

File No. 221059

Committee Item No. 8

Board Item No. 19

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee

Date November 2, 2022

Board of Supervisors Meeting

Date November 8, 2022

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
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OTHER (Use back side if additional space is needed)

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| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>MTAB Resolution No. 220920-086 9/20/2022</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>PSC Approval 7/18/2022</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>MTA/PLN CEQA Determination of Exemption 9/13/2022</u> |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <u>MTA Briefing Letter 9/28/2022</u> |
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Completed by: Brent Jalipa

Date October 27, 2022

Completed by: Brent Jalipa

Date November 3, 2022

1 [Contract - Intercare Holdings Insurance Services, Inc. - Workers' Compensation Third Party
2 Administrator Services - \$33,771,962]

3 **Resolution authorizing the Municipal Transportation Agency to execute an agreement**
4 **with Intercare Holdings Insurance Services, Inc. for Workers' Compensation Third**
5 **Party Administrator services for an amount not to exceed \$33,771,962 for a three-year**
6 **base term from November 1, 2022, through October 31, 2025, and two three-year**
7 **options to extend, with said options to be exercised by the Municipal Transportation**
8 **Agency without further approval of the Board of Supervisors; and where applicable,**
9 **affirming the Planning Department's determination under the California Environmental**
10 **Quality Act.**

11
12 WHEREAS, State law requires the Municipal Transportation Agency (SFMTA), as an
13 employer, to provide workers compensation benefits, comprising short-term and long-term
14 medical treatment, temporary and permanent disability, and other statutory benefits to injured
15 SFMTA employees; and

16 WHEREAS, The SFMTA assumed responsibility for managing its workers'
17 compensation claims on July 1, 2000, as authorized by Charter, Section 8A.104(c); and

18 WHEREAS, The SFMTA and City's Department of Human Resources (DHR) issued a
19 joint Request for Proposals on May 4, 2022, for separate contracts for workers' compensation
20 claims administration services; and

21 WHEREAS, The SFMTA and DHR received proposals from three proposers:
22 Innovative Claim Solutions; Tristar; and Intercare Holdings Insurance Services, Inc.
23 (Intercare); and

24 WHEREAS, The SFMTA and DHR determined that Innovative Claim Solutions'
25 proposal was not responsive to RFP requirements concerning account handling certifications

1 and documentation concerning the experience and qualifications of its claims management
2 personnel, and its proposal therefore was not evaluated; and

3 WHEREAS, A selection panel of persons with significant experience and expertise in
4 workers' compensation claims management evaluated the remaining two proposals and
5 ranked Intercare's proposal the highest; and

6 WHEREAS, On July 18, 2022, the Civil Service Commission authorized the SFMTA to
7 contract out workers compensation claims management services, Notice of Action for
8 Personal Service Contract Number 48002 – 21/22; and

9 WHEREAS, On September 13, 2022, the SFMTA, under authority delegated by the
10 Planning Department, determined that the Workers' Compensation Claims Administration
11 Services Agreement is not a "project" under the California Environmental Quality Act (CEQA)
12 pursuant to Title 14 of the California Code of Regulations, Sections 15060(c) and 15378(b),
13 and a copy of the CEQA determination is on file with the Secretary to the SFMTA Board of
14 Directors and is incorporated herein by reference; and

15 WHEREAS, The contract amount exceeds \$10,000,000, therefore the contract is
16 subject to Board of Supervisors' approval, in accordance with Charter, Section 9.118(b); now,
17 therefore, be it

18 RESOLVED, That the Board of Supervisors approves Contract No. SFMTA-2022-31
19 with Intercare Holdings Insurance Services, Inc., to provide workers' compensation claims
20 administration services for a contract amount not to exceed \$33,771,962 for a three-year base
21 term and two options of three-years each to extend the term for a total term of nine years, said
22 options to be exercised by the Municipal Transportation Agency without further approval of the
23 Board of Supervisors; and, be it

1 FURTHER RESOLVED, That within thirty (30) days of the agreement being fully
2 executed by all parties, the Municipal Transportation Agency shall provide the final agreement
3 to the Clerk of the Board for inclusion into the official file.

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Items 7 & 8 Files 22-1059 and 22-1060	Department: Department of Human Resources (DHR), San Francisco Municipal Transportation Agency (SFMTA)
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EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolutions would approve workers’ compensation third party administrator services contracts between Intercare Holdings Insurance Services, Inc. (Intercare) and (1) the San Francisco Municipal Transportation Agency (SFMTA), for an amount not to exceed \$33,771,962 (File 22-1059), and (2) the Department of Human Resources (DHR), for an amount not to exceed \$29,357,361 (File 22-1060). Each contract would have a term of three years from November 2022 through October 2025, with two three-year options to extend through October 2031.

Key Points

- The City has administered its self-insured workers’ compensation program through DHR since 1932. In 2000, Proposition E amended the City Charter to authorize SFMTA to administer its own workers’ compensation claims. While most department claims are handled by DHR’s self-administered program, five City departments (not including SFMTA) use contracted claims administrator services.
- In May 2022, SFMTA and DHR jointly issued a Request for Proposals (RFP) for workers’ compensation administration services. Intercare, which has been the current provider, was deemed the highest scoring responsive and responsible proposer. SFMTA requested to enter into separate contracts with Intercare to provide greater flexibility to adjust the contract.
- Under the proposed contracts, Intercare would provide workers’ compensation claims administration services, as well as as-needed services. The proposed agreements assume 600 new annual claims from MTA and 800 new claims from other departments covered by Intercare.

Fiscal Impact

- The proposed contracts would have a total combined amount not to exceed \$63,129,323, which includes expenditure authority for the initial contract term and two three-year extension terms. Between the two contracts, Intercare would employ approximately 33.5 full-time equivalent (FTE) employees. DHR’s contract expenditures would be allocated to the five departments using the service, and SFMTA’s contract expenditures would be funded by its annual operating budget.

Recommendation

- Approve the proposed resolutions.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND

State law requires every employer in California to provide workers’ compensation benefits to its employees for work-related injuries and illnesses. The City has administered its self-insured workers’ compensation program through the Department of Human Resources (DHR) since 1932. In 2000, Proposition E amended the City Charter to authorize the San Francisco Municipal Transportation Agency (SFMTA) to administer its own workers’ compensation claims. According to DHR, most department claims are handled by DHR’s Workers’ Compensation Division’s (WCD) self-administered program. However, Department of Public Health (DPH), Department of Public Works (Public Works), Department of Sanitation and Streets (SES), City Attorney’s Office (CAT), and DHR rely on contracted claims administration to eliminate conflicts of interests for departments with workers compensation claim approval authority (CAT and DHR) and because the DHR capacity for managing claims is limited by existing staffing. Intercare Holdings Insurance Services (Intercare) currently provides workers’ compensation third-party administrator services for both DHR and SFMTA under a five-year joint contract that will expire on October 31, 2022 (File 17-0510).

