

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND
Northern Claims Management, LLC**

THIS AGREEMENT, entered into this day of , 2015, by and
between the COUNTY OF SAN MATEO, hereinafter called "County," and Northern
Claims Management, hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, pursuant to Government Code Section 31000, County may
contract with independent contractors for the furnishing of such services to or for
County or any Department thereof;

WHEREAS, it is necessary and desirable that Contractor be retained for the
purpose of Workers' Compensation Third Party Administrator.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO
AS FOLLOWS:**

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and
incorporated into this Agreement by this reference:

Exhibit A—Services

Exhibit B—Payments and Rates

Attachment H—HIPAA Business Associate Requirements

Attachment I—§ 504 Compliance

Addendum 1 – Service Level Agreement

2. Services to be performed by Contractor

In consideration of the payments set forth herein and in Exhibit B, Contractor shall
perform services for County in accordance with the terms, conditions, and
specifications set forth herein and in Exhibit A.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms,
conditions, and specifications set forth herein and in Exhibit A, County shall make
payment to Contractor based on the rates and in the manner specified in Exhibit B.
County reserves the right to withhold payment if County determines that the quantity
or quality of the work performed is unacceptable. In no event shall County's total
fiscal obligation under this Agreement exceed \$2,628,190.

4. Term and Termination

Subject to compliance with all terms and conditions, the term of this Agreement shall be from June 1, 2015, through May 31, 2018.

This Agreement may be terminated by Contractor, the Director of Human Resources, or his/her designee at any time without a requirement of good cause upon thirty (30) days' written notice to the other party.

In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such materials. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.

5. Availability of Funds

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

7. Hold Harmless

7.1 **General Hold Harmless.** Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following: (A) injuries to or death of any person, including Contractor or its employees/officers/agents; (B) damage to any property of any kind whatsoever and to whomsoever belonging; (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of County and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

7.2 Intellectual Property Indemnification.

Contractor hereby certifies that it owns, controls, or licenses and retains all right, title, and interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets ("IP Rights") except as otherwise noted by this Agreement. Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for County (other than modification performed by, or at the direction of, Contractor) in such a way as to cause the alleged infringement at issue; (b) any aspects of the services under this Agreement which have been used by County in a manner prohibited by this Agreement.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion thereof to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement.

9. Insurance

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish County with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to County of any pending change in the limits of liability or of any cancellation or modification of the policy.

- (1) **Workers' Compensation and Employer's Liability Insurance.** Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, (a) that it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) that it will comply with such provisions before commencing the performance of work under this Agreement.
- (2) **Liability Insurance.** Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or by an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amount specified below.

Such insurance shall include:

(a)	Comprehensive General Liability	\$1,000,000
(b)	Motor Vehicle Liability Insurance	\$1,000,000
(c)	Professional Liability	\$1,000,000

County and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to County and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the County or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

10. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Further, Contractor certifies that Contractor and all of its subcontractors will adhere to all applicable provisions of Chapter 4.106 of the San Mateo County Ordinance Code, which regulates the use of disposable food service ware.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

11. **Non-Discrimination and Other Requirements**

- A. *General non-discrimination.* No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.
- B. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.
- C. *Section 504 of the Rehabilitation Act of 1973.* Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.
- D. *Compliance with County's Equal Benefits Ordinance.* With respect to the provision of benefits to its employees, Contractor shall comply with Chapter 2.84 of the County Ordinance Code, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. In order to meet the requirements of Chapter 2.84, Contractor must certify which of the following statements is/are accurate:
- ☒ Contractor complies with Chapter 2.84 by:
 - ☒ offering the same benefits to its employees with spouses and its employees with domestic partners.
 - ☐ offering, in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic partner that is equal to Contractor's cost of providing the benefit to an employee with a spouse.
 - ☐ Contractor is exempt from having to comply with Chapter 2.84 because it has no employees or does not provide benefits to employees' spouses.
 - ☐ Contractor does not comply with Chapter 2.84, and a waiver must be sought.

