

**PROFESSIONAL SERVICES AGREEMENT FOR SELF-INSURED  
WORKERS' COMPENSATION THIRD PARTY CLAIMS ADMINISTRATOR**

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (“City”) acting by and through its City Manager, or her designee, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on the \_\_\_\_\_ day of \_\_\_\_\_, 2016 and AS&G Claims Administration, Inc., by and through Jeff L. Hord, its Executive Vice President (“Consultant” or “TPA”), both of which may be referred to herein collectively as the “Parties”.

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**I. DEFINITIONS**

As used in this Agreement, the following terms shall have meanings as set out below:

- 1.1 “City” is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.2 “Consultant” is defined in the preamble of this Agreement and includes its successors.
- 1.3 “Contract Transition Period” means the period during which Consultant shall prepare to perform the services described in section 3.1.1, and includes, but is not limited to migrating data and setting up files from the City’s prior TPA, and is estimated to begin on October 7, 2016, and concludes January 1, 2017.
- 1.4 “Contract Year One” means the first calendar year of this Contract, beginning January 1, 2017 and ending December 31, 2017.
- 1.5 “Contract Year Two” means the second calendar year of this Contract, beginning January 1, 2018 and ending December 31, 2018.
- 1.6 “Contract Year Three” means the third calendar year of this Contract, beginning January 1, 2019 and ending December 31, 2019.
- 1.7 “Contract Year Four” means the first renewal period of this Contract, if the option to renew is exercised, beginning January 1, 2020 and ending December 31, 2020.

- 1.8 “Contract Year Five” means the second renewal period of this Contract, if the option to renew is exercised, beginning January 1, 2021 and ending December 31, 2021.
- 1.9 “Director” means the Director of the City’s Office of Risk Management.
- 1.10 “Lost Time Claims” means a claim where indemnity benefits are payable beginning the first day of incapacity for work.

## **II. TERM**

- 2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on October 7, 2016 for the purpose of allowing Consultant to perform transition services (the Contract Transition Period), and shall begin for all other purposes on January 1, 2017 and terminate on December 31, 2019.
- 2.2 At City’s option, this Contract may be renewed and extended beyond the date stated above under the same terms and conditions for 2 additional 1 year periods. Renewals shall be in writing, signed by the City Manager, or the City Manager’s designee, or the Director. City shall also have the right to extend this contract under the same terms and conditions beyond the term or any renewal thereof, on a month to month basis, not to exceed a total of six months. Said renewals and month to month extensions shall not require City Council approval, but are subject to and contingent upon appropriation of funds for payment of all costs to be incurred during those periods.
- 2.3 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City’s budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

## **III. SCOPE OF SERVICES**

- 3.1 Consultant agrees to provide the services described in this Article III entitled Scope of Services in exchange for the compensation described in Article IV. Compensation.
- 3.1.1 Contract Transition Services. Consultant shall provide City with a transition plan for City’s approval no later than October 13, 2016. The approved transition plan shall be attached hereto and incorporated herein for all purposes as Attachment D. Dates contained in the transition plan may be modified with the consent of Director, Office of Risk Management. Consultant shall perform transition services during the Contract Transition Period to ensure Consultant is ready and able to assume TPA services on January, 1, 2017. Transition services include migrating City’s data from City’s prior TPA and any other preparatory work required to be able to assume TPA responsibilities on January 1, 2017. There shall be no additional cost for transition services.



- 3.3.7 Provide daily courier service for pick-up and delivery of new claims, lawsuits and other information from the City, at a time to be coordinated with the City, at no expense to the City.
- 3.3.8 Provide electronic capability to report claims directly into claims system, at no cost to the City.
- 3.3.9 Report all workers' compensation claims to Central Index Bureau (CIB) upon file creation with a copy retained in the file. Resubmit an index every six months until case is closed. TPA shall NOT allocate CIB expense to the City.
- 3.3.10 Estimate, establish and maintain reserves on a "most probable" basis. In reserving practices, the TPA will take into consideration indemnity, medical, rehabilitation, and allocated expense categories, and all other major sub-categories of each. Changes in reserves must be reviewed and approved by TPA claims supervisor. Any reserves established over \$50,000 and all Lifetime Cost Analyses require authorization by the Director or designee.
- 3.3.11 Use a 30 day adjuster diary system for timely file review. Each file diary review, including reserves, shall be documented in detail in the computer file notes. All reserves will be monitored and adjusted accordingly. File notes shall contain an explanation for any adjustment.
- 3.3.12 Maintain copies of all written correspondence within the claim file, whether physical or electronic, and make same available at any time upon the City's request at no additional cost to the City.
- 3.3.13 Keep the City fully apprised of significant changes in the State of Texas Workers' Compensation rules that may affect the City, and provide notices for continuing education courses offered in San Antonio or the surrounding areas.
- 3.3.14 Conduct internal audits to ensure contract requirements are being fulfilled every six months and provide report of findings to Director.
- 3.3.15 Cooperate with City in identifying overpayments and duplicate payments, and provide explanation. If overpayments resulted from TPA's failure to discharge duties diligently, TPA shall reimburse the City within 30 days for overpayments and provide a report.
- 3.3.16 Submit to and cooperate with on-site visits and claims/operational audits performed by third-party consultants or City staff. If conflicts or perceived conflicts of interest arise, the City will determine if such conflict exists and act accordingly.
- 3.3.17 Provide periodic information to, and cooperate with, the City's actuarial service provider.