In May 2022 SFMTA and DHR jointly issued a Request for Proposals (RFP) for workers’ compensation administration services. Three firms submitted proposals, but one proposal was deemed nonresponsive because it lacked documentation of qualifications. An evaluation panel reviewed the remaining two proposals and scored them, as shown in Exhibit 1 below.¹

Exhibit 1: Proposals and Scores from RFP

Proposer	Score
Intercare	125.42
Tristar	113.20

Source: SFMTA, DHR

Intercare was deemed the highest scoring responsive and responsible proposer. Rather than entering into another joint contract with DHR, SFMTA requested entering into separate contracts with Intercare. According to SFMTA Human Resources Manager Ify Omokaro, a separate contract would allow SFMTA greater flexibility to adjust the contract without having to go through the Office of Contract Administration (OCA), as SFMTA has Charter authority over its contracts. SFMTA negotiates a per-claim fee, and SFMTA’s claims are often more complex than other City

¹ The evaluation panel consisted of a DPH Health and Safety Manager, an Airport Health and Safety Manager, a DHR Workers’ Compensation Claims Compliance Officer, a DHR Workers’ Compensation Claims Finance Senior Management Assistant, and an SFMTA Workers’ Compensation Senior Analyst.

departments due to its workforce. In September 2022, the SFMTA Board approved its contract with Intercare.

Workers' Compensation Claims

Exhibit 2 below shows workers' compensation claims filed in each of the past five fiscal years.

Exhibit 2: Annual Workers' Compensation Claims Filed, FY 2017-18 through FY 2021-22

Year	Claims Handled by WCD	Intercare Claims Assigned by DHR	Intercare Claims for SFMTA	Total
FY 2017-18	2,174	1,071	631	3,876
FY 2018-19	2,245	1,007	686	3,938
FY 2019-20	2,028	989	634	3,651
FY 2020-21	2,524	1,038	563	4,125
FY 2021-22	3,528	1,142	721	5,391
Total	12,499	5,247	3,235	20,981

Source: DHR

According to Peggy Sugarman, DHR Workers' Compensation Director, DHR anticipates that claims will decline in FY 2022-23 relative to FY 2021-22 due to fewer COVID-19 claims. The rate of decline will be dependent of seasonal COVID-19 patterns, as well as the nature of the predominant variants in circulation. The proposed agreements assume 600 new annual claims from MTA and 800 new annual claims from other departments covered by Intercare.

DETAILS OF PROPOSED LEGISLATION

The proposed resolutions would approve workers' compensation third-party administrator services contracts between Intercare and (1) SFMTA, for an amount not to exceed \$33,771,962 (File 22-1059), and (2) DHR, for an amount not to exceed \$29,357,361 (File 22-1060). Each contract would have a term of three years, from November 2022 through October 2025, with two three-year options to extend through October 2031.

Under the proposed contracts, Intercare would provide the following **workers' compensation claims administration services** to DHR and SFMTA: claims intake, investigation, and eligibility determination; management of temporary and permanent disability eligibility and payments; management of medical claims, medical services review, and working with DHR/SFMTA's medical bill review service; coordinating payment to medical service providers and evaluating physicians; medical and disability claims management to facilitate employees' return to work; management of claims cost reduction programs; management of subrogation and third-party claims settlement; litigation support to the City Attorney; Occupational Safety and Health Administration (OSHA) database management; and Medicare injury/incident data reporting. Additionally, Intercare would provide **as needed services**: nurse triage injury hotline and reporting, pharmacy benefit management services, fraud investigation and reporting, and other as-needed services in support of the City's workers' compensation program.

Under the proposed contracts, Intercare is required to submit monthly and quarterly reports to DHR and SFMTA providing detailed claim volume, cost data, and caseload staffing. Intercare is required to respond to phone or email communications from the City within one business day

and from other parties within five business days and make records available for audit within one business day. According to DHR Workers' Compensation Director Sugarman, DHR regularly audits samples of claims for each adjuster for compliance with the laws governing workers' compensation benefit delivery, general performance, and compliance with service instructions. Intercare may settle claims for up to \$20,000, but larger settlement requests must be reviewed and approved by DHR or SFMTA.

Fee Structure

The proposed contracts include budgets for fixed fees to cover the claims administration services noted above and projected spending for the as-needed services, which is billed on an hourly basis by task order. Year 1 of the MTA contract fixed fee is \$3.1 million and assumes 20 full-time equivalent (FTE) staff with 2,150 claims per examiner. Year 1 of the DHR contract fixed fee is \$2 million and assumes 13.50 FTE with 1,800 claims per examiner. The number of claims per examiner is higher in the MTA contract due a different mix of claims and longer case cycle times.

FISCAL IMPACT

The proposed contracts would have a total combined amount not to exceed \$63,129,323, which includes expenditure authority for the initial contract term and two three-year extension terms. Estimated annual expenditures are shown in Exhibit 3 below.

Exhibit 3: Estimated Annual Contract Expenditures

Year	SFMTA Contract (File 22-1059)	DHR Contract (File 22-1060)	Total
Year 1	\$3,324,304	\$2,854,748	\$6,179,052
Year 2	3,424,033	2,948,590	6,372,623
Year 3	3,526,754	3,045,659	6,572,413
Year 4 (First Option)	3,632,557	3,146,070	6,778,627
Year 5	3,741,534	3,249,945	6,991,479
Year 6	3,853,780	3,357,412	7,211,192
Year 7 (Second Option)	3,969,393	3,468,599	7,437,992
Year 8	4,088,475	3,583,645	7,672,120
Year 9	4,211,130	3,702,693	7,913,823
Total	\$33,771,961	\$29,357,361	\$63,129,322

Source: Proposed Contracts

The SFMTA contract budget includes \$31,994,111 in annual fixed fees and \$1,777,850 in estimated as-needed services, and the DHR contract budget includes \$20,722,012 in annual fixed fees, \$8,228,985 in estimated as-needed services, and \$406,364 in check printing costs (which includes check printing costs for SFMTA). Between the two contracts, Intercare would employ approximately 33.5 full-time equivalent (FTE) employees. DHR's contract expenditures would be allocated to the five departments using the service, and SFMTA's contract expenditures would be funded by its annual operating budget.

RECOMMENDATION

Approve the proposed resolution.