- E. *Discrimination Against Individuals with Disabilities.* The Contractor shall comply fully with the nondiscrimination requirements of 41 C.F.R. 60-741.5(a), which is incorporated herein as if fully set forth.
- F. *History of Discrimination.* Contractor must check one of the two following options, and by executing this Agreement, Contractor certifies that the option selected is accurate:
- ☒ No finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
 - ☐ Finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination.
- G. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to the following:
- i) termination of this Agreement;
 - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
 - iii) liquidated damages of \$2,500 per violation; and/or
 - iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this Section and/or to set off all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such

notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

12. Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that a contractor shall have and adhere to a written policy providing that its employees, to the extent they live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code."

13. Retention of Records, Right to Monitor and Audit

(a) Contractor shall maintain all required records for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit of County, a Federal grantor agency, and the State of California.

(b) Reporting and Record Keeping: Contractor shall comply with all program and fiscal reporting requirements set forth by appropriate Federal, State, and local agencies, and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representatives, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

14. Merger Clause & Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated herein by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in

any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

15. Controlling Law and Venue

The validity of this Agreement and of its terms or provisions, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

16. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Scott Johnson
Risk Manager
455 County Center, 5th Floor
Mailstop HRD 163
Redwood City, CA 94063

In the case of Contractor, to:

Jim Bankson
P.O. Box 6385
Santa Rosa, CA 95406

17. Electronic Signature

If both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo, both boxes below must be checked. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

For County: ☐ If this box is checked by County, County consents to the use of electronic signatures in relation to this Agreement.

For Contractor: ☒ If this box is checked by Contractor, Contractor consents to the use of electronic signatures in relation to this Agreement.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

By: _____
President, Board of Supervisors, San Mateo
County

Date: _____

ATTEST:

By: _____
Clerk of Said Board

Northern Claims Management


Contractor's Signature

Date: 4/6/15

(Revised 7/1/13)

Exhibit A

It is agreed between the County of San Mateo, California and Contractor as follows:

1. **Services to be performed by Contractor** in consideration of the payments hereinafter set forth, Contractor in accordance with the terms, conditions and specification set forth herein for the COUNTY OF SAN MATEO, Department of Human Resources, Division of Risk Management. Specifically, contractor shall:
 - 1.1 The contractor shall comply with all laws, rules and regulations governing the administrator of self-insurance as required by California and advise the County of any legislative or regulatory changes either when proposed or enacted.
 - 1.2 In all non-litigated lost time cases, telephone or personal contact will be established with the injured employee within two (2) working days of case makeup. Such contact will continue as often as necessary.
 - 1.3 Within 60 days from commencement of an agreement with the County, the contractor will develop internal written procedures subject to County approval delineating handling of County claims in the following areas:
 - a. Compensability of claims
 - b. Provision of benefit information to employees
 - c. Payment of any and all state mandated workers' compensation benefits
 - d. Medical treatment
 - e. Medical-legal examinations
 - f. Litigation support
 - g. Establishment and maintenance of reserve
 - h. Case closure
 - i. Handling and copying mail to the County, e-copies are acceptable and preferred
 - j. System for payment of bills to insure no duplicate payments
 - 1.4 The contractor shall assign three (3) fully qualified, senior level, permanent claims examiners to the County account. The contractor will assign a targeted caseload of 150, but no more than 175 open indemnity claims per fully qualified examiner. The selected proposer shall maintain an up to date listing of the cases assigned to each examiner on the County account and shall furnish said list to County on a monthly basis. The County may have the option to participate in the selection and interview process of staff assigned to the County account.
 - 1.5 The contractor shall assign one (1) fully qualified certified claims supervisor. This supervisor should possess at least five (5) years of experience in the claims industry to include two (2) years of experience with Public Agency accounts. This supervisor should have strong leadership skills and possess the following abilities:
 - a. To communicate with County any and all new rules and regulations
 - b. To effectively communicate and manage the claims examiners so as to reduce the turnover of the claims examiners on the County account
 - c. To effectively liaise with defense counsel
 - d. To monitor the County account to ensure that claims files are being properly handled and that the examiner's claims counts are not in excess of 175 files.