- 3.3.18 Annually prepare and mail all IRS forms 1099 Misc. for all vendors. An electronic version shall be submitted to City within 10 days of filing with IRS, but no later than March 30th of each year, whichever occurs first.
- 3.3.19 Have management/supervisory level personnel assign claims, utilizing appropriate cost center numbers, as provided by City.
- 3.3.20 Examine and report claims with indication of fraud. TPA will assign an investigator to investigate suspected fraudulent claims with City's advance written consent, and report findings to City.
- 3.3.21 TPA's account executive shall provide monthly data and trending analysis of the program's successes and opportunities for improvement; as well as participate in the budget estimates and re-estimates as requested.
- 3.3.22 Provide to the City an annual "SOC 1" Type 2 report in accordance with Statement on Standards for Attestation Engagements (SSAE) No. 16, Reporting on Controls at a Service Organization, which supersedes the SAS 70.
- 3.3.23 TPA shall provide annual audited financial statements within 90 days following the end of the TPA's fiscal year.
- 3.3.24 Conduct (at least quarterly) compliance reviews and medical bill audits on a randomly selected sample of the claim files with reports to City.
- 3.3.25 Provide a check register of all indemnity, medical and expense payments prior to issuing checks, at no additional cost to the City, and in the format provided by the City.
- 3.3.26 TPA shall provide reports to City's excess insurance provider on each specific claim that meets the reporting criteria of each provider. Such reporting will be conditioned upon the City providing all necessary coverage and reporting criteria to the TPA. TPA shall provide status of claim(s) to carrier and City every 30 days or as otherwise required by the carrier.
- 3.3.27 Maintain a dedicated telephone line for City employees to report claims directly to TPA. TPA shall also have a web-based reporting system for entering claims. All claims submitted by phone or electronically during normal business hours shall be entered into the TPA's claims system by the TPA on the same business day at no additional cost to City.
- 3.3.28 Assume the role and responsibilities of the City's Reporting Agent pursuant to the Medicare, Medicaid, SCHIP Extension Act 2007, 42 USCA §1395y, as amended from time to time (MMSEA), at no additional cost to the City, for the purpose of fulfilling the reporting requirements contained therein, to include liability claims.

- 3.3.29 TPA shall ensure electronic reporting to the proper authorities of all workers' compensation and liability claims as required by MMSEA at no cost to City.
- 3.3.30 Prepare and submit all queries and quarterly reports to the Center for Medicare and Medicaid Services (CMS) in accordance with the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA), 42 USCA §1395y, as hereafter amended; at no additional cost to City, to include liability claims.
- 3.3.31 Indemnify, defend and hold City harmless from all fines and penalties levied against the City, TPA, or TPA subcontractors for TPA's failure to comply with MMSEA requirements. In no way will TPA, if selected, pass along or otherwise cause City to pay fines, which are levied solely against the TPA and/or TPA's subcontractor or levied against City due to TPA's or TPA's subcontractors negligence, error or omission.
- 3.3.32 Upon termination of the contract, by expiration of the term or any other manner provided therein, TPA shall transfer all of City's hard and electronic files, including both workers' compensation and general liability claim files from TPA's RMIS system, to City or its new Consultant, as directed by City. TPA shall be responsible for the cost to transfer hard files and electronic data. TPA shall convert electronic data, upload, download, and migrate as necessary to the new system to be used by City. TPA shall work with City's new consultant, as required, in transferring all electronic data, hard copy files, and any other City owned records in TPA's possession at no additional cost to City;
- 3.3.33 Develop and administer a customer service survey, approved by the City, and provide quarterly results.

#### 3.4 Claims Management

- 3.4.1 Establish and assign claims within 24 hours from receipt of the initial report.
- 3.4.2 Contact lost time injured employee, medical provider and applicable City department within 24 hours of claim assignment by telephone call, or mail contact letter if the employee cannot be reached by phone.
- 3.4.3 Obtain employee's signature authorizing release of medical records, and obtain copies of medical bills and records.
- 3.4.4 Take recorded statements from all lost time injured employees as part of the investigation, at no cost to the City.
- 3.4.5 Obtain approval from the City on surveillances, and vocational evaluations.
- 3.4.6 Maintain personal contact with all lost time injured employees at least once every three weeks in order to maintain rapport and monitor medical progress and overall status.

- 3.4.7 Notify the injured employee when impairment benefits are owed. TPA's adjusters shall issue the first lost time check to the employee and explain all the benefits owed to the employee, including medical benefits.
- 3.4.8 Pursue all applicable contributions from prior compensable injuries, before final resolution of an impairment rating.
- 3.4.9 Provide a written summary to the Independent Medical Exam doctor, Required Medical Exam doctor, and/or Designated Doctor along with copies of all medical reports and films necessary for a successful and complete examination.
- 3.4.10 Timely pay all bills related to the claim, including fees owed to third parties, and benefits owed in accordance with the Texas Workers' Compensation Act.
- 3.4.11 TPA shall abide by the understanding that the amounts charged for medical or vocational case management, PPO fees, private investigative fees, structured settlement fees and Allocated Loss Adjustment expenses shall not be paid under the indemnity or medical portions of the claim.
- 3.4.12 TPA shall abide by the understanding that no charge shall be levied against the City for the payment processing of Allocated Loss Adjustment expenses.
- 3.4.13 Obtain all relevant signatures for payment processing.
- 3.4.14 Instruments disbursing, or directing disbursement of funds for workers' compensation related bills or benefits in the amount of \$10,000.00 or more require a minimum of one original and one facsimile signature of a signer authorized by TPA, or, in the absence of the original signature of a signer authorized by the TPA, one of the following signatures:
- Chief Financial Officer;
  - Director of Finance;
  - Assistant Director of Finance – Accounting;
  - Disbursements and Receivables Administrator;
  - Controller; or
  - Financial Reporting Manager(s) in accordance with City Ordinance 2011-12-08-1015.
- 3.4.15 Instruments disbursing, or directing disbursement of funds for workers' compensation related bills or benefits that are less than \$10,000.00 require a minimum of one facsimile signature of a signer authorized by TPA.
- 3.4.16 City shall provide prompt notice to TPA of any change in signature requirements, which shall automatically be incorporated in the contract.