Workers' Compensation Program

- 3rd-Party contract for work injury claims administration with Intercare Holding Services
- Manages injury claims as assigned by DHR
- 3 Year Term, with two 3 Year Options not to exceed \$29,357,361
- Includes “as-needed” services to support citywide workers' compensation program

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. SFMTA-2022-31

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

Contract No. SFMTA-2022-31

This Agreement is made as of _____, in the San Francisco, California, by and between Intercare Holdings Insurance Services, Inc., a Delaware corporation (Contractor), and the City and County of San Francisco (City), a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

A. The SFMTA 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 the 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 the SFMTA, as set forth in this Agreement.

E. The City's Civil Service Commission approved this Agreement under Contract number 48002-21/22 on July 18, 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 “**CCO**” means the SFMTA Contract Compliance Office.

1.5 “**City**” or “**the City**” means the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

1.6 “**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 WCAB, parties to a litigated matter, or to State and federal government agencies.)

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

1.8 “**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.

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

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

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

1.12 “**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.

1.13 “Contract Administrator” means the contract administrator assigned to the Contract by the SFMTA.

1.14 “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.

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

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

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

1.18 “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.

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

1.20 “Director” means the Director of Transportation of the SFMTA./

1.21 “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.

1.22 “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.

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

1.24 “Program” - See “Services.”

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

1.26 “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.

1.27 “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 VIII A of the San Francisco Charter.

1.28 “Services” (alternatively referenced as “the Program”) means all actions, activities and other work that Contractor shall perform that are necessary 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.

1.29 “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 SFMTA 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 SFMTA’s exercise of said options to extend the term of the Agreement shall be within the sole discretion of the SFMTA and 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 Thirty-Three Million Seven Hundred Seventy-One Thousand Nine Hundred Sixty-Two Dollars (**\$33,771,962**).

3.3.2 Payment. Contractor shall provide an invoice to the SFMTA 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 Director of Transportation, or his designee, in his 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 the SFMTA 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 SFMTA 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 the SFMTA 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
- (b) Nurse Triage After Hours/Overflow Coverage: The Kingstree Group
- (c) Loss Prevention and Safety Services: Loss Prevention Specialists (LPS)
- (d) Pharmacy Benefit Management Plan Services: Optum

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 and under SFMTA contract approval policies. 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: San Francisco Municipal Transportation Agency
Workers' Compensation Program
Attention: Ify Omokaro, Program Manager
One South Van Ness Avenue, 6th Floor
San Francisco, CA 94103
email: Ify.Omokaro@sfmta.com

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

Any notice of default must be sent by overnight delivery service or courier, with a signature obtained at delivery or via email with proof of delivery followed by hardcopy delivered via U.S. Mail First Class. 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 law and under the policies of the SFMTA Board of Directors. Contractor shall cooperate with the City to submit a CMD Contract Modification Form to the CCO 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 its 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 SFMTA Specific Terms

12.1 Large Vehicle Driver Safety Training Requirements.

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

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

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 the SFMTA 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

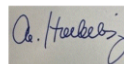


Appendix C - Confidentiality Agreement

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
San Francisco Municipal Transportation Agency	Intercare Holdings Insurance Services, Inc.
_____ Jeffrey P. Tumlin Director of Transportation	 _____ Agnes Hoerberling Chief Executive Officer
Authorized By: Municipal Transportation Agency Board of Directors	
Resolution No: <u>220920-086</u>	<u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u>
Adopted: <u>9/20/2022</u>	By signing this Agreement, Contractor acknowledges that it has read and understands
Attest:  _____ Secretary of the Board	Section 12.1: Large Vehicle Driver Safety Training Requirements.
Board of Supervisors	
Resolution No: _____	City Supplier Number: 0000018253
Adopted: _____	
Attest: _____ Clerk of the Board	
Approved as to Form:	
David Chiu City Attorney	
By:  _____ Robert K. Stone Deputy City Attorney	

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 SFMTA employees. 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 or the SFMTA (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 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 the SFMTA 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 the SFMTA 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. Reserved.

1.4. Department Liaisons

Contractor's performance of the Services shall be coordinated through the SFMTA Liaison, who shall have the authority to direct Contractor as to all matters concerning the Services and the resulting Agreements. The SFMTA's Liaison is the SFMTA's Workers' Compensation Program Manager or their designee.

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 SFMTA staff. Prior to the meeting, Contractor shall provide a draft agenda and draft Program plan for 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 SFMTA 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 SFMTA 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 SFMTA's workers' compensation claims with separate Claims Examiners and supervisors dedicated solely to SFMTA claims, respectively.
- b. Provide an experienced, dedicated account manager (Program Account Manager) to provide oversight to the management of SFMTA 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 SFMTA'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 the SFMTA's Workers' Compensation Program Manager (his 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 125 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 125 for 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 SFMTA 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 SFMTA 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 SFMTA.
- l. The SFMTA 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 SFMTA's approval.

2.3. SFMTA Claims Assignment

Contractor shall assign caseload by SFMTA Division on the SFMTA Program instead of splitting the claims alphabetically by the name of the injured worker.

2.4. Performance Standards: Communications and Reporting

Contractor shall:

- a. Respond to phone or email communications from the SFMTA within one business day, and respond to written communications from any person or entity within five business days.
- b. Manage all SFMTA 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 SFMTA and by state agencies charged with enforcement of the provisions of the California Labor Code.
- d. Meet with the SFMTA's authorized representatives upon request and at regularly scheduled times to be determined by the SFMTA to discuss cases selected by the SFMTA and/or Contractor as requiring special attention.
- e. Conduct claim review with specified SFMTA Departments to review claims identified by the SFMTA, 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 SFMTA'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 SFMTA'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 SFMTA's workers' compensation Program and costs.
 - 10) Monthly reports that will include data on loss control/statistical analysis, payments, recoveries and cost allocation by SFMTA.
 - 11) Estimated value (of medical and disability benefits) of each active claim and required reserves.
- g.** Meet with the SFMTA and physician members or representatives of the Medical Provider Network, as required by the Agreement or as directed by the SFMTA 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 SFMTA to 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 SFMTA's Workers' Compensation Program Manager.
 - n.** Send copies of all DWC notices and Transitional Work letters to the SFMTA Liaison and its Americans with Disabilities Act (ADA) Coordinator, and SFMTA payroll department. 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 SFMTA Representative. Contractor shall accept

direction only from the SFMTA's authorized representatives or other persons identified in a written notice as authorized by the SFMTA. 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 Transportation who shall confirm or overrule the directive in writing.

