

**ORDINANCE 2019-01-17-0041**

**APPROVING A THREE YEAR CONTRACT WITH INJURY MANAGEMENT ORGANIZATION, INC. TO PROVIDE MEDICAL COST CONTAINMENT SERVICES THROUGH A WORKERS' COMPENSATION HEALTH CARE NETWORK BEGINNING MARCH 1, 2019 FOR AN ESTIMATED ANNUAL COST OF \$455,000.00 WITH RENEWAL OPTIONS. FUNDS ARE AVAILABLE IN THE SELF-INSURANCE WORKERS' COMPENSATION FUND FY 2019 ADOPTED BUDGET AND COSTS WILL BE OFFSET BY EFFICIENCIES INTRODUCED BY THE HEALTH CARE NETWORK PROGRAM.**

\* \* \* \* \*

**WHEREAS**, the City released a Request for Proposals (RFP) to provide the City with provide medical cost containment services through a Workers' Compensation Health Care Network (HCN) in accordance with chapter 1305 of the Texas Insurance Code; and

**WHEREAS**, one response was received and evaluated; and

**WHEREAS**, staff recommends Injury Management Organization, Inc. for award of this contract;  
**NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** Injury Management Organization, Inc. is hereby selected to provide medical cost containment services through a Workers' Compensation Health Care Network (HCN) in accordance with chapter 1305 of the Texas Insurance Code, as described in the attached contract for an estimated annual cost of \$455,000.00. The City Manager or her designee, or the Director of the Office of Risk Management, is hereby authorized to execute the contract for said services, a copy of which is attached hereto and incorporated herein as **Exhibit I**. The terms of said contract are hereby approved. This contract may be renewed and extended for two additional, successive one-year renewal periods on the same terms and conditions, subject to funding by the City Council, and extended as otherwise provided within the contract. So long as funding is provided for in the budget, no further City Council action shall be required to effect the renewals and/or extensions, which may be executed by the City Manager, the City Manager's designee, or the Director of the Office of Risk Management.

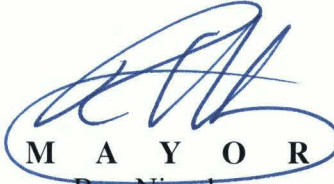
**SECTION 2.** Funding for this ordinance in the amount up to \$265,300.00 is available in Fund 75003000, Cost Center 7501010001 and General Ledger 5201040 as part of the Fiscal Year 2019 budget. Additional funding is contingent upon City Council approval of subsequent budgets that fall within the term length of this contract.

**SECTION 3.** Payment not to exceed the budgeted amount is authorized to Injury Management Organization, Inc. (IMO) to provide medical cost containment services through 1305 Worker's Compensation Health Care Network (HSN).

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.


**SECTION 5.** This ordinance is effective immediately upon passage by eight or more affirmative votes; otherwise, it is effective on the tenth day after passage.

**PASSED AND APPROVED** this 17<sup>th</sup> day of January, 2019.




**M A Y O R**  
Ron Nirenberg

**ATTEST:**



\_\_\_\_\_  
Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**



\_\_\_\_\_  
Andrew Segovia, City Attorney

| <b>Agenda Item:</b> | <b>30 ( in consent vote: 7, 8, 9, 10, 11, 12, 13A, 13B, 14, 16, 17, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30 )</b>  |                    |            |            |                |               |               |
|---------------------|---|--------------------|------------|------------|----------------|---------------|---------------|
| <b>Date:</b>        | 01/17/2019  |                    |            |            |                |               |               |
| <b>Time:</b>        | 09:52:27 AM   |                    |            |            |                |               |               |
| <b>Vote Type:</b>   | Motion to Approve   |                    |            |            |                |               |               |
| <b>Description:</b> | Ordinance approving a three year contract with Injury Management Organization, Inc. to provide medical cost containment services through a Workers' Compensation Health Care Network beginning March 1, 2019 for an estimated annual cost of \$455,000.00 with renewal options. Funds are available in the Self-Insurance Workers' Compensation Fund FY 2019 Adopted Budget and costs will be offset by efficiencies introduced by the Heath Care Network Program. [Ben Gorzell, Chief Financial Officer; Debra Ojo, Director, Office of Risk Management] |                    |            |            |                |               |               |
| <b>Result:</b>      | Passed  |                    |            |            |                |               |               |
| <b>Voter</b>        | <b>Group</b>  | <b>Not Present</b> | <b>Yea</b> | <b>Nay</b> | <b>Abstain</b> | <b>Motion</b> | <b>Second</b> |
| Ron Nirenberg       | Mayor   |                    | x          |            |                |               |               |
| Roberto C. Treviño  | District 1  |                    | x          |            |                | x             |               |
| Art A. Hall         | District 2  |                    | x          |            |                |               |               |
| Rebecca Viagran     | District 3  |                    | x          |            |                |               |               |
| Rey Saldaña         | District 4  |                    | x          |            |                |               |               |
| Shirley Gonzales    | District 5  |                    | x          |            |                |               |               |
| Greg Brockhouse     | District 6  |                    | x          |            |                |               |               |
| Ana E. Sandoval     | District 7  |                    | x          |            |                |               |               |
| Manny Pelaez        | District 8  |                    | x          |            |                |               |               |
| John Courage        | District 9  |                    | x          |            |                |               | x             |
| Clayton H. Perry    | District 10   |                    | x          |            |                |               |               |