- 3.4.17 Have the capacity to issue income benefits electronically via direct deposit, and do so as directed by the City.
- 3.4.18 TPA shall provide an explanation of how Temporary Income Benefits (TIBS) are calculated, including adjustments to each injured employee. TPA shall provide an example to employees and the City as requested.
- 3.4.19 The City has engaged a law firm for legal representation for all formal hearings (Contested Case, Appeals Panels, judicial reviews) and other administrative hearings as requested by the City, before the TDI/Division of Worker's Compensation, who also acts as City's Austin Division Representative. TPA will represent the City at all informal hearings (BRC) and will be required to coordinate with and work closely with legal representative.
- 3.4.20 Provide a written report to City on the proceedings of any administrative hearing within 72 hours after such hearing, at no additional cost to the City. Any representation of the City beyond administrative hearings and selection of legal counsel for these matters shall be approved by the City Attorney.
- 3.4.21 Provide and track a monthly status report on all open administrative proceedings (i.e., Benefit Review Conference, Contested Case Hearing, Administrative Hearings).
- 3.4.22 Attend all meetings, administrative hearings, and legal proceedings that the City, or its outside counsel requests, at no additional expense to the City.
- 3.4.23 Electronically transfer information required by statute or regulation to the Department of Insurance, Division of Workers' Compensation, and other involved parties in a timely manner at no expense to the City and document the claim file to support compliance and confirmation date.
- 3.4.24 Adjusters shall advise the City of any subrogation potential discovered through their investigation with 15 days of the notice of injury. The notification should include the workers' compensation claim number, a brief description of the loss, the First Report of Injury and if available, the police report and SAPD report number.
- 3.4.25 Provide quarterly executive summaries of issues, trends, opportunities and results as it relates to workers' compensation program management.
- 3.4.26 Prepare and file, with the appropriate State agencies, all forms required for the City to maintain its qualifications as a self-insured political subdivision, as authorized under Texas Labor Code, Chapter 504, unless otherwise directed by City. Expenses related to maintaining this status under the rules and regulations of Texas shall be passed onto the City.



- 3.4.27 Obtain all necessary information to fully complete and file all required forms with the TDI-DWC, as required by law or regulation.
- 3.4.28 Adjusters shall mail any and all required forms to the employee or designated party such as the DWC 1, Rights and Responsibilities, medical authorization, brochure, DWC 3 (wage statement), DWC 6 (supplemental report of injury), and all Plain Language Notices (PLN) on behalf of the City at no cost.
- 3.4.29 Adjusters shall amend the First Report of Injury to include additional data when necessary on behalf of the City prior to sending to Electronic Data Interchange.

### 3.5 Medical Cost Containment

- 3.5.1 Provide bill review, utilization review (prospective, concurrent, retrospective, pre-procedure) peer review, pre-authorization, case management, vocational and rehabilitation evaluation, discharge planning, identification of catastrophic illnesses or injury, and other workers' compensation medical cost management related services as requested and approved by the City.
- 3.5.2 Audit medical bills in accordance with TDI-DWC fee guidelines or special discounts negotiated with providers. TPA shall not charge City for duplicate bill reviews on denied claims.
- 3.5.3 Make appropriate application of treatment guidelines and fee schedules.
- 3.5.4 Electronically transfer required information to the TDI-DWC and other involved parties in a timely manner at no cost to the City.
- 3.5.5 Use pro-active approval and coordinate activities with the claims adjusters and supervising staff with regard to case management services. Follow the City's established protocols for case management referrals in accordance with Attachment C herein.
- 3.5.6 Monitor appropriateness of treatment, necessity and continuation of medical treatment in relation to an on-the-job injury/illness.
- 3.5.7 Review medical bills for any irregularities such as overlapping dates of services, unrelated fees, up-coding and unbundling.
- 3.5.8 Properly document files regarding analysis, recommendations/reviews, pre-authorization, etc. Documentation must show due diligence and reasonableness for any recommendations made, should these be challenged through administrative or judicial channels.

- 3.5.9 Require bill review and utilization management staff to use Official Disability Treatment Guidelines (ODG) to properly handle claims and manage overutilization.
  - 3.5.10 Provide services through experienced, qualified, and licensed professional staff. Services of a medical director may be utilized on a case by case basis. The case managers should have appropriate required designations.
  - 3.5.11 Obtain pre-approval from City on all vocational evaluation for job analysis.
  - 3.5.12 Assist with facilitating return to work.
  - 3.5.13 Should the City elect to participate in a Certified 1305 Network or a 504 Plan, pay in accordance with fee schedule guidelines and Network rates, or Plan rates.
  - 3.5.14 Ensure case managers and utilization review staff are available to treating physicians during physician's business hours.
  - 3.5.15 Provide treating physicians with timely notification of decisions regarding preauthorization.
  - 3.5.16 Provide monthly reporting, analysis and improvement opportunities for all cost containment and case management programs.
  - 3.5.17 Perform such other responsibilities associated with medical cost containment services.
- 3.6 Pharmacy Benefit Management (PBM)
- 3.6.1 Provide bill review, utilization review (prospective, concurrent, retrospective, pre-procedure) peer review, pre-authorization, and other workers' compensation PBM related services as requested and approved by the City.
  - 3.6.2 Audit and pay pharmacy bills in accordance with TDI-DWC fee guidelines or special discounts negotiated with providers, whether City contracts directly with providers or uses TPA's plan.
  - 3.6.3 Implement early medication intervention protocols where medication peer reviews are done with suggestions of appropriate medication.
  - 3.6.4 Electronically transfer required information to the TDI-DWC and other involved parties in a timely manner at no cost to the City.
  - 3.6.5 Monitor appropriateness of prescription(s), necessity and continuation of prescription(s) in relation to an on-the-job injury/illness.