- p. The SFMTA 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 SFMTA may assign to it.
- q. Contractor may rely on the direction of SFMTA Representatives and shall perform the Services as the SFMTA Representatives may direct. But if a SFMTA 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 SFMTA Representative who gave that direction and shall describe the specific grounds on which Contractor objects. If the SFMTA Representative confirms his/her direction in writing, Contractor may perform that action or task as directed, but the SFMTA shall not hold Contractor responsible for any penalty or liability arising from Contractor's performance of that action or task.

2.5. Records Storage and Maintenance

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 SFMTA 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 SFMTA are the property of the SFMTA. Contractor shall not dispose of any Records without the prior express written authorization from the SFMTA. (See Article 8 of this Appendix, Data Management.)

2.6. 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.

2.7. 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).

2.8. Causation Investigation

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

2.9. Compensability Determination

Contractor shall determine the compensability of injuries and illnesses claimed by SFMTA 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 SFMTA 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.

2.10. Claims Diary

Contractor shall maintain a diary system utilizing the SFMTA'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 SFMTA'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.

2.11. Claim Management Plan

Contractor shall establish a Plan of Action (POA) for the investigation, adjustment and prompt resolution of all indemnity cases as soon as possible, but not to exceed seven business days from receipt of the first report of injury (DWC-I, 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.

2.12. 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 SFMTA by sending the SFMTA a claims diary system reserve alert including explanation for the change within two business days of the change.

2.13. 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.

2.14. Timely Payment and Notices

Contractor shall issue all payments, notices of delay in decision, and compensability determinations in the manner and within the time limits required by applicable laws and regulations. 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 SFMTA on a monthly basis.

2.15. Permanent/Stationary and Return to Work Notices

Contractor shall notify SFMTA by email within 48 hours of receipt of any medical report finding a SFMTA employee to be permanent and stationary and/or releasing a SFMTA employee to return to work. The purpose of said notice is to allow the SFMTA to return the employee to work as expeditiously as possible and determine what modifications or accommodations, if any, may be required to facilitate the employee's return to work.

2.16. Document Match and Review Process

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

2.17. Missing DWC-1

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

2.18. Claim Resolution

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

2.19. Claims Settlement

For each claim, Contractor shall:

- a. **Threshold Amount.** Seek to negotiate and settle claims within the threshold amount(s) as provided by the SFMTA. Threshold amounts may be increased or decreased at the SFMTA'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 SFMTA.
- 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 SFMTA must be submitted to the appropriate SFMTA 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 SFMTA and shall include complete documentation of potential liability based upon all relevant evidence.

2.20. Return to Work

Contractor shall work closely with SFMTA'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.

2.21. Claims Closeout

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

2.22. Paper Reduction

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

2.23. Applicable Authority

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

2.24. Claims Resolution

To facilitate claims resolution, Claims Examiners and interested claimants (who are not represented by legal counsel) will meet, as directed by the SFMTA, in person at a location to be determined by the SFMTA 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 and SFMTA's respective Utilization Review Plans mandated by California Labor Code Section 4610, as the SFMTA 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 SFMTA policies, including utilization review and pharmacy benefit management.

3.3. Nurse Triage Services

Contractor shall provide Nurse Triage Services as described below to reduce claim reporting lag, enable more timely delivery of benefits to injured workers, including directing medical treatment recommendations as indicated by the injured employee's injury and medical status. Nurse Triage Services shall also be available for SFMTA 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 SFMTA 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 SFMTA Liaison.
 - 12) Triage nurse, when not conducting new claim intake duties, shall be available to SFMTA for general medical inquiries.

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

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

3.4. Telemedicine Services

- a. On an as-needed basis or as required by the SFMTA, 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 SFMTA employees who do not have reasonably close access to local emergency medical treatment services. The SFMTA may require

Contractor to provide telemedicine services to SFMTA 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 SFMTA'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 SFMTA 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 SFMTA.

3.5. Medical Case Management

- a. **Approved Vendors.** Contractor shall refer claims for Medical Case Management only to vendors designated on the SFMTA'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 SFMTA, 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 SFMTA-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 SFMTA.
- c. **Pharmacy Program Protocols.** Contractor shall within 30 days of the Effective Date of the Agreement provide the SFMTA 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 SFMTA 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 SFMTA and communicate with SFMTA Liaisons on the need for equipment necessary to accommodate an employee's workplace restrictions consistent with SFMTA policy.

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 SFMTA 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 SFMTA 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 SFMTA 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 SFMTA 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 SFMTA employee by contacting the appropriate SFMTA 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 SFMTA.

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 SFMTA 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 SFMTA'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 SFMTA 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 Holdings Insurance Services
Administrator for City and County of San Francisco
Department of Human Resources
Workers' Compensation Division
6020 West Oaks Blvd Ste 100
Rocklin, CA 95765

- 3) Checks used to draw on the WCD Account shall contain the following identifying language:

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

- 4) Checks used to draw on the SFMTA Account shall contain the following identifying language:

San Francisco Municipal Transportation Agency
Attention: Workers Compensation Division
One South Van Ness Avenue, 6th Floor
San Francisco, CA 94103-5413

5) 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 the SFMTA Director of Human Resources (for SFMTA Account) whose name shall appear on the US Bank Signature Authorization card(s).

6.2. Banking

a. Bank Accounts

- 1) The City has established two bank Accounts with US Bank from which Contractor shall issue payment of workers' compensation indemnity benefits and payments to workers' compensation vendors. One account shall be used by Contractor to issue payments on claims adjusted by Contractor (TPA Account) and one shall be used to issue payments on claims adjusted by Contractor for SFMTA (SFMTA Account). 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, Finance and Systems Manager
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 TPA and SFMTA bank accounts.

b. Purpose of Bank Account(s)

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

SFMTA 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 WCD staff, following the timely and proper documentation of exceptions by Contractor to the SFMTA, 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 WCD with the request for a stop payment, including the affidavit, with the reason for the request; and

c) Contractor has received an email confirmation from the WCD that the request has been processed with 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 SFMTA 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 the 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 SFMTA, 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 "San Francisco Municipal Transportation Agency" or "SFMTA"

for all payments issued under the SFMTA Account. Contractor shall coordinate with the SFMTA on all recovery efforts in the event that recoupment of overpayments cannot be completed within 30 days.

f. Handling of Cash Receipts Payable to the SFMTA

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

a) For SFMTA reimbursements, the SFMTA's designated contact is:

Wei Han, Accountant III
San Francisco Municipal Transportation Agency
One South Van Ness Ave., 8th Floor, Cube 8129
San Francisco, CA 94103
Phone: (415)-646-2154
Wei.Han@sfmta.com