LOC  
1/17/19  
Item No. 30

## **EXHIBIT I**



**PROFESSIONAL SERVICES AGREEMENT  
FOR  
1305 WORKERS' COMPENSATION HEALTH CARE NETWORK**

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 Director of the Office of Risk Management, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on the \_\_\_\_\_ day of \_\_\_\_\_, 2019 and Injury Management Organization, Inc. by and through Catherine Benavidez, its President and CEO ("Consultant"), 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 "Director" shall mean the director of City's Office of Risk Management.
- 1.4 "HCN" and "Network" mean a Workers' Compensation Health Care Network implemented and managed in accordance with the Texas Insurance Code, Chapter 1305 and regulations issued pursuant thereto, for the City's self-insured Workers' Compensation Program.
- 1.5 Network Claim(s) mean workers' compensation claims occurring on or after October 1, 2018, with the exception of those City employees who currently reside outside of the Network service area and who do not elect to treat within the Network.

**II. TERM**

- 2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence on March 1, 2019 and terminate on February 28,

2022. City expects the Consultant to begin performing preliminary services on March 1, 2019; however, the actual Network, and claims occurring thereunder, shall not start until April 1, 2019. Preliminary services consist of employee training, preparing the employee handbook, creating notices for employees, and all things required for implementation of the Healthcare Network (HCN) in advance. Administrative Fees are not payable for this preliminary period of time.

- 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, and signed by 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 180 days. 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.
- 3.2 All work performed by Consultant hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Consultant, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article VII. Termination, in whole or in part, should Consultant's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.
- 3.3 Consultant shall perform the roles and responsibilities identified for Injury Management Organization, Inc./IMO Med-Select Network® set forth on Attachment C - Division of Responsibilities for Certified Network Claims.
- 3.4 Consultant shall work closely with the City's Third Party Administrator (TPA) to provide a seamless process for City's internal operations and City's injured employees. Consultant shall coordinate services with the TPA to provide the timely delivery of healthcare through a healthcare provider panel dedicated to effective treatment while promoting City's return to work program and achieving employee satisfaction. Consultant's key objectives shall be:



3.4.1 To offer and manage a panel of medical providers and a sufficient number of specialists contracted to provide the highest quality and appropriate care at reasonable cost and;

3.4.2 To track outcomes, costs and utilization of care.

3.5 Consultant shall:

3.5.1 Nominate medical providers for inclusion in Network as warranted for service area coverage and medical specialty needs;

3.5.2 Credential and contract Network providers;

3.5.3 Provide educational sessions for Network medical providers, claims examiners and City employees;

3.5.4 Maintain and supply copies of updated medical directory on a quarterly basis;

3.5.5 Provide Notice of Network Requirements in accordance with Insurance Code, Chapter 1305;

3.5.6 Receive and download claim feed from TPA, daily;

3.5.7 Provide toll-free telephone services, at least 40 hours per week during normal business hours and in central time zone;

3.5.8 Provide after-hours telephonic instructions for City employees and respond within 2 business days after the call is received by Network;

3.5.9 Provide Telephonic Case Management (TCM) within 2 business days from the time of the receipt of the first report of injury;

3.5.10 Ensure Telephonic Case Manager assists with provider selection and necessary change of treating doctor, provider relations and medical intervention with the treating doctor in the oversight of the evidence based guidelines as it relates to medical and return to work;

3.5.11 Facilitate communication and provide information to injured employee, medical providers, claims adjusters and City during the recovery of the injured employee;

3.5.12 Provide "return to work" oversight with the treating providers;

3.5.13 Confirm provider is a Network provider, treating doctor or referral doctor;

3.5.14 Perform state reporting requirements for Networks;

3.5.15 Review and respond to employee's requests for change of Network treating doctor;

3.5.16 Implement and maintain Network complaint systems;

3.5.17 Acknowledge, investigate and follow up on Network complaints within 7 days of receiving complaint; bring resolution to complaints within 30 days of receiving the complaint;

3.5.18 Notify City of complaints filed and their resolution.

3.5.19 Develop and administer a customer service survey, approved by the City, and provide quarterly results;

3.5.20 Prepare TDI Network report card requirements;

3.5.21 Report Network results to TDI;

3.5.22 Develop and implement Network Quality Improvement Program (QIP):

3.5.22.1 Implement QIP within 90 days of effective date of contract

3.5.22.2 Conduct quality audits of office, Manager(s), Supervisor(s) and case managers, which must be scheduled and on-going