- 3.6.6 Review pharmacy bills for any irregularities such as overlapping dates of services, unrelated fees, up-coding and unbundling.
  - 3.6.7 Properly document files regarding analysis, recommendations/reviews, pre-authorization, etc. Documentation must show due diligence and reasonableness for any recommendations made, should these be challenged through administrative or judicial channels.
  - 3.6.8 Provide services through experienced, qualified, and licensed professional staff. Services of a medical director may be utilized on a case by case basis as approved by City.
  - 3.6.9 Make case managers and utilization review staff available to treating physicians during physician's business hours.
  - 3.6.10 Provide treating physicians with timely notification of decisions regarding authorization.
  - 3.6.11 Provide monthly reporting, analysis issues, trends and improvement opportunities.
  - 3.6.12 Comply with all rules and regulations promulgated by the Commissioner of Workers' Compensation and all requirements of the Texas Legislature pertaining to prescription medication and services.
  - 3.6.13 Perform other such responsibilities associated with PBM services.
- 3.7 Risk Management Information System (RMIS)
- 3.7.1 TPA shall provide software (claims platform) necessary to perform services hereunder.
  - 3.7.2 TPA must identify and proceed to correct any inoperative software within 48 hours after City reports a problem.
  - 3.7.3 TPA shall provide City direct access to its RMIS for as many users as City requires, for the term of this contract, including any extensions or renewals hereof, and for an additional 30 days following expiration or termination. Risk Management shall have direct access to the RMIS' electronic claims file and report writer. The current estimated number of users is 30 for workers' compensation claims and 9 for liability claims.
  - 3.7.4 The City administers its self insured general and auto liability program internally and will use the TPA's RMIS to facilitate administering its program, in addition to using TPA's RMIS for the workers' compensation program.

- 3.7.5 System Capabilities. TPA's RMIS shall be capable of, though not limited to, the following:
- 3.7.5.1 Secured data;
  - 3.7.5.2 Access via standard Internet connection 24 hours a day, 7 days a week, 365 days per year;
  - 3.7.5.3 Direct claim reporting of new claims (DWC 1, 3 and 6) 24 hours a day, 7 days a week throughout the year;
  - 3.7.5.4 All usual and necessary statistical claim information data;
  - 3.7.5.5 Capturing detailed information on: medical bills, other payments, client, injured worker, injured worker history, provider, diagnosis and treatment;
  - 3.7.5.6 Reporting the number of claims for a specific time period by injury date and by report date;
  - 3.7.5.7 Accurately calculating the number of full and partial days of disability for each claim, accounting for all periods of intermittent changes in the claimant's work status;
  - 3.7.5.8 Producing monthly reports on employees who, in addition to the claim filed in a particular month, have filed one or more prior claims with City;
  - 3.7.5.9 Accurately reflecting paid and incurred amounts of net subrogation recoveries;
  - 3.7.5.10 Accurately capturing the number of lost time claims reported during a specific period for medical only claims, reopened claims, and prior claims;
  - 3.7.5.11 Capturing return to work dates;
  - 3.7.5.12 Capturing North American Industrial Classification System Codes;
  - 3.7.5.13 Distinguishing among the different types of payments made for cost containment services, and tracking same, including, but not limited to, state fee schedule, utilization review results and clinical edit reductions;
  - 3.7.5.14 Tracking DWC Form PLN 1 and PLN 11 denials and disputes by the reason for the denial/dispute, such as un-allowed condition, wage calculation, waiting period and vocational rehabilitation;
  - 3.7.5.15 Electronically making payment for indemnity and death benefits, programmed specific to Texas, and calculating the amount due based upon

wages earned and the type of allowance, offering accuracy, timeliness, edit and audit processing, approval review and check production;

- 3.7.5.16 Tracking Benefit Review Conferences and Contested Case Hearings through a diary system, which can be altered based upon the City's needs and the nature of the claim; and
  - 3.7.5.17 Tracking claims by City location codes, which can then be extracted by department, division and section.
- 3.7.6 TPA shall provide reports through its web-based RMIS monthly or as requested by City. All reports shall be available on-line and may be run at any frequency requested by City. Custom formatting and detailing of data fields shall be available. Available reports shall include, but are not limited to:
- 3.7.6.1 All Open Claims;
  - 3.7.6.2 Claims Summary by Claim Year, including claim counts;
  - 3.7.6.3 Claims Lost Detail;
  - 3.7.6.4 Claims Paid;
  - 3.7.6.5 Loss runs, which shall include a record of overpayments recovered by fiscal year each month. This report shall be submitted by TPA to City by the 15<sup>th</sup> working day of each month;
  - 3.7.6.6 TPA shall provide City with a report of gross billings, number of audited bills, cost of audit, fee guideline reductions and PPO discounts, net amount and percentage of savings on a monthly basis. This report shall be submitted to City by the 15<sup>th</sup> working day of each month.
  - 3.7.6.7 TPA shall make available to City, a copy of all status reports to the excess insurance carrier as warranted by the severity and complexity of the claim.
  - 3.7.6.8 TPA shall provide City with the monthly recap report via electronic mail no later than 15 days after the last day of the month.
  - 3.7.6.9 TPA shall provide all other monthly reports to the City, as requested, at no additional cost to City.
- 3.7.7 TPA shall enable City to do *ad hoc* reporting from its RMIS on any other information requested by City, whether for workers' compensation or liability claims.

- 3.7.8 TPA shall provide City with RMIS training for all users, whether the use is for workers' compensation or liability claims. Training shall occur on a quarterly basis, or as deemed necessary by City. The first training session shall be held within 10 days of the start of the Contract, and will occur at a City-designated facility. Length of training sessions shall be sufficient, as determined solely by City, to ensure adequate knowledge for use of the RMIS, including, but not limited to, running reports.
- 3.7.9 TPA shall retain all ownership and copyright interest in and to any and all software, computer programs, business methods, related documentation, technology, know-how and processes developed by TPA.
- 3.7.10 TPA will grant City a paid-up, non-exclusive, non-transferable license for its RMIS/Claims Administration Software, and will procure on City's behalf a paid-up, non-exclusive, non-transferable license for any required third party software that may be necessary for use in conjunction with TPA's software, for an unlimited number of City users. The term of the licenses shall be for the duration of the Contract, including any extensions or renewals thereof and for 30 days after contract termination or expiration.
- 3.7.11 City acknowledges that the licenses granted are limited to City's own use exclusively and that City does not have the right to sub-license any of the software in either its original or modified form.
- 3.7.12 TPA's software shall be web-based, and as such, fully compatible with City's existing software and hardware, and City shall not incur any additional expenses, other than providing access to the Internet, in order to access and use TPA's software as described herein.
- 3.7.13 TPA shall perform regularly scheduled backups of its RMIS system, daily at a minimum.
- 3.7.14 TPA shall add new vendors to TPA's system to enable payment, establishing a Vendor ID, for both workers' compensation claims and general liability claims. Vendors must be added within 5 business days of City's request;
- 3.7.15 For City's general liability claims, TPA shall:
- 3.7.15.1 Establish separate branch and client organization structure for Liability Claims in RMIS based on City's existing branch and client organization structure in the RMIS currently in use;
  - 3.7.15.2 Restrict access to City's Liability Claims in RMIS to City's Registered Users.
  - 3.7.15.3 Run ISO claim searches on third-party claimants upon request by

the City, at no additional costs to the City.