2) The SFMTA shall be responsible for processing all cash receipts, including depositing of checks to SFMTA 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 "San Francisco Municipal Transportation Agency" or "SFMTA" for all claims or payments issued under the SFMTA 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 SFMTA 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 the SFMTA. In the event that electronic payment exceptions occur, Contractor shall confer with the SFMTA to investigate and resolve bank accounting discrepancies.

i. Audits

The SFMTA, 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 the SFMTA 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 SFMTA employees due workers' compensation benefits. Contractor will inform CCSF-WCD and MTA for any payment over its authority limit and will request CCSF-WCD or MTA to approve those payments.

b. Payments to Vendors

- 1) DHR will provide Contractor access to and authority to approve payments against the SFMTA 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 WCD adjusters. No payment can be issued against any Account unless the SFMTA adds the vendor to the system following procedures approved by the WCD Finance and Systems Manager.
- 3) Upon receipt of a valid and complete request from TPA or WCD 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 SFMTA 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 SFMTA 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 SFMTA 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 SFMTA 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 SFMTA's Workers' Compensation Program Manager 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 SFMTA requests, Contractor, or its subcontractors, shall provide as-needed claims management support services as described below and as the SFMTA 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 SFMTA may request from Contractor include, but are not limited, to the following:

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

- d. **Knowledgebase System Services.** Contractor shall to 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.
- e. **Audit Services.** Contractor shall provide claim audits, medical provider billing investigation audits, and program management audit and consultation services.
- f. **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.
- g. **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 assist 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.
- h. **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 SFMTA 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 SFMTA will perform the tasks and provide the resources only that are specifically described in this Section 10. Unless specifically otherwise stated, Contractor shall

be responsible for performing all tasks, services and providing all resources that are necessary for or incidental to the completion of the Services in accordance with the requirements of this Agreement.

10.2. The 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 SFMTA 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 SFMTA with providing ongoing services on a temporary emergency basis as directed by City. The SFMTA 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 SFMTA unable to temporarily process workers' compensation claims

Appendix B Calculation of Charges

A. Compensation for Services

1. In accordance with Section 3.3 (Compensation) of this Agreement, the SFMTA shall compensate Contractor for Services performed to the SFMTA'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 SFMTA may exercise as options) shall not exceed \$33,771,962, 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. The SFMTA 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, the Annual Fixed Fees 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 total amount for As-Needed Services listed below.

	Estimated As-Needed Services	Annual Fixed Fees	Total
-			
<u>Contract Year 1:</u>	\$175,000.00	\$3,149,303.76	\$3,324,303.76
<u>Contract Year 2:</u>	\$180,250.00	\$3,243,782.87	\$3,424,032.87
<u>Contract Year 3:</u>	\$185,658.00	\$3,341,096.35	\$3,526,754.35
<u>Contract Year 4 (First Option - Year 1):</u>	\$191,228.00	\$3,441,329.24	\$3,632,557.24
<u>Contract Year 5 (First Option - Year 2):</u>	\$196,965.00	\$3,544,569.12	\$3,741,534.12
<u>Contract Year 6 (First Option - Year 3):</u>	\$202,874.00	\$3,650,906.20	\$3,853,780.20
<u>Contract Year 7 (Second Option - Year 1):</u>	\$208,960.00	\$3,760,433.38	\$3,969,393.38
<u>Contract Year 8 (Second Option - Year 2):</u>	\$215,229.00	\$3,873,246.38	\$4,088,475.38
<u>Contract Year 9 (Second Option - Year 3):</u>	\$221,686.00	\$3,989,443.77	\$4,211,129.77
<u>Total Annual Fixed Fees</u>	\$1,777,850	\$31,994,111.08	\$33,771,961.08

B. SFMTA Claims

1. Claims Load Per Examiner. The SFMTA shall compensate Contractor for Services performed on SFMTA 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 125 SFMTA 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	500
Medical Only - New	50
Indemnity and Medical-only - Pending	1,100
Future Medical - Pending	500
TOTAL	2,150

2. Staffing

Contractor shall implement the Staffing Model described below to perform the Services for SFMTA Claims. Contractor’s staff shall be dedicated to SFMTA Claims for the Full Time Employee (FTE) value listed below, except those personnel who are assigned to Intercare’s shared services department. (See Appendix A, Section 2.2.g., for more detailed Services staffing requirements.)

Positions	FTE
Claims Manager	0.70
Claims Supervisor	2.50
Indemnity Claims Adjuster	8.00
Future Medical Claims Adjuster	2.00
Medical Only Claims Adjuster	1.00
Claims Assistant	3.00
Admin/General Clerk	2.30
<u>Triage/Case Management Nurse</u>	0.50
Total FTE	20.00

3. 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

4. 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 San Francisco Municipal Transportation Agency, a department of 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_____

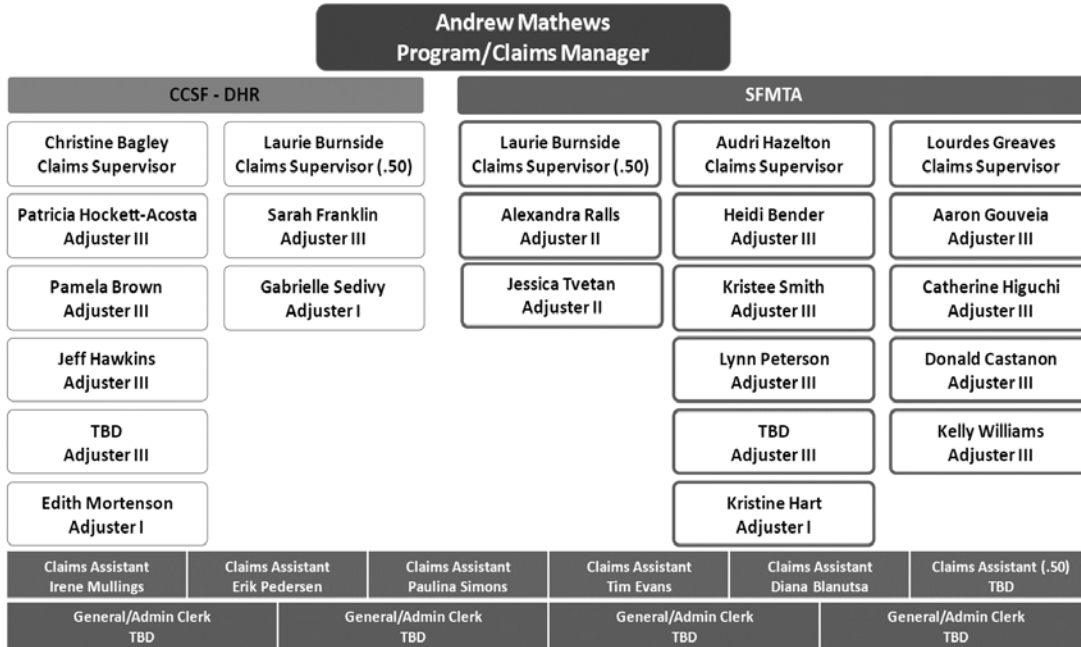
Position/Title_____

Date_____

Appendix D Contractor Staffing Chart



CCSF DHR AND SFMTA ORG CHART



Appendix E
Client Service Instructions

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 220920-086

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) is authorized under State law to be permissibly self-insured for purposes of workers' compensation; and,