3.5.22.3 Provide formal internal audit reports to CITY, if requested.

3.5.23 Adopt treatment guidelines, return-to-work guidelines, and individual treatment protocols as warranted. The guidelines need to be evidence based, nationally recognized and scientifically valid and outcome based;

3.5.24 Engage in Performance Measures in accordance with Attachment E – Performance Standards; and

### 3.6 Medical Cost Containment.

Consultant shall provide the following medical cost containment services for Network Claims:

3.6.1 Provide bill review, utilization review (prospective, concurrent, retrospective, pre-procedure) peer review, pre-authorization, case management, vocational rehabilitation evaluation, discharge planning, telephonic and field case management, identification of catastrophic illnesses or injury and other Workers' Compensation medical cost management related services as requested and approved by the City and within the timelines identified in Insurance Code Chapter 1305, as hereafter amended;



3.6.2 Audit medical bills in accordance with TDI-DWC fee guidelines or special discounts negotiated with providers.

3.6.3 Make appropriate application of treatment guidelines and fee schedules.

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 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 medical case management in accordance with Attachment D herein.

3.6.6 Monitor appropriateness of treatment, necessity and continuation of medical treatment in relation to an on-the-job injury/illness.

3.6.7 Review medical bills for any irregularities such as overlapping dates of services, unrelated fees, up-coding and unbundling.

3.6.8 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.

3.6.9 Require bill review and utilization management staff to use Official Disability Treatment Guidelines (ODG) to properly handle claims and manage overutilization.

3.6.10 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.

3.6.11 Obtain pre-approval from City on all vocational evaluation for job analysis.

3.6.12 Assist with facilitating return to work.

3.6.13 Ensure case managers and utilization review staff are available to treating physicians during physician's business hours.

3.6.14 Provide monthly reporting, analysis and improvement opportunities for all cost containment and case management programs.

3.6.15 Perform other such responsibilities associated with medical cost containment services with regard to Network Claims.

### 3.7 Pharmacy Benefit Management Services.

Consultant shall provide the following services:

3.7.1 Provide pharmacy 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 City.

3.7.2 Audit pharmacy bills in accordance with TDI-DWC fee guidelines or special discounts negotiated between TPA and providers and submit to City's TPA for payment.

3.7.3 Implement early medication intervention protocols where medication peer reviews are done with suggestions of appropriate medication.

3.7.4 Electronically transfer required information to TDI-DWC and other involved parties in a timely manner at no cost to the City.

3.7.5 Monitor appropriateness of prescription(s), necessity and continuation of prescription(s) in relation to an on-the-job injury/illness.

3.7.6 Review pharmacy bills for any irregularities such as overlapping dates of services, unrelated fees, up-coding and unbundling.

3.7.7 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.

3.7.8 Make case managers and utilization review staff available to treating physicians during physician's business hours.

3.7.9 Provide treating physicians with timely notification of decisions regarding authorization.

3.7.10 Provide monthly reporting, analysis issues, trends and improvement opportunities.

3.7.11 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.

3.7.12 Perform other such responsibilities associated with PBM services.

3.8 Risk Management Information System (RMIS)

3.8.1 Consultant's RMIS shall be capable of and shall interface with the City's TPA RMIS.

3.8.2 Consultant shall manage data collection and electronic interfaces required to transmit information required by the Texas Department of Insurance; Division of Workers' Compensation (TDI-DWC), and the City's TPA. Consultant shall:

3.8.2.1 Establish, test, and verify the data transfer function between the Network and the TPA;

3.8.2.2 Establish provider look up capability for all City employees and adjusters;

3.8.2.3 Identify, develop, implement, test, and verify any data entry interface required;

3.8.2.4 Develop, implement, test, and verify reporting capabilities and required applications;

3.8.2.5 Develop, implement, test, and verify provider search, viewing and printing of directories;

3.8.2.6 Train TPA and City employees on the use of the systems.

3.8.3 All documents involved in medical management and claims management must be part of the integrated imaged claim file. The documents must be attached to the claim file. Consultant shall work with the TPA to ensure a complete and accurate claim file.

3.8.4 Consultant is responsible for working with the TPA to establish procedures and electronic interface enabling ease of accessibility to the provider panel and sharing of information vital to claims management.

#### 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:

|   | Yr. 1    | Yr. 2    | Yr. 3    | Yr. 4    | Yr. 5    |
|---|----------|----------|----------|----------|----------|
| ADMINISTRATIVE SERVICES FEE<br>(AKA NETWORK ACCESS FEE)<br>CHARGE PER CLAIM | \$350.00 | \$350.00 | \$350.00 | \$350.00 | \$350.00 |



Network Access Fee Includes: Network Start Up / Set Up, Provider Panel Access, Provider Management, Education, Credentialing, Contracting and all TDI Compliance requirements such as data call, Quality Improvement Programs, Complaint, and Customer Service needs, and all other services described in this Agreement, except as specifically set forth immediately below.