3.7.16 TPA's RMIS shall interface with City's SAP system, so that General Liability payments issued through the City's SAP system will be reflected in the claim file in TPA's RMIS system without requiring manual entry.

### 3.8 Account Funding/Banking

3.8.1 TPA is responsible for ensuring it is able to receive an electronic transmission from the City containing basic employee information.

3.8.2 TPA shall issue checks on a "positive pay" basis tied to a zero balance checking account, established at the City's depository for payments to employees, medical providers, vendors, citizens and attorneys.

3.8.3 TPA shall provide, at a minimum, a weekly check register and void list to City's Finance Department in a format that can be uploaded into the SAP system.

3.8.4 City shall place funds in the account on a daily basis in an amount determined by the daily check register provided by TPA, taking into consideration required City approval for payments as described herein.

3.8.5 TPA shall, at no additional cost to City, provide the checks which comply with the City's financial institution minimum standards.

3.8.6 Upon termination of the contract, by expiration of the term or any other manner provided therein, TPA shall have all outstanding invoices received through the date prior to termination paid and processed, and shall have all files completed and updated in a neat and orderly manner.

### 3.9 Performance Standards

3.9.1 Listed below are Performance Standards, which must be met by the TPA through out the contract term, excluding an initial 90-day transition period at the start of the contract, and including any renewal terms. Also listed below are the Amounts at Risk for failure to meet the respective Performance Standards. The amount of fee to be withheld is not to be considered as a penalty, but shall be deemed, taken or treated as reasonable liquidated damages, fixed and agreed upon by and between TPA and City because of the impracticality and difficulty of fixing and ascertaining the actual damages City would sustain in the event of a failure or refusal to meet each performance standard, and the amounts stated herein are agreed to be the amount of damages that City would sustain. The Amount at Risk is stated as a percentage of the TPA's annual Basic Claims Administration Fee. The City's actual withholding from the TPA's fees for failure to meet the performance standards shall not, in any contract year, exceed 10% of the annual contract cost. However, this sum does not include any liquidated damages that may

be assessed for failing to meet the guarantee described below related to the Performance Based Oversight (PBO) Audit performed by the State.

3.9.2 If the TPA materially breaches one or more of the Performance Standards stated below, it agrees to pay the aggregate of the respective Amounts at Risk in the form of a reduction in the Basic Claims Administration Fee due and payable under the Agreement. Such amount will be deducted from the Basic Claims Administration Fee due the month following the determination that the Performance Standards have been breached. TPA’s invoice shall be itemized to reflect this reduction in the amount owed by City. If such determination is made after termination of the Agreement or at the end of the Contract Term, the TPA agrees to pay the City an amount equal to the aggregate of the respective Amounts at Risk in a lump sum payment within 30 days following written notification from the Director of the amount due. The TPA’s performance under the Performance Standards will be evaluated by the City’s third party claims auditor. In the absence of an auditor, the Performance Standards will be jointly reviewed and evaluated by the TPA and the Director. Repayment of the amounts specified herein shall not be the City’s sole remedy in the event that the TPA materially breaches one or more of the Performance Standards and shall not prejudice the City’s right to terminate this Agreement for cause.

<b>PERFORMANCE STANDARD</b>	<b>AMOUNT AT RISK</b>
a) Completing and documenting quality facts pertaining to three (3) or four (4) point contact for each claim, namely injured workers, the supervisor, medical provider and witnesses, if applicable, within twenty-four (24) hours of receipt of the claim on one-hundred percent (100%) of a randomly selected representative sample. If contacts are not completed, daily attempts must be continued until completed. Examples to be maintained in the Client Special Instructions.	1%
b) Contacting and documenting quality claim file notes regarding contact with injured workers’ and medical providers (on a weekly, but no less than bi-weekly basis) who are receiving Temporary Income Benefits on one-hundred percent (100%) of a randomly selected representative sample. Examples to be maintained in the Client Special Instructions.	1%
c) Taking quality recorded statements, documenting daily attempts, or reasons a recorded statement cannot be taken on all lost time Claims within 24 hours of receipt of claim in ninety percent (90%) of a randomly selected representative sample. Examples to be maintained in the Client Special Instructions.	.33%



- d) Documenting claim file notes within 48 hours of claim receipt regarding prior claims history of injured workers from city historical claims and other sources and evidencing awareness of contribution applicability to subject claim in ninety-five percent (95%) of a randomly selected representative sample. .67%
- e) Initiating initial and subsequent weekly benefits within the statutory time constraints on one-hundred percent (100%) of a randomly selected representative sample. 2%
- f) Performing the claims management function in such a way as to readily demonstrate a functional diary system for adjusters and supervisors in ninety-five percent (95%) of a randomly selected representative sample. This includes documenting claim file notes with a clear strategy and action plan for disposition. .67%
- g) Maintaining a manageable workload of 135 active (meaning TIBs are being currently paid or were paid) Lost Time claims. If the Adjuster's caseload exceeds 135 active lost time claims, the TPA agrees to reduce same within thirty (30) days. Caseloads will be reported to the City once a month. .33%
- h) All open cases will be maintained on an open diary and all files must be reviewed every 30 days (with the exception of medical maintenance files which can be reviewed every 90 days) on ninety percent (90%) of a randomly selected representative sample. Unless clearly documented, no file is to go more than 30 days without being reviewed. Each open indemnity case must have a plan of action with a time-line, which provides adequate information to demonstrate how the adjuster intends to move the claim to closure. An initial action plan will be documented within 15 days of receipt of claim. If for any reason a diary date is expected to exceed 30 days, the adjuster must document with supervisor acknowledgment. .66%
- i) The supervisor must review all Lost Time Claims files after the Adjuster has completed their three point contact, investigation, reserves and plan of action. The supervisor must document the initial review within 14 days of receipt of claim with subsequent supervisor reviews documented every 60 days until file closure on ninety-five percent (95%) of a randomly selected representative sample. .67%
- j) Provide quarterly reports to City's excess insurance provider on each specific claim that meets the reporting criteria of each provider. TPA shall provide status of claim(s) to City on one-hundred percent (100%) of a randomly selected representative sample. 1%