WHEREAS, The SFMTA assumed responsibility for managing its workers' compensation claims on July 1, 2000, as authorized by Charter Section 8A.104(c); and,

WHEREAS, The SFMTA and the City's Department of Human Resources (which manages other City departments' workers compensation claims) have joint contracts with Intercare Holdings Insurance Services, Inc. (Intercare) to manage City employees' workers' compensation claims since November 1, 2012, which will expire on October 31, 2022; and,

WHEREAS, The SFMTA and City's Department of Human Resources issued a joint Request for Proposals on May 4, 2022, for separate contracts for workers' compensation claims administration services; and,

WHEREAS, The SFMTA and DHR received proposals from three proposers: Innovative Claim Solutions; Tristar; and Intercare Holdings Insurance Services, Inc.; and,

WHEREAS, The SFMTA and DHR determined that Innovative Claim Solutions' proposal was not responsive to RFP requirements concerning account handling certifications and documentation concerning the experience and qualifications of claims management personnel, and that proposal therefore was not evaluated; and,

WHEREAS, A selection panel of persons with significant experience and expertise in workers' compensation claims management evaluated the remaining two proposals and ranked Intercare Holdings Insurance Services' proposal the highest; and,

WHEREAS, On July 18, 2022, the Civil Service Commission authorized the SFMTA to contract out workers compensation claims management services, Notice of Action for Personal Service Contract Number 48002 – 21/22; and,

WHEREAS, On September 13, 2022, the SFMTA, under authority delegated by the Planning Department, determined that the Workers' Compensation Claims Administration Services Agreement is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; and,

WHEREAS, The contract amount exceeds \$10 million, therefore the contract is subject to Board of Supervisors' approval, in accordance with Charter Section 9.118; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors approves Contract No. SFMTA-2022-31 with Intercare Holdings Insurance Services, Inc., to provide workers' compensation claims administration services for a contract amount not to exceed \$33,771,962 for a three-year base term and two options of three-years each to extend the term for a total term of nine years, said options to be exercised by the Director of Transportation; and be it further

RESOLVED, San Francisco Municipal Transportation Agency Board of Directors requests the Board of Supervisors to approve Contract No. SFMTA-2022-31.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of September 20, 2022.



Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCY -- MTA Dept. Code: MTA

Type of Request: [X] Initial [] Modification of an existing PSC (PSC # _____)

Type of Approval: [] Expedited [X] Regular ([] Omit Posting)

Type of Service: Workers Compensation Claims Management

Funding Source: Operating Funds PSC Duration: 9 years 1 day
PSC Amount: \$35,000,000 PSC Est. Start Date: 10/01/2022 PSC Est. End Date: 09/30/2031

1. Description of Work

A. Scope of Work:

The San Francisco Municipal Transportation Agency (SFMTA) is self-insured for Workers' Compensation (Workers' Comp) and existing claims are currently adjusted by a third party administrator (TPA). The contractor will provide claims adjusting and consulting services for existing and new claims for Workers' Comp benefits filed by SFMTA employees. Services include claims review and compensability determination; payment of statutory benefits, medical providers, and ancillary claims services; vendor management for bill review; investigative services; coordination of claims defense with the City Attorney; management of benefit delivery system; and data collection and management.

B. Explain why this service is necessary and the consequence of denial:

SFMTA is required by State law to provide Workers' Comp benefits to its employees. As a certified self-insured employer, SFMTA is required to provide claims administration services. Rather than purchase insurance, self-insured employers usually choose to self-insure their workers' compensation liabilities for the reasons of cost-effectiveness, greater control over their claims programs and increased safety and loss control management.

The success of a Workers' Comp self-insurance program is often dependent upon the effectiveness of loss control activities and claims supervision. If this service is denied, SFMTA would have neither the expertise nor staffing to address workers' compensation claims brought on by its employees

C. Has this service been provided in the past. If so, how? If the service was provided via a PSC, provide the most recently approved PSC # and upload a copy of the PSC.

These services have been provided under PSC No. 4088-03/04 and are currently provided under PSC# 4088-11/12.

D. Will the contract(s) be renewed? No

2. Union Notification: On 04/12/2022, the Department notified the following employee organizations of this PSC/RFP request: SEIU Local 1021

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 48002 - 21/22

DHR Analysis/Recommendation:

07/18/2022

Commission Approval Required

DHR Approved for 07/18/2022

Approved by Civil Service Commission with conditions

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise:

A Claims Examiner is responsible for determining the validity of a workers' comp claim. The Workers' Comp adjuster may establish a case; reserve, approve and process indemnity and medical benefits; may hire investigators, attorneys, or other professionals; and may negotiate settlements of claims. The Claims Adjuster is required to possess specialized knowledge, have five (5) years in the last eight (8) years of on-the-job experience adjusting California workers' compensation claims, and possess certification with "Experienced Claims Adjuster

B. Which, if any, civil service class(es) normally perform(s) this work?

8141,8165,1209,

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If yes, explain:

Yes. The contractor must have proprietary claims adjusting procedures and claims management software that will be accessible to SFMTA. The contractor will also maintain office and storage space sufficient to house claims management staff and nearly 2,000 open Workers' Comp claims files.

4. Why Classified Civil Service Cannot Perform

A. Explain why civil service classes are not applicable:

A contracted TPA had been successfully demonstrated as the most effective way to meet statutory requirements governing the provision of workers' compensation benefits to SFMTA employees.

B. Would it be practical to adopt a new civil service class to perform this work? Explain.

No. Classifications already exist. SFMTA retains a Workers' Compensation Manager and support staff assigned to manage the disability and return to work programs. However, SFMTA does not employ a workers' comp claims adjusting staff which could be viewed as a conflict of interest.