The fees shown below shall be submitted for payment to City's TPA, as they will be billed against the applicable claim file. Consultant shall provide a monthly report to City showing what has been submitted to the TPA for payment.

|  | Yr. 1                                      | Yr. 2        | Yr. 3        | Yr. 4        | Yr. 5        |
|--|--|--------------|--------------|--------------|--------------|
| <b>Medical Bill Audit Per Bill</b>                         | \$8.50                                     | \$8.50       | \$8.50       | \$8.50       | \$8.50       |
| • For UB-92  | \$8.50                                     | \$8.50       | \$8.50       | \$8.50       | \$8.50       |
| • For CMS 1500   | \$8.50                                     | \$8.50       | \$8.50       | \$8.50       | \$8.50       |
| • For Pharmaceutical                                       | \$8.50                                     | \$8.50       | \$8.50       | \$8.50       | \$8.50       |
| <b>Pre-authorization Fee (per request)</b>                 | \$160.00                                   | \$160.00     | \$160.00     | \$160.00     | \$160.00     |
| <b>Hospital Bill Audit</b>                                 |  |              |              |              |              |
| • Desk Audit Fee   | \$8.50                                     | \$8.50       | \$8.50       | \$8.50       | \$8.50       |
| • Flat Rate Per Total Hospital Bill (for Desk Audits only) | \$125.00                                   | \$125.00     | \$125.00     | \$125.00     | \$125.00     |
| • On-site Audit Fee  | \$125/00/Hr.                               | \$125/00/Hr. | \$125/00/Hr. | \$125/00/Hr. | \$125/00/Hr. |
| <b>Medical Record Peer Review (per hour)</b>               | \$225.00                                   | \$225.00     | \$225.00     | \$225.00     | \$225.00     |
| <b>Field Case Management (per claim)</b>                   | \$90.00                                    | \$90.00      | \$90.00      | \$90.00      | \$90.00      |
| <b>Telephonic Case Management (per claim)</b>              | No Charge. Included in Network Access Fee. |              |              |              |              |
| <b>Independent Review Organization (IRO) (per review)</b>  | \$160.00                                   | \$160.00     | \$160.00     | \$160.00     | \$160.00     |
| <b>Peer Review (per review)</b>                            | \$775.00                                   | \$775.00     | \$775.00     | \$775.00     | \$775.00     |
| <b>Required Medical Exam (RME) (per review)</b>            | \$375.00                                   | \$375.00     | \$375.00     | \$375.00     | \$375.00     |
| <b>Designated Doctor's Exam (DDE) (per review)</b>         | \$375.00                                   | \$375.00     | \$375.00     | \$375.00     | \$375.00     |
| <b>Retrospective Review (per review)</b>                   | \$160.00                                   | \$160.00     | \$160.00     | \$160.00     | \$160.00     |



Pricing is for claims occurring on or after the effective date of the contract. All proposed fees are included in the prices provided. Consultant shall not charge for travel time. Pricing during the month to month renewal period, if exercised, shall be the same as pricing stated during Year 5.

- 4.2 Consultant shall submit invoices for Administrative Services Fees to City on a monthly basis for fees incurred the prior month, in a form acceptable to City, which City shall pay within 30 days of receipt and approval by Director. 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, Office of Risk Management, P.O. Box 839966, San Antonio, Texas 78283-3966.
- 4.3 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.
- 4.4 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 90 calendar days' written notice, which notice shall be provided in accordance with Article VIII. Notice.
- 7.3 Termination For Cause. In compliance with Texas Insurance Code §1305.154(c)(3), this Agreement may be terminated immediately if cause exists.
- 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.
- 7.5 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:

Injury Management Organization, Inc.  
Catherine Benavidez, President and CEO  
5560 Tennyson Pkwy, Ste 110  
Plano, Texas 75024

## 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 Office of Risk Management, which shall be clearly labeled "**Workers Compensation Health Care Network**" 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 Office of Risk Management. No officer or employee, other than the Director of City's Office of Risk Management, 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 City's Risk Manager 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 Limits   |
| 2. Employers' Liability   | \$1,000,000/\$1,000,000/\$1,000,000  |
| 3. Commercial General Liability Insurance to include coverage for the following:<br>a. Premises operations<br>b. Independent Contractors<br>c. Products/completed operations<br>d. Personal Injury<br>e. Contractual Liability<br>f. Damage to property rented by you | For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence;<br>\$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage<br><br>f. \$100,000                |
| 4. Business Automobile Liability<br>a. Owned/leased vehicles<br>b. Non-owned vehicles<br>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 policies are to be maintained and in effect for no less than two years subsequent to the completion of the professional services  | \$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services. |
| 6. Crime Insurance  | \$1,000,000 per occurrence   |