- k) Document and provide monthly reports of actual lost time duration to MD guidelines on all claims involving lost time on one-hundred percent (100%) of a randomly selected representative sample. .67%
- l) Referring claims for telephonic or field case management per the referral triggers as outlined in the City's Medical Case Management protocol on one-hundred percent (100%) of a randomly selected representative sample. 1%

**TOTAL** 10%

3.9.3 Performance Based Oversight (PBO)

As a measure of performance, TPA must score 90% or higher on any Performance Based Oversight (PBO) audits conducted by the State of Texas, through any of its departments or agencies, during the first 180 days of the awarded contract, and 95% or higher for the remainder of the contract term and any renewals. If TPA fails to achieve this performance measure, TPA shall pay City the sum of \$1,000 for each percentage point, rounded to the nearest whole number, which TPA falls below the guarantee, as liquidated damages. TPA shall apply this sum as a credit on the next invoice TPA submits to the City after receipt of notice from City. If no further invoices are due, TPA shall pay this sum within 30 days of City's demand for same. The Parties agree that the actual damages that might be sustained by City by reason of the breach by TPA of this guarantee are uncertain and would be difficult of ascertainment, and that the sum specified above would be a reasonable compensation for such breach. TPA hereby promises to pay, and City hereby agrees to accept, such sum as liquidated damages, and not as a penalty, in the event of such breach.

**IV. COMPENSATION TO CONSULTANT**

- 4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Consultant as follows:
  - 4.1.1 Annual Claims Administration Fee for Contract Year One - \$1,030,000.00;
  - 4.1.2 Annual Claims Administration Fee for Contract Year Two - \$1,054,000.00;
  - 4.1.3 Annual Claims Administration Fee for Contract Year Three - \$1,108,000.00;
  - 4.1.4 Annual Claims Administration Fee for Contract Year Four - \$1,163,000.00, subject to contract renewal for this period;
  - 4.1.5 Annual Claims Administration Fee for Contract Year Five - \$1,221,000.00, subject to contract renewal for this period.

4.1.6 Monthly extensions. If City extends this contract in accordance with section 2.2, City shall pay Consultant's Claims Administration Fee in accordance with the rates stated in section 4.1.5 above. Services charged to the claims file during such extensions shall be paid at the rates shown for Year 5 in section 4.3 below.

4.2 City shall pay the fees owed to Consultant described in section 4.1.1 – 4.1.6 above in equal monthly installments in arrears. Consultant shall submit monthly invoices to City, in a form acceptable to City, no earlier than the 30<sup>th</sup> day of each month. City shall pay properly submitted invoices within 30 days of receipt and approval by Director, or Director's designee. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, Finance Department, Risk Management Division, P.O. Box 839966, San Antonio, Texas 78283-3966.

4.3 Charges for the services identified below will be billed directly to the claims file at the rates shown below.

	Year 1	Year 2	Year 3	Year 4	Year 5
<b>Medical Bill Audit (Flat Rate Per Bill)</b>					
Medical Bill Audit (CMS 1500)	\$8.50	\$8.50	\$8.50	\$8.50	\$8.50
Hospital Audit (UB-92)	\$8.50	\$8.50	\$8.50	\$8.50	\$8.50
Pharmaceutical	\$8.50	\$8.50	\$8.50	\$8.50	\$8.50
<b>Pre-Authorization Fee (Per Pre-Authorization)</b>					
Medical	\$160.00	\$160.00	\$160.00	\$160.00	\$160.00
Pharmaceutical Retrospective Review	\$160.00	\$160.00	\$160.00	\$160.00	\$160.00
<b>Case Management</b>					
Field (Per Hour)	\$95.00	\$95.00	\$95.00	\$95.00	\$95.00
Telephonic (Per Claim)	\$85.00	\$85.00	\$85.00	\$85.00	\$85.00
<b>Peer Review (Per Review)</b>					
	\$750.00	\$750.00	\$750.00	\$750.00	\$750.00
<b>Independent Review Organization (IRO) (Per Review)</b>					
	\$100.00	\$100.00	\$100.00	\$100.00	\$100.00
<b>Required Medical Examination Coordination (RME) (Per Review)</b>					
	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
<b>Designated Doctor (DDE) (Per Review)</b>					

	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
<b>Independent Medical Exam (IME) (Per Review)</b>					
	\$350.00	\$350.00	\$350.00	\$350.00	\$350.00
<b>Private Investigation Services (Per Hour)</b>					
	\$80.00	\$80.00	\$80.00	\$80.00	\$80.00

TPA shall not charge for travel time.

- 4.4 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by the San Antonio City Council by passage of an ordinance therefore. No additional fees or expenses may be charged to the claims file, other than as provided in section 4.3 above, without express written approval of the Director, except for legal fees, which require express written approval from the City Attorney.
- 4.5 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

## V. OWNERSHIP OF DOCUMENTS

- 5.1 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.
- 5.2 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

## VI. RECORDS RETENTION

- 6.1 Consultant and its subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as “documents”), and shall make such materials available to the City at their respective offices, at all reasonable times and as often as City may deem necessary during the Agreement period, including any extension or renewal

hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

- 6.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four years (hereafter referred to as “retention period”) from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return the documents to City at Consultant’s expense prior to or at the conclusion of the retention period. In such event, Consultant may retain a copy of the documents.
- 6.3 Consultant shall notify City, immediately, in the event Consultant receives any requests for information from a third party, which pertain to the documentation and records referenced herein. Consultant understands and agrees that City will process and handle all such requests.