- 1.6. All claims files will be created within two (2) working days following receipt of the Employer's First Report of Injury, or two (2) working days after the contractor has knowledge of a potential claim and obtains information from the County necessary to create the file, whichever occurs first.
- 1.7. The compensability determination and the reasons for such determination will be made and documented in the file within three (3) working days of receipt of the notification of the loss by the contractor. If benefits are to be delayed, a "Delay of Benefits" letter shall be mailed in compliance with the Division of Workers' Compensation (DWC) guidelines.
- 1.8. Initial indemnity payments will be issued in accordance with County procedures, together with the properly completed DWC Benefit Notice and in compliance with DWC guidelines. All indemnity payments subsequent to the first payment will be verified with the County and issued in compliance with Labor Code Section 4651.
- 1.9. Claimed transportation reimbursement will be issued and mailed within ten (10) days of the receipt of the claim for reimbursement. Advance travel expense will be issued and mailed to the injured employee no less than ten (10) days prior to the anticipated day of travel.
- 1.10. Medical billings will be matched to the file, reviewed for correctness, approved for payment and paid within thirty (30) to forty-five (45) days of receipt, or objected to within thirty (30) days as required by law.
- 1.11. In cases involving anticipated loss of time from work in excess of ten (10) working days, contact will be established with the treating physician within five (5) working days of case makeup. Such contacts may be via telephone, fax or email and will continue during the continuation of temporary disability to assure that treatment is related to a compensable injury or illness.
- 1.12. The contractor shall refer litigated cases to defense counsel as agreed with County within five (5) working days after receiving approval from the County to refer said cases to counsel.
- 1.13. Except where agreed with defense counsel, the contractor shall arrange all medical legal examinations, including writing the cover letter to the doctor and sending all records to the doctor.
- 1.14. Appointments with Agreed Medical Examiners shall be arranged in consultation with the contractor, Defense and Applicant Attorney's. The contractor shall be responsible for sending all records and medical reports to the agreed upon examiner.

- 1.15. The contractor shall obtain medical records whether on its own or at the request of the County or defense counsel.
- 1.16. The contractor shall forward all original medical reports to the defense attorney within twenty (20) working days, with a copy to applicant's attorney and the County.
- 1.17. The contractor shall within ten (10) days of receiving any permanent and stationary report, or within ten (10) days of receiving any Declaration of Readiness to Proceed filed by an applicant, prepare a written evaluation of the medical report with copies to the County and the defense counsel.
- 1.18. The contractor shall prepare a legal review sheet containing its recommendation for settlement of litigated cases not later than ten (10) days prior to any conference or hearing.
- 1.19. The contractor shall on receipt of medical information indicating that a case should be finalized, take appropriate action to finalize the case within ten (10) working days. This shall include the preparation of a legal review sheet containing the recommendations of the claims examiner.
- 1.20. The contractor shall cooperate with the County in determining an injured worker's eligibility for the SJDB voucher and timely send out of the appropriate notices as required – LC §4658.1, LC §4658.5 & LC §4658.6.
- 1.21. The contractor shall, notify the County within ten (10) days of receipt of a physician's report or knowledge of a physician's opinion indicating that an employee is MMI and has permanent job restrictions. The contractor shall send out the appropriate timely notices and adjust payment of permanent disability benefits as required by LC §4658(d)(2), (3)(B).
The County may comply with legal requirements through providing permanent modified or alternate work.
- 1.22. The contractor shall balance all active cases with appropriate file documentation at least every 6 months for active indemnity claims and at least every 12 months for future medical claims. The contractor shall balance every case at least once a year.
- 1.23. The contractor shall report potential excess cases to the excess carrier on a per case basis in accordance with the following:
- a. when a total reserve for the occurrence exceeds 50% of the County's SIR
 - b. when the re-opening of any claim in which further award might exceed 50% of the County's SIR
 - c. when any occurrence may involve:
 - death
 - injury to the spinal cord
 - amputation of a major extremity
 - serious health injury
 - severe burns

- permanent total disability as defined by law possible disability of more than nine (9) months
- an occurrence involving serious injury to two (2) or more employees

1.24. The contractor shall advise the County of the assessment of any penalty delayed payment and the reason therefore. The contractor shall be financially responsible for payment of any penalty for which the contractor.

1.25. The contractor shall, at the time of case makeup, using the information available, establish an initial reserve which takes into consideration the type of injury, temporary disability, potential permanent disability and cost of medical treatment.