5. Additional Information (if "yes", attach explanation)

YES NO

- A. Will the contractor directly supervise City and County employee? YES NO
- B. Will the contractor train City and County employee?
The scope of this work does not require SFMTA employees to be trained. YES NO
- C. Are there legal mandates requiring the use of contractual services? YES NO
- D. Are there federal or state grant requirements regarding the use of contractual services? YES NO
- E. Has a board or commission determined that contracting is the most effective way to provide this service? Resolution: 03-190 YES NO
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? YES NO

THE ABOVE INFORMATION IS SUBMITTED AS COMPLETE AND ACCURATE ON BEHALF OF THE DEPARTMENT HEAD ON 06/15/2022 BY:

Name: Amy NUQUE Phone: 415-646-2802 Email: amy.nuque@sfmta.com

Address: 1 South Van Ness, 6th Floor San Francisco, CA 94103



Contract No. SFMTA-2022-31, Intercare Holdings Insurance Services, Inc.

The San Francisco Municipal Transportation Agency (SFMTA) seeks authorization for the Director of Transportation to approve contract SFMTA-2022-31 with Intercare Holdings Insurance Services, Inc., to provide worker's compensation claims administration services for a contract amount not to exceed \$33,771,962, for a three-year base term and two three-year term extension options, for a total term of nine years, and requests the Board of Supervisors approve the contract.

Not a "project" under CEQA pursuant to CEQA Guidelines Sections 15060(c) and 15378(b) because the action would not result in a direct or a reasonably foreseeable indirect physical change to the environment.

A handwritten signature in black ink that reads "Angela Alter".

September 13, 2022

Angela E. Alter, Environmental Review Planner Date
San Francisco Municipal Transportation Agency

A handwritten signature in black ink that reads "JMcKellar".

September 13, 2022

Jennifer McKellar, Senior Planner
San Francisco Planning Department

Date



London Breed, Mayor

Gwyneth Borden, Chair
Amanda Eaken, Vice Chair
Stephanie Cajina, Director

Steve Heminger, Director
Fiona Hinze, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

September 28, 2022

The Honorable Members of the Board of Supervisors
City and County of San Francisco
1 Dr. Carlton Goodlett Place, Room 244
San Francisco, CA 94102

Subject: Request for Approval to Contract No. SFMTA-2022-31 with Intercare Holdings Insurance Services, Inc. to Provide Workers' Compensation Claims Administration Services to the SFMTA

Honorable Members of the Board of Supervisors:

The San Francisco Municipal Transportation Agency (SFMTA) requests that the San Francisco Board of Supervisors approve Contract No. SFMTA-2022-31 with Intercare Holdings Insurance Services, Inc. (Intercare) to provide workers' compensation claims administration services for a contract amount not to exceed \$33,771,962 for a three-year base term, and two three-year term extension options, for a total term of nine years. The SFMTA Board of Directors approved this contract by Resolution No. 220920-086 at its meeting on September 20, 2022, subject to Board of Supervisors approval. Board of Supervisors' approval is required under Charter section 9.118(b), because expenditures under the proposed contract will exceed \$10 million.

Background

State law requires that every employer in California provide workers compensation benefits to its employees for work-related injuries and illnesses; an employer may either secure workers compensation insurance or may be licensed by the State as a self-insured employer. Cal. Labor Code § 3700(a). The SFMTA is licensed by the State to be a self-insured employer; as such, the SFMTA directly pays injured employees temporary disability, permanent disability, medical treatment and other statutory benefits as operating expenses. The SFMTA's workers compensation claims costs average \$28,962,750 per year (FY 2021 to FY 2022). The SFMTA currently has approximately 1,600 open workers compensation claims, and SFMTA employees submit an average of 550 new claims each year.

State law requires a self-insured employer to manage its employees' workers compensation claims and distribution of benefits itself or by contracting with a licensed workers compensation claims management company. Cal. Labor Code §§ 3700(b), 3700(c). On July 1, 2000, as authorized by Charter Section 8A.104(c), the SFMTA assumed direct responsibility for managing its employees' workers' compensation claims, which the Department of Human Resources (DHR) previously managed. Since 2000, the SFMTA has either directly contracted with a workers compensation claims management firm or has used a joint contract with DHR. In November



2012, the SFMTA and DHR jointly contracted with Intercare for workers compensation claims services, which will expire on October 31, 2022. The SFMTA now seeks to contract directly with a claims management firm, as that direct relationship will provide the SFMTA greater flexibility to respond to claims and cost issues unique to the SFMTA workforce, including physical and verbal assaults, continuous trauma, and collisions.

Selection Process

The SFMTA and DHR issued a joint Request for Proposals (RFP) on May 4, 2022 for workers compensation claims administration services. The agencies contacted 47 claims administration firms to solicit proposals. But only three firms submitted proposals: Innovative Claim Solutions, Tristar, and Intercare. (Several firms that declined to submit proposals later explained that the number and complexity of DHR and SFMTA claims, and a lack of resources and labor necessary to perform the services, prevented them from submitting proposals.) Innovative Claims Solutions' proposal was determined to be nonresponsive, because it did not provide required industry account handling certification and documentation establishing that its staff meets minimum experience qualifications stated in the RFP. A selection panel evaluated the remaining two proposals and ranked Intercare's proposal highest:

Proposer	Total Points
Intercare Holdings Insurance Services	125.42
Tristar	113.20

Scope of Services

Under the proposed new contract, Intercare will provide workers' compensation claims administration services to SFMTA. (Intercare will also provide those services to DHR under a separate contract with similar terms and conditions.) The scope of services that Intercare will perform are similar to the existing contract, including:

- Claims intake, investigation, and eligibility determination
- Management of temporary and permanent disability eligibility and payments
- Management of medical claims, medical services review, and working with SFMTA's medical bill review service
- Coordinating payment to medical service providers and evaluating physicians
- Medical and disability claims management to facilitate employees' return to work
- Management of claims cost reduction programs
- Management of subrogation and third-party claims settlement
- Litigation support to the City Attorney
- OSHA database management
- Medicare injury/incident data reporting



Under the new contract, Intercare will also provide nurse triage and pharmacy benefit management services.

Contract Term and Compensation

The base three-year term of the proposed contract will be from November 1, 2022 to October 31, 2025, with two three-year options to extend the term. The total contract amount for full nine-year term of the contract is not to exceed \$33,771,962. That amount includes only the costs of administering SFMTA workers compensation claims, that amount does not include the costs of workers compensation benefits, including temporary and permanent disability support payments, and the cost of medical evaluation and treatment. The SFMTA (as a self-insured employer) pays workers compensation benefits and transactional costs (including claims management costs and fees) out of annual operating funds, which are or will be included in SFMTA budgets for FY2022-2023 through FY2031-2032. Intercare will act as the SFMTA’s agent in processing payment authorizations for those benefits and costs, but those costs are not accounted as expenditures under the contract.