## **VII. TERMINATION**

- 7.1 For purposes of this Agreement, "termination" of this Agreement shall mean termination by expiration of the Agreement term as stated in Article II. Term, or earlier termination pursuant to any of the provisions hereof.
- 7.2 Termination Without Cause. This Agreement may be terminated by City upon 30 calendar days’ written notice, which notice shall be provided in accordance with Article VIII. Notice.
- 7.3 Termination For Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
- 7.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XII. Assignment and Subcontracting;
- 7.3.2 Any material breach of the terms of this Agreement, as determined solely by City.
- 7.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s)

in default. Consultant shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such 30 day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.

- 7.4.1 Failure to comply with the terms and conditions stated in Attachment A – SBEDA Program Compliance;
  - 7.4.2 Bankruptcy or selling substantially all of company's assets
  - 7.4.3 Failing to perform or failing to comply with any covenant herein required
  - 7.4.4 Performing unsatisfactorily
- 7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 7.6 Regardless of how this Agreement is terminated, Consultant shall effect an orderly transfer to City or to such person(s) or firm(s) as the City may designate, at no additional cost to City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by Consultant, or provided to Consultant, hereunder, regardless of storage medium, if so requested by City, or shall otherwise be retained by Consultant in accordance with Article VI. Records Retention. Any record transfer shall be completed within thirty (30) calendar days of a written request by City and shall be completed at Consultant's sole cost and expense. Payment of compensation due or to become due to Consultant is conditioned upon delivery of all such documents, if requested.
- 7.7 Within 45 calendar days of the effective date of completion, or termination or expiration of this Agreement, Consultant shall submit to City its claims, in detail, for the monies owed by City for services performed under this Agreement through the effective date of termination. Failure by Consultant to submit its claims within said forty-five (45) calendar days shall negate any liability on the part of City and constitute a **Waiver** by Consultant of any and all right or claims to collect moneys that Consultant may rightfully be otherwise entitled to for services performed pursuant to this Agreement.
- 7.8 Upon the effective date of expiration or termination of this Agreement, Consultant shall cease all operations of work being performed by Consultant or any of its subcontractors pursuant to this Agreement.
- 7.9 Termination not sole remedy. In no event shall City's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of City's remedies,

nor shall such termination limit, in any way, at law or at equity, City's right to seek damages from or otherwise pursue Consultant for any default hereunder or other action.

## VIII. NOTICE

Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

If intended for City, to:

City of San Antonio  
Office of Risk Management  
Attn: Debra Ojo, Director  
P.O. Box 839966  
San Antonio, Texas 78283-3966

If intended for Consultant, to:

AS&G Claims Administration, Inc.  
Attn: Jeff L. Hord, Executive Vice  
President  
8700 Crownhill Blvd., Suite 701  
San Antonio, TX 78209

## IX. NON-DISCRIMINATION

Non-Discrimination. As a party to this contract, Consultant understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

## X. INSURANCE

10.1 Prior to the commencement of any work under this Agreement, Consultant shall furnish copies of all required endorsements and completed certificate(s) of insurance to the City's Finance Department, which shall be clearly labeled "Workers' Compensation TPA Agreement" in the description of operations block of the certificate. The certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept a memorandum of insurance or binder as proof of insurance. The certificate(s) must be signed by the authorized representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized

representative to City. City shall have no duty to pay or perform under this agreement until such certificate and endorsements have been received and approved by City's Finance Department. No officer or employee, other than Director, shall have authority to waive this requirement.

- 10.2 City reserves the right to review the insurance requirements of this article during the effective period of this agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by Director based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.
- 10.3 A consultant's financial integrity is of interest to City; therefore, subject to Consultant's right to maintain reasonable deductibles in such amounts as are approved by City, Consultant shall obtain and maintain in full force and effect for the duration of this agreement, and any extension hereof, at Consultant's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims-made Basis)	\$2,000,000 per claim, \$5,000,000 aggregate
6. Commercial Crime Coverage (Policy shall be endorsed to name City as a joint loss payee.)	\$500,000 per claim

- 10.4 Consultant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Consultant herein, and provide a certificate of insurance and endorsement that names Consultant and City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Consultant. Consultant shall provide City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by Director, without



subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by Director, which shall become a part of the contract for all purposes.

- 10.5 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Consultant shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Consultant shall pay any costs incurred resulting from provision of said documents.

City of San Antonio  
Attn: Finance Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

- 10.6 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

- 10.7 Within five calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement certificate of insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this agreement.

- 10.8 In addition to any other remedies City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order Consultant to stop work hereunder, and/or

withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.

- 10.9 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.
- 10.10 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this agreement.
- 10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- 10.12 Consultant and any subcontractors are responsible for all damage to their own equipment and/or property.

## **XI. INDEMNIFICATION**

- 11.1 **CONSULTANT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSULTANT'S activities under this Agreement, including any acts or omissions of CONSULTANT, any agent, officer, director, representative, employee, consultant or subcontractor of CONSULTANT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONSULTANT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

- 11.2 The provisions of this indemnity are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Consultant shall advise City in writing within 24 hours of any claim or demand against City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Consultant's cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving Consultant of any of its obligations under this paragraph.
- 11.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Consultant in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Consultant shall retain City approved defense counsel within 7 business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Consultant fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Consultant shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 11.4 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of Consultant any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or any subcontractor under worker's compensation or other employee benefit acts.

## **XII. ASSIGNMENT AND SUBCONTRACTING**

- 12.1 Consultant shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of Consultant. Consultant, its employees or its subcontractors shall perform all necessary work.
- 12.2 It is City's understanding and this Agreement is made in reliance thereon, that Consultant intends to use the following subcontractors in the performance of this Agreement: Injury Management Organization, Barrett Insurance Service, and Dependable Express. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of San Antonio City Council ("City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.
- 12.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in

no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.