1.26. The contractor shall return telephone and e-mail inquiries within one (1) business day of the inquiry.

1.27. The contractor shall clearly date stamp all correspondence on the reverse side.

1.28. The contractor shall send to the County via email all medical legal reports, MSA's and permanent and stationary reports the same day that they are received by NCM.

1.29. The contractor shall answer all correspondence within ten (10) days of receipt.

1.30. The contractor shall obtain County authorization on all settlements over \$10,000. For settlements under \$10,000, NCM shall email notification of the settlement to the County.

1.31. The contractor shall suggest to County those claims requiring outside referrals for services and arrange for those services after authorization by the County.

1.32. The contractor shall supply all necessary forms to accomplish the services outlined in this RRF.

1.33. The contractor shall maintain an up to date listing of the cases assigned to the defense counsel and shall furnish said list to the County on an as requested basis.

1.35 The contractor shall be able to prepare reports, but not limited to, the following:

- a. a computerized loss analysis and summary covering significant activity on claims;
- b. a payment authorization register in the form of a computerized printout;
- c. a report by location covering significant activity on claims reported to the contractor and cumulative loss information to date;
- d. the annual self insurance report in a form acceptable to the State of California Self-Insurance Plans Department.

1.36. The contractor shall have the capacity to issue checks for and on behalf of the County and to both County Risk Management and County Controller's Office.

1.37. The contractor must have software that is compatible and interfaces with the software presently used by The County (please refer to Section LC. above). Proposers should provide sufficient information and be able to demonstrate said compatibility, including a statement concerning what cost, if any, shall be borne by the County. accordance with the MMSES Act of 2007

Exhibit B

In consideration of the services provided by Contractor in Exhibit A and subject to the terms of the Agreement, County shall pay Contractor based on the following fee schedule and terms:

Fiscal Year	Total Fee
15-16	\$858,773
16-17	\$875,949
17-18	\$893,468
Optional 18-19	\$911,337
Optional 19-20	\$929,564

Attachment H
Health Insurance Portability and Accountability Act (HIPAA)
Business Associate Requirements

DEFINITIONS

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations (CFR) sections 160.103, 164.304, and 164.501. All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.

- a. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the parties to this agreement shall mean Contractor.
- b. **Covered Entity.** "Covered entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement shall mean County.
- c. **HIPAA Rules.** "HIPAA rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR part 160 and part 164, as amended and supplemented by Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009.
- d. **Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- e. **Electronic Protected Health Information.** "Electronic Protected Health Information" (EPHI) means individually identifiable health information that is transmitted or maintained in electronic media; it is limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- f. **Individual.** "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- g. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- h. **Protected Health Information.** "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in Section 164.503 and is limited to the information created or received by Business Associate from or on behalf of County.
- i. **Required By Law.** "Required by law" shall have the same meaning as the term "required by law" in Section 164.501.
- j. **Secretary.** "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- k. **Breach.** The acquisition, access, use, or disclosure of PHI in violation of the Privacy Rule that compromises the security or privacy of the PHI and subject to the exclusions set forth in Section 164.402. Unless an exception applies, an impermissible

use or disclosure of PHI *is presumed* to be a breach, unless it can be demonstrated there is a low probability that the PHI has been compromised based upon, at minimum, a four-part risk assessment:

1. Nature and extent of PHI included, identifiers and likelihood of re-identification;
 2. Identity of the unauthorized person or to whom impermissible disclosure was made;
 3. Whether PHI was actually viewed or only the opportunity to do so existed;
 4. The extent to which the risk has been mitigated.
- l. **Security Rule.** "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.
- m. **Unsecured PHI.** "Unsecured PHI" is protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in relevant HHS guidance.
- n. **Security Incident.** "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. "Security Incident" includes all incidents that constitute breaches of unsecured protected health information.

OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE

- a. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to comply with Subpart C of 45 CFR part 164 with respect to EPHI and PHI, and to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to make uses and disclosures requests for Protected Health Information consistent with minimum necessary policy and procedures.
- d. Business Associate may not use or disclose protected health information in a manner that would violate subpart E of 45 CFR part 164.504 if used or disclosed by Covered Entity.
- e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- f. Business Associate agrees to report to County any use or disclosure of Protected Health Information not authorized by this Agreement.
- g. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of County, agrees to adhere to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

- h. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.
- i. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- j. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of County, available to the County at the request of County or the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- k. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- l. Business Associate agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (k) of this Schedule, in order to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- m. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of County.
- n. Business Associate shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- o. Business Associate shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- p. Business Associate shall report to County any Security Incident within three (3) business days of becoming aware of such incident. Business Associate shall also facilitate breach notification(s) to the appropriate governing body (i.e. HHS, OCR, etc.) as required by law. As appropriate and after consulting with County, Business Associate shall also notify affected individuals and the media of a qualifying breach.
- q. Business Associate understands that it is directly liable under the HIPAA rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of Protected Health Information that are not authorized by this Attachment, the underlying contract as or required by law.

PERMITTED USES AND DISCLOSURES BY CONTRACTOR AS BUSINESS ASSOCIATE

Except as otherwise limited in this Schedule, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

OBLIGATIONS OF COUNTY

- a. County shall provide Business Associate with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- b. County shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- c. County shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

PERMISSABLE REQUESTS BY COUNTY

County shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if so requested by County, unless the Business Associate will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Business Associate.

DUTIES UPON TERMINATION OF AGREEMENT

- a. Upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from County, or created, maintained, or received by Business Associate on behalf of County, that Business Associate still maintains in any form. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- b. In the event that Business Associate determines that returning or destroying Protected Health Information is infeasible, Business Associate shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

MISCELLANEOUS

- a. **Regulatory References.** A reference in this Schedule to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. **Amendment.** The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. **Survival.** The respective rights and obligations of Business Associate under this Schedule shall survive the termination of the Agreement.
- d. **Interpretation.** Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. **Reservation of Right to Monitor Activities.** County reserves the right to monitor the security policies and procedures of Business Associate.

ATTACHMENT I

Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended

The undersigned (hereinafter called "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- ☐ a. Employs fewer than 15 persons.
- ☐ b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R.

84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.

Name of 504 Person:

Robert Wallace

Name of Contractor(s):

NORTHERN CLAIMS Mgmt

Street Address or P.O. Box:

PO Box 6385

City, State, Zip Code:

SANTA ROSA, CA 95406

I certify that the above information is complete and correct to the best of my knowledge

Signature:

JR

Title of Authorized Official:

President

Date:

4/6/15

*Exception: DHHS regulations state that: "If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."

Addendum 1

Version: 1
Date of Last Update: 3/26/15

Service Level Agreement between San Mateo County and Northern Claims Management



Documentation:

1. The Adjuster shall maintain notes that are up to date and include the following:
 - a. Factual account of what happened
 - b. Clear next action item(s) to be taken
 - c. Timeframe for next action
 - d. Outline the strategy to move the claim to resolution
2. Adjuster notes must include the reasoning to support why treatment has been approved/denied, indicating whether UR is needed, or why it is needed
3. The Adjuster shall complete regular POA notes with clear action items (see table, below). Each POA note must include the following:
 - a. Overview of medical treatment/current status
 - b. Current RTW status
 - c. Barriers to get the claim to resolution
 - d. Clear action item(s) to be taken
 - e. Date of next POA
4. The Claims Supervisor shall conduct regular reviews of each claim (see table, below) which must include:
 - a. Concise overview of claim progress to date
 - b. Questions/Recommendations to be addressed by Adjuster
 - c. The Adjuster must respond to questions/recommendations made by supervisor in a follow up note within one week
5. Unless defined by the SMC WC Manager, the following Table for POA and Supervisor Review applies to all open claims:

	All First Aid Claims	All Medical Only/Minor PD Claims	All Major PD Claims	All Active TTD/TWA Claims
Adjuster POA	Every 120 days	Every 90 days	Every 90 days	Every 30 days
Supervisor Review	Not Required	Every 120 days	Every 90 days	Every 90 days
Adjuster Response to Supervisor Review			One Week	

Communication:

1. The Adjusters must reply to emails and phone messages within one business day
 - a. After a second request, the SMC WC Manager will notify the Claims Supervisor of the need for return communication