- 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 City's Risk Manager, 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 City's Risk Manager, 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: Office of Risk Management  
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 the **CITY** in writing within 24 hours of any claim or demand against the **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. The **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 seven (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: None. 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. RESERVED.**

### **XV. CONFLICT OF INTEREST**

- 15.1 The Charter of the City of San Antonio and the City of San Antonio Code of Ethics prohibit a City officer or employee, as those terms are defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. 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 or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;

- an entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or
- an entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) 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 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 & LEGAL FEES**

- 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.
- 21.3 The Parties hereto expressly agree that, in the event of litigation, each party hereby waives its right to payment of attorneys' fees.

## **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 – Required Provisions Under Texas Insurance Code Chapter 1305
- 25.2 Attachment B – Contingency Plan
- 25.3 Attachment C - Division of Responsibilities for Certified Network Claims
- 25.4 Attachment D - Medical Case Management Protocol
- 25.5 Attachment E – Performance Standards

#### **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. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL**

- 27.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
  - (1) does not boycott Israel; and
  - (2) will not boycott Israel during the term of the contract.
- 27.2 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or



limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

- 27.3 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.
- 27.4 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

#### **XXVIII. PROHIBITED CONTRIBUTIONS**

- 28.1 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.
- 28.2 Consultant acknowledges that the City has identified this Agreement as high profile.
- 28.3 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.

*[The remainder of this page is intentionally left blank.]*

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

**City of San Antonio**

**Injury Management Organization, Inc.**

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

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

Printed Name: Debra Ojo

Printed Name: Catherine Benavidez

Title: Director, Office of Risk  
Management

Title: President and CEO

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

Date: 11-6-2018

Approved as to Form:

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



## **Attachment A**

### **Required Provisions Under Texas Insurance Code Chapter 1305**

The Parties agree to the following in compliance with Chapter 1305 of the Texas Insurance Code (Chapter 1305) and the rules promulgated by the Texas Department of Insurance (the Department), both as hereafter amended, in regard to certified workers' compensation health care networks:

1. Neither this Agreement nor any Network contract with a health care provider, management contractor or other third party shall be interpreted to involve a transfer of risk as defined under Chapter 1305, §1305.004(a)(26).
2. Network shall provide the functions delegated by City and meet the reporting requirements of each function as described in Article III of this Agreement, and shall, without exception, contract with providers for the provision of health care, and perform functions related to the operation of a quality improvement program and credentialing in accordance with the requirements of the Texas Insurance Code Chapter 1305, as hereafter amended (Chapter 1305).
3. Network and any management contractor or third party to which Network delegates a function will perform all delegated functions in full compliance with all requirements of Chapter 1305, the Texas Workers' Compensation Act, Texas Labor Code Title 5, Subtitle A and rules of the commissioner or the commissioner of workers' compensation.
4. Network, a management contractor, a third party to which Network delegates a function, and Network's contracted providers are prohibited from billing or attempting to collect any amounts from City's employees for health care services for compensable injuries under any circumstances, including the insolvency of City or Network, except as provided by Chapter 1305, §1305.451(b)(6).
5. City retains ultimate responsibility for ensuring that all delegated functions and all management contractor functions are performed in accordance with applicable statutes and rules. This Agreement may not be construed to limit in any way City's responsibility, including financial responsibility, to comply with all statutory and regulatory requirements.
6. Network's role is to provide the services described under Chapter 1305, §1305.154(b), as well as any other services or functions delegated by City, including functions delegated to a management contractor, subject to City's oversight and monitoring of Network's performance;
7. Network shall provide City, at least monthly and in a form usable for audit purposes, the data necessary for City to comply with the reporting requirements of the Department of Insurance and the Division of Workers' Compensation with respect to any services provided under this Agreement, including the following data:

- (A) last name, first name, date of injury, date of birth, sex, address, telephone number and social security number of each injured employee who is being served by Network, and name and license number of the injured employee's treating doctor;
  - (B) initial date of health care services delivered by Network for each employee; and
  - (C) any other data, as determined by the Agreement, necessary to assure proper monitoring of functions delegated to Network by City.
- 8. City, Network, any management contractor, and any third party to which Network delegates a function shall comply with the data reporting requirements of the Texas Workers' Compensation Act and rules of the Commissioner of Workers' Compensation.
- 9. Any agreement by which Network delegates any function to a management contractor or any third party shall be in writing and require the delegated third party or management contractor to be subject to all the requirements of Chapter 1305 and Title 28 Texas Administrative Code ("TAC") Chapter 10.
- 10. Network shall provide to City and the Department the license number of a management contractor or any delegated third party who performs a function that requires a license under the Texas Insurance Code or another insurance law of this state, including a license as a utilization review agent under Texas Insurance Code, Chapter 4201.
- 11. Parties acknowledge that:
  - (A) any management contractor or third party to whom Network delegates a function must perform in compliance with Chapter 1305, Title 28 TAC Chapter 10, and other applicable statutes and rules, and that the management contractor or third party is subject to City's and the Network's oversight and monitoring of its performance; and
  - (B) if the management contractor or the third party fails to meet monitoring standards established to ensure that functions delegated or assigned to the management contractor or the third party under the delegation contract are in full compliance with all statutory and regulatory requirements, City or Network may cancel the delegation of any or all delegated functions.
- 12. Network and any management contractor or third party to which Network delegates a function shall provide all necessary information to allow City to provide information to employees as required by Section 1305.451 and 28 TAC §10.60 (relating to Notice of Network Requirements; Employee Information).
- 13. Network, in contracting with a third party directly or through another third party, shall require the third party to permit the Commissioner to examine at any time any information the Commissioner believes is relevant to the third party's financial condition or the ability of Network to meet Network's responsibilities in connection with any function the third party performs or has been delegated.



14. Network shall:

- (A) implement and maintain a complaint system in accordance with requirements under Insurance Code §1305.401 and 28 TAC §10.120 (relating to Complaint System Required); and
- (B) make the complaint log and complaint files available to City upon request to the extent permitted by law.

15. This Agreement and any Network contract with a provider or third party shall be deemed to allow City to effect a contingency plan in the event that City is required to reassume functions from the Network as contemplated under Insurance Code §1305.155. More specifically, this Agreement incorporates the Contingency plan described in Attachment B. Under this plan, City will, in the event of termination of this Agreement or failure to perform, resume one or more functions of the Network under this Agreement, including payment to providers and employee notification, quality of care, utilization review, retrospective review, and continuity of care and plans for identifying and transitioning employees to new providers.

16. Any Network contract with a provider or third party must comply with all applicable statutory and regulatory requirements under federal and state law.

## **Attachment B**

### **Contingency Plan**

In the event of termination of this Agreement or Network's failure to perform under the terms of this Agreement, City will resume functions delegated to Network under this Agreement, including, but not limited to functions related to the following:

1. Payment to providers and notifications to employees. Within 10 days of termination of this Agreement or notification from City for Network's failure to perform, Network shall provide written notification to Network's providers and employees receiving healthcare through Network that City has resumed responsibility for this function and that all invoices are to be submitted to City. The notice shall include City's address, contact information and place for submission for bills. The notice shall be mailed to the last known address of record for the provider and the employee.
2. Quality of Care. Network shall ensure quality of care continuation by providing City all current medical status and prognosis of care that would be exported back to the claim files for immediate update on cases within 30 days of the effective date of termination of this Agreement, or within 30 days of Network's receipt of written notice from City of Network's failure to perform under this Agreement.
3. Utilization Review. Within 30 days of the effective date of termination of this Agreement, or within 30 days of Network's receipt of written notice from City of Network's failure to perform under the terms of this Agreement, Network shall provide the necessary updates on all cases that were processed for utilization review for the year prior to the effective date of termination of this Agreement, or of the transfer of Network functions to City or City's designee.
4. Retrospective Review. All peer reviews dated one year prior to the effective date of the termination of this Agreement or one year prior to Network's receipt of written notice from City of Network's failure to perform under the terms of this Agreement, and which peer reviews originated with Network and were performed at City's request under the terms of this Agreement, shall be sent to City electronically or by regular mail within 30 days of the effective date of termination of this Agreement, or within 30 days of Network's receipt of written notice from City of Network's failure to perform under the terms of this Agreement.
5. Continuity of Care. Network shall request the health care provider represent to City in writing via the appropriate Network form, either that the provider will continue care, or that it intends to discontinue care, providing 30 days written notice to Network, City and the employee for transfer of care. City shall have an appropriate direct provider contact that will ensure communication with the treating provider.



New providers that are necessary for transfer will be interfaced with the administrator of any successor network or City's designee.

6. Reporting Requirements. All data required to meet reporting requirements contained in Chapter 1305 shall be provided to City no later than 30 days from the date that the reports are required for submission from Network to the Division of Workers' Compensation as may be determine or directed by the Texas Department of Insurance.

City's agreement to implement this contingency plan, as required by the Texas Insurance Code, does not in any way relieve Network of its obligations under this Agreement or waive or reduce City's rights and remedies available for Network's failure to perform the services described in this Agreement.