- 12.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.
- 12.5 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should Consultant assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Consultant shall thereupon cease and terminate, in accordance with Article VII. Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Consultant shall in no event release Consultant from any obligation under the terms of this Agreement, nor shall it relieve or release Consultant from the payment of any damages to City, which City sustains as a result of such violation.

### **XIII. INDEPENDENT CONTRACTOR**

Consultant covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of City; that Consultant shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and consultants; that the doctrine of “respondeat superior” shall not apply as between City and Consultant, its officers, agents, employees, contractors, subcontractors and consultants, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between City and Consultant. The parties hereto understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the Consultant under this Agreement and that the Consultant has no authority to bind the City.

### **XIV. CONFIDENTIALITY & NETWORK SECURITY**

- 14.1 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by Consultant under this Agreement shall be disclosed or made available to any individual or organization by Consultant, other than as expressly permitted by this Agreement, without the express

prior written approval of City. In the event Consultant receives any such request, Consultant shall forward such request to City immediately.

- 14.2 Consultant shall establish a method to secure the confidentiality of records and information that Consultant may have access to hereunder in accordance with the applicable federal, state, and local laws, rules and regulations. This provision shall not be construed as limiting City's right of access to records or other information under this Agreement.
- 14.3 If City's access to claims data requires a network connection (the "Network Connection") between City's wide area network and TPA's wide area network, TPA and City shall take reasonable and customary precautions to prevent the unauthorized access to or use of the Network Connection through their respective networks. The parties agree, however, that each party is responsible for the security of its own network. Neither party shall be liable to the other for unauthorized access to the Network Connection, so long as the accused party shall have taken reasonable and customary precautions to prevent such unauthorized access.
- 14.4 Whether or not marked as such, and without regard to the media in which such records are stored, "Confidential Information" shall mean:
  - 14.4.1 any business or technical information pertaining to the parties herein or to third parties, which is furnished, disclosed or made available by one party to the other, including, without limitation, specifications, prototypes, software, marketing plans, financial data and personnel statistics; and
  - 14.4.2 medical records, reports and information, as well as any other non-medical records, reports or information pertaining to claimants under the Program.
- 14.5 "Confidential Information" shall not mean this contract document, or any other document required or permitted to be disclosed pursuant to the Texas Public Information Act.
- 14.6 Each party agrees to protect Confidential Information received hereunder with the same degree of care that such party exercises with its own confidential information (but in no event less than reasonable care) and to limit access and disclosure of Confidential Information only to their employees, agents and contractors who have a "need to know," and who agree to maintain confidentiality in accordance with this section. Notwithstanding the foregoing, City agrees to permit TPA to compile and disseminate aggregate, de-identified information for benchmarking purposes or forward to a data collection facility data for Qualified Claims handled pursuant to this Agreement, provided that such facility agrees in writing to keep City's data confidential. Further, TPA shall be entitled, without violation of this section and without prior consent of City, to retain claims administration information and to forward claims administration information to government agencies to the extent required by law for the proper performance of the services set forth herein. The dissemination of information referred to in this paragraph is that dissemination of information as required for TPA to perform its

obligations under this Agreement.

- 14.7 The provisions of this section shall survive the expiration or termination of the Agreement.

#### **XIV. CONFLICT OF INTEREST**

- 15.1 Consultant acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Section 2-52 of the City Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; an entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the entity, or ten (10) percent or more of the fair market value of the entity; an entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary entity.
- 15.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Consultant further warrants and certifies that it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.

#### **XVI. AMENDMENTS**

Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both City and Consultant. Director shall have authority to execute amendments on behalf of the City without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

#### **XVII. SEVERABILITY**

If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision

as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

### **XVIII. LICENSES/CERTIFICATIONS**

Consultant warrants and certifies that Consultant and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

### **XIX. COMPLIANCE**

Consultant shall provide and perform all services required under this Agreement in compliance with all applicable federal, state and local laws, rules and regulations.

### **XX. NONWAIVER OF PERFORMANCE**

Unless otherwise specifically provided for in this Agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of City, such changes must be approved by the City Council, as described in Article XVI. Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

### **XXI. LAW APPLICABLE**

**21.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County,

Texas.

## **XXII. LEGAL AUTHORITY**

The signer of this Agreement for Consultant represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Consultant and to bind Consultant to all of the terms, conditions, provisions and obligations herein contained.

## **XXIII. PARTIES BOUND**

This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

## **XXIV. CAPTIONS**

The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

## **XXV. INCORPORATION OF ATTACHMENTS**

Each of the attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all attachments:

- 25.1 Attachment "A" – SBEDA Program Compliance.
- 25.2 Attachment "B" – Consultant's SBEDA Utilization Plan
- 25.3 Attachment "C" - Medical Case Management Protocol
- 25.4 Attachment "D" - Consultant's Transition Plan

## **XXVI. ENTIRE AGREEMENT**

This Agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties hereto and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereto, and duly executed by the parties, in accordance with Article XVI. Amendments.

## **XXVII. PROHIBITED CONTRIBUTIONS**



- 27.1 Consultant acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a “high-profile” discretionary contract, as defined by the City of San Antonio Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. Consultant understands that if the legal signatory entering the contract has made such a contribution, the city may not award the contract to that contributor or to that contributor’s business entity. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be different from the individual submitting the response.
- 27.2 Consultant acknowledges that the City has identified this Agreement as high profile.
- 27.3 Consultant warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Agreement. Should the signor of this Agreement violate this provision, the City Council may, in its discretion, declare this Agreement void.

**EXECUTED** and **AGREED** to as of the dates indicated below.

**CITY OF SAN ANTONIO**

**AS&G CLAIMS ADMINISTRATION, INC.**

\_\_\_\_\_  
*(Signature)*

Printed Name: Debra Ojo

Title: Director, Office of Risk Management

Date: \_\_\_\_\_

\_\_\_\_\_  
*(Signature)*

Printed Name: Jeff L. Hord

Title: Executive Vice President

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
 Assistant City Attorney