2. Email communication between NCM and SMC will be clear, concise, professional, objective and in the spirit of fairness and impartiality with respect to SMC employees
3. The Adjuster will furnish the SMC WC Manager with copies of pertinent reports (i.e., IME, MSA, etc.) upon receipt
4. The Adjuster will email or call the SMC WC Manager when a significant, material event happens on a claim (i.e., surgery approved, claim now litigated, etc.)
5. The Adjuster must notify the SMCWC Manager of any reserve increase greater than \$25,000 in a timely manner and must address:
 - a. The material change in claim requiring an increase in reserves
 - b. How the increased money will bring the claim to resolution
 - c. Any information available about potential savings/recovery that may be obtained at a later date

Authorization:

1. SAR's less than \$50,000 will be emailed to the SMC WC Manager at least ten days prior to MSC so that SMC can adequately review them and provide authority
2. SAR's over \$50,000 will be emailed to the SMC WC Manager at least 90 days prior to MSC so that SMC can adequately review them and obtain Board Approval
3. All claim direction, authority, and requests from SMC must come from the SMC WC Managers and not any other employee of SMC
 - a. If such a request is made, the NCM Adjuster will address this directly with the SMC WC Manager
4. Request for surveillance shall be made with the following:
 - a. Specific request (i.e., social media, surveillance, activity check)
 - b. Clear goal of surveillance (i.e., observe the employee performing outside his/her restrictions, working for another employer, etc.)
 - c. Action plan for what will be done with the evidence
 - d. Strategic plan for how information will be used to advance claim to resolution
5. Request for approval of Nurse Case Management shall be made with the following:
 - a. Specific request (i.e., telephonic, in-person, etc.)
 - b. Clear goal (i.e., assist in clarifying return to work restrictions, monitor the employee through surgery process, etc.)
 - c. Timeframe for assignment
6. Request for defense attorney (from SMC approved panel) assignment shall be made to SMC WC Manager and must include:
 - a. Specific Attorney/Firm to be assigned
 - b. Reason for assignment of defense (i.e., in response to notice of legal representation, to attend a MSC, assist in settlement negotiation, etc.)
 - a. Upon assignment, the Adjuster must obtain a written outline from the attorney to define defense strategy and estimated defense cost based on current status of the claim

Process:

1. The Adjuster must allow SMC WC Managers an opportunity to review MSA's before sending them to opposing counsel
2. The Adjuster must allow SMC WC Managers an opportunity, when they request, to review letters and questionnaires to PTP's, medical legal physicians, etc. before submitting them
3. Case lists for medical case management meetings will be distributed to SMC WC Managers at least ten business days prior to the meeting

4. Three-point-contact must be made within the first two business days of assignment of the claim to NCM
 - a. If unable to contact each party within this timeframe, the Adjuster shall notify the SMC WC Manager

MPN:

1. The Adjuster must notify the SMC WC Manager if employees are not treating within the MPN
2. The Adjuster must escalate any concerns regarding the MPN to the SMC WC Manager

Referrals:

1. San Mateo County and Northern Claims Management will work collaboratively to identify the most appropriate outside referral given each individual situation.

Data/Reports:

1. NCM shall maintain up to date data reports in ClaimWare for SMC and will provide additional ad hoc reports when requested
2. Requests for changes to data shall be made within three business days
3. NCM will provide SMC with the ability to document additional attributes (.i.e., SMC specific loss cause, training, criteria, claim trigger, etc.) in the ClaimWare system

Claim Review/Audit:

1. NCM and SMC will participate in a quarterly claim review of selected claims (chosen by SMC WC Managers) that includes:
 - a. Meeting to review selected claims (complex medical, off work employees)
 - b. Discussion regarding current claim status, action needed to be taken to move claim to resolution, and timeframe for action
 - c. Review of NCM best practices/SMC Service Level Agreement to ensure mutual understanding and agreement
2. SMC will conduct an annual audit of NCM claims (approximately 10% of claims closed since last audit) to include:
 - a. Audit will address process outlined in NCM Best Practices
 - b. Audit will address Service Level Agreement protocols
 - c. Audit results provided by SMC will clearly outline performance in an objective manner with a score and provide performance improvement recommendations if appropriate
 - d. NCM will have an opportunity to respond to the audit