## **Attachment C**

### **Division of Responsibilities for Certified Network Claims**

Note: The term "Network" as used below means the IMO Med-Select Network.®

#### **Carrier**

1. Upon implementation of Network, provide current employees with notice of Network requirements.
2. Obtain acknowledgment of Network requirements from all current and new employees, provide copy to IMO Network.
3. Provide new employees with notice of Network requirements and provide copy of acknowledgement to IMO Network.
4. Maintain acknowledgment of Network requirements signed by all employees.
5. Notify employees of Network requirements at time of injury.
6. Notify TPA of lost time from work.
7. Provide TPA with requested wage information.
8. Prepare Bona Fide Offer of Employment letter if appropriate (Division Rule 129.6).
9. Send Bona Fide Offer of Employment letter to worker (Division Rule 129.6).
10. Notify TPA of return to work.
11. Ensure that TPA provides timely, consistent data to IMO as required for 1305 Performance measuring and network benchmarking.

#### **TPA**

1. Contact injured worker and City management upon receipt of new claim.
2. Verify new claims entered into the TPA's claim system and export nightly to IMO.

These lists do not describe all duties imposed on the Carrier, TPA and IMO under the Insurance Code or TDI rules, but are intended to assist the parties in implementing the City's IMO Network.



3. Investigate new claim to determine:
  - a. coverage
  - b. compensability
  - c. extent of injury
  - d. lost time
4. Report new claim to the Texas Department of Insurance, Division of Workers' Compensation ("Division").
5. The TPA will provide the first report of injury information to IMO Network's Telephonic Case Manager within 48 hours of the City's knowledge of the injury.
6. Notify IMO electronically of claimant's lost time from work and return to work.
7. Timely dispute any non-compensability injury, condition or body part.
8. Immediately notify IMO Network electronically of any non-compensable injury, condition or body part.
9. If claim is a death claim, investigate potential beneficiaries and notify of potential benefits.
10. Notify Division, worker and doctor of any dispute of compensability (PLN-1).
11. Notify Division, worker of any reinstatement of benefits (PLN-10).
12. Notify Division, worker and doctor of any dispute of extent of injury (PLN-11).
13. Notify Central Index Bureau (CIB) of lost time, complicated medical and questionable Cases.
14. Maintain diary to document claim activity.
15. Monitor and adjust reserves as necessary.
16. Make personal contact with injured worker every three weeks in claims where worker is off work and is on Temporary Income Benefits (TIBS). (Labor Code 408.101). If worker is on medical only, contact every 90 days if necessary.

These lists do not describe all duties imposed on the Carrier, TPA and IMO under the Insurance Code or TDI rules, but are intended to assist the parties in implementing the City's IMO Network.

17. Identify cases in which City has subrogation interest and notify City.
18. Calculate Average Weekly Wage (AWW) (Labor Code 408.041).
19. Calculate benefits rate.
20. Initiate TIBS.
21. Report first payment of benefits to Division and worker (PLN-2).
22. Notify Division of Injury if lost time or occupational disease.
23. Initiate surveillance when appropriate.
24. Review bills and medical documentation presented in examiner's toolbox.
25. Perform necessary actions on bills in reference to compensability and extent of injury issues as needed.
26. Notify City and IMO Network of any release to return to work within restrictions.
27. Monitor claim for attainment of maximum medical improvement (MMI) (Labor Code 408.011).
28. Request designated doctor exam if necessary to obtain certification of MMI and Impairment Rating (IR) and follow through to obtain DWC-69 from the designated doctor (Labor Code 408.123).
29. Send medical analysis and records to designated doctor (DD) (Labor Code 401.011).
30. Obtain peer review with IMO if MMI or IR appears to be in error.
31. Obtain medical peer review with IMO Network Provider as requested by IMO.
32. Send medical records to IMO for peer review physician as requested by IMO.
33. File dispute of MMI and IR if in error.
34. Initiate impairment income benefits.
35. Notify worker of attainment of MMI and first IR (PLN-3).

These lists do not describe all duties imposed on the Carrier, TPA and IMO under the Insurance Code or TDI rules, but are intended to assist the parties in implementing the City's IMO Network.



36. Pursue contribution, if appropriate.
37. Review applications for supplemental income benefits.
38. Pay supplemental income benefits or dispute entitlement by requesting BRC.
39. Notify Division and worker of change in benefit type or amount (PLN-7, PLN-8).
40. Notify Division and worker of suspension of benefits (PLN-9).
41. Request RME from Division when necessary (Labor Code 408.004).
42. Provide claims data to Network daily.
43. Provide timely, consistent data to IMO as required for measuring 1305 network performance and benchmarking.
44. Send payment to Independent Review Organization (IRO) for review fee (Labor Code 413.031).
45. Receive IRO decision and issue any required payment.
46. Pay medical bills.
47. Send explanation of benefits to doctor and injured worker as required by DWC rules.
48. Represent City position in benefits and medical necessity disputes at Division field office and upon judicial review.
49. Will attend all Benefit Review Conferences (BRCs) and Contested Case Hearings (CCHs) with counsel retained by TPA on behalf of the City (Labor Code Chapter 410).
50. Pay any benefits required by interlocutory order or CCH decision.
51. Defend City at Appeals Panel level and judicial review (Labor Code Chapter 410, Subchapter E)

Injury Management Organization, Inc./IMO Med-Select Network®

1. Nominate medical providers for inclusion in Network as warranted for service area coverage and medical specialty needs.
2. Credential and contract Network providers.