The negotiated administrative fees that the SFMTA would pay Intercare under the proposed contract would be \$3,324,303.76 for the first year, increasing in each subsequent year by three percent. (The current contract annual administrative fee for SFMTA is \$2,970,060.) The negotiated administrative fees are based on the number of claims that Intercare will manage; the contract amount also includes as-needed fees Intercare may charge for additional services authorized by the SFMTA that are outside the scope of the fixed fee services. The proposed fees for the new contract are set out in the following table:

<u>Contract Year</u>	Estimated As-Needed Services	Annual Fixed Fees	Total
Year 1	\$175,000.00	\$3,149,303.76	\$3,324,303.76
Year 2	\$180,250.00	\$3,243,782.87	\$3,424,032.87
Year 3	\$185,658.00	\$3,341,096.35	\$3,526,754.35
Year 4 (1st Ext. Option)	\$191,228.00	\$3,441,329.24	\$3,632,557.24
Year 5	\$196,965.00	\$3,544,569.12	\$3,741,534.12
Year 6	\$202,874.00	\$3,650,906.20	\$3,853,780.20
Year 7 (2nd Ext. Option)	\$208,960.00	\$3,760,433.38	\$3,969,393.38
Year 8	\$215,229.00	\$3,873,246.38	\$4,088,475.38
Year 9	\$221,686.00	\$3,989,443.77	\$4,211,129.77
Total Amount Not to Exceed	\$1,777,850	\$31,994,111.08	\$33,771,961.08



The Annual Fixed Fees (paid monthly) covers all costs for managing SFMTA's workers compensation claims, including claims managers' wages/salaries and benefits, claims handling costs, overhead, profit, contract transition charges, claims personnel retention incentives, travel, lodging, meals, and other direct costs related to managing SFMTA workers compensation claims. The SFMTA will not compensate Intercare any additional costs it may incur in managing claims, but the SFMTA may request additional services under task orders to address claims management issues and requirements that are outside the scope of the fixed-fee general claims services. Task orders will be negotiated using the hourly personnel rates stated in the contract. The Annual Fixed Fees stated in the table above include annual cost increases.

Alternatives Considered

The current contract with Intercare will expire on October 31, 2022. The SFMTA and DHR, with Board of Supervisors approval, could extend the existing contract, but doing so would not accord with City and SFMTA policies that contracts should be put to competitive bid at regular intervals to ensure that the City receives the best services at reasonable prices.

The SFMTA and DHR considered issuing separate RFPs, but the two agencies concluded that issuing a joint RFP and selection process was the more efficient approach. The SFMTA also determined it would be better for the SFMTA to have its own contract with Intercare, to provide it greater flexibility to address workers compensation issues particular to SFMTA employees.

SFMTA Board Approval

On September 20, 2022, the SFMTA Board of Directors approved Resolution No. 220920-086 approving Contract No. SFMTA-2022-31 with Intercare to provide workers' compensation claims administration services for a contract not to exceed \$33,771,962 for a three-year base term and two three-year term extension options, for a total term of nine years, subject to the Board of Supervisors' approval.

Thank you for your consideration of this proposed contract. Should you have any questions or require more information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Jeffrey Tumlin".

Jeffrey Tumlin
Director of Transportation



San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 221059

Bid/RFP #:

Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (for amendment only)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Ify Omokaro	4156464786
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
MTA Municipal Transportation Agency	Ify.omokaro@sfmta.com

5. CONTRACTOR	
NAME OF CONTRACTOR Intercare Holdings Insurance Services	TELEPHONE NUMBER 800-771-5454
STREET ADDRESS (including City, State and Zip Code) 6020 W Oaks Blvd, Rocklin, CA 95765	EMAIL AHoerberling@Intercareins.com

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER	FILE NUMBER (If applicable) 221059
DESCRIPTION OF AMOUNT OF CONTRACT \$33,771,962		
NATURE OF THE CONTRACT (Please describe) <p>The SFMTA is a self-insured employer for purposes of workers' compensation claims, as authorized by State law. The SFMTA assumed responsibility for managing its workers' compensation claims on July 1, 2000, under the authority of San Francisco Charter Section 8A.104(c). The SFMTA and the Department of Human Resources (DHR) have had joint contracts with Intercare Holdings Insurance Services Inc. (Intercare) for workers' compensation claims administration since November 1, 2012. The current contract with Intercare expires on October 31, 2022. On May 4, 2022, the SFMTA, jointly with DHR, issued a Request for Proposals for two separate contracts for workers' Compensation Claims Administration Services. A selection panel evaluated two proposals and ranked Intercare's proposal highest. The current contract annual administrative fee for SFMTA is \$2,970,060. The annual administrative fee under the proposed contract with Intercare would be \$3,324,303.76 for the first year, increasing in each subsequent year by three percent.</p>		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Hoeberling	Agnes	CEO
2	Ellington	Jodi	CFO
3	Avriett	Alan	Other Principal Officer
4	Galtney	Rob	Other Principal Officer
5	Lord	Jon	Other Principal Officer
6	Jaltorossian	Maggie	Other Principal Officer
7	Evans	Amy	Other Principal Officer
8	Miller	Jayne	Other Principal Officer
9	Buri	Danielle	Other Principal Officer
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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50			

Check this box if you need to include additional names. Please submit a separate form with complete information. Select “Supplemental” for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

<p>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</p> <p>BOS Clerk of the Board</p>	<p>DATE SIGNED</p>
---	---------------------------



London Breed, Mayor

Gwyneth Borden, Chair
Amanda Eaken, Vice Chair
Stephanie Cajina, Director

Steve Heminger, Director
Fiona Hinze, Director
Manny Yekutieli, Director

Jeffrey Tumlin, Director of Transportation

October 6, 2022

Angela Calvillo, Clerk of the Board
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Madame Clerk:

Attached is a proposed resolution for Board of Supervisors approval. Contract No. SFMTA-2022-31 is with Intercare Holdings Insurance Services, Inc. to Provide Workers' Compensation Claims Administration Services to the San Francisco Municipal Transportation Agency.

The following is a list of accompanying documents:

- Briefing letter
- Resolution
- Draft Agreement
- Agreement signature page
- Human Resources, Personal Services Contracts approval
- SFMTA Board Resolution, signed
- California Environmental Quality Act determination
- San Francisco Ethics Commission Form 126(f)4, filed

Please contact the SFMTA's Local Government Affairs Liaison, Janet Martinson, at 415.994.3143 if you have any questions regarding this submission.

Sincerely,

A handwritten signature in blue ink that reads "Jeffrey P. Tumlin".

Jeffrey P. Tumlin
Director of Transportation