These lists do not describe all duties imposed on the Carrier, TPA and IMO under the Insurance Code or TDI rules, but are intended to assist the parties in implementing the City's IMO Network.

3. Provide educational session for Network medical providers, claims examiners and City employees.
4. Maintain/Supply Network website medical directory updates on a quarterly basis.
5. Develop and implement Network quality improvement program (QIP).
6. Receive nightly claim system feed from TPA and downloaded daily.
7. Provide Telephonic Case Management (TCM) within 2 business days from the time of the receipt of the first report of injury receipt.
8. Telephonic Case Manager will assist with provider selection and necessary change of treating doctor, provider relations and medical interventions with the treating doctor in the oversight of the evidence based guidelines as it relates to medical and return to work.
9. Facilitate communication and provide information to parties, including insurance adjusters and City workers' compensation coordinators during the recovery of the injured employee.
10. Work closely with selected physician in Network and the employer in the return to work program.
11. Provide "return to work" oversight with the treating providers from the first release prescribed by the treating doctor release to work either in a modified or full duty release.
12. Communication regarding the physical work abilities to the City of San Antonio for work placement based on physical abilities will be followed and documented.
13. Telephonic Case Manager will work closely with the insurance adjuster when IMO determines a field medical case management task assignment is necessary.
14. Telephonic Case Manager will work closely with the insurance adjuster when IMO determines a medical peer screen is necessary with the medical provider.
15. Field Case Management will be assigned when determined by IMO to be necessary for cases that meet Network criteria for field assignments.
16. Provide a written summary and analysis to the RME doctor or Designated Doctor, along with copies of all medical reports and files necessary for a successful and complete examination.

These lists do not describe all duties imposed on the Carrier, TPA and IMO under the Insurance Code or TDI rules, but are intended to assist the parties in implementing the City's IMO Network.



17. Adopt treatment guidelines, return-to-work guidelines, and individual treatment protocol as warranted with the provider panel and through the efforts of the QIP panel.
18. Confirm provider is a Network provider.
19. Confirm provider is Network Treating Doctor or referral doctor (Labor Code 401.011).
20. Perform state reporting requirements for Networks.
21. Review requests for change of Network Treating Doctor.
22. Respond to requests to change Network Treating Doctor.
23. Implement and maintain Network complaint systems.
24. Acknowledge, investigate and follow up with Network complaints.
25. Issue resolution letter for provider complaint in relation to medical bills.
26. Maintain Network complaint log of medical bills.
27. Prepare Texas Department of Insurance (TDI) Network report card requirements
28. Report Network results to TDI.
29. Review requests for preauthorization.
30. Respond to requests for preauthorization.
31. Review requests for preauthorization reconsideration.
32. Respond to requests for preauthorization reconsideration.
33. Receive requests for IRO reviews and determine whether requests are timely.
34. Forward requests for IRO reviews to TDI.
35. Send medical records, treatment guidelines, etc. to IRO physician.
36. Review medical bills – sort Network vs. non-Network bills
37. Scan medical bills

These lists do not describe all duties imposed on the Carrier, TPA and IMO under the Insurance Code or TDI rules, but are intended to assist the parties in implementing the City's IMO Network.

- a. Perform scan file indexing – association to existing Claim.
  - b. Receive bill back from Examiner's Toolbox Approved Process.
- 38. Determine whether preauthorization was required.
  - 39. Confirm services were preauthorized if preauthorization was required.
  - 40. Confirm medical necessity if preauthorization was not required.
  - 41. Review bill for duplications, unrelatedness, upcoding and unbundling.
  - 42. Reprice the medical bill according to the provider contract agreement.
  - 43. Prepare explanation of benefits to accompany payment or dispute of medical bills.
  - 44. Send explanation of benefits to doctor and injured worker as required by Division rules.
  - 45. Receive medical bill reconsiderations.
  - 46. Process medical bill reconsiderations.

These lists do not describe all duties imposed on the Carrier, TPA and IMO under the Insurance Code or TDI rules, but are intended to assist the parties in implementing the City's IMO Network.



## **Attachment D**

### **CITY OF SAN ANTONIO PROTOCOLS AND CRITERIA FOR MEDICAL CASE MANAGEMENT SERVICES FOR NETWORK CLAIMS**

The following protocols have been established to meet the City of San Antonio's (COSA) needs and contract terms. *All parties will do what is best for COSA and its injured employees* and if there are any exceptions to the below criteria and protocols, approval from COSA must be timely obtained and documented.

#### **I. PROTOCOLS AND PROCESS FOR FIELD MEDICAL CASE MANAGEMENT (MCM)**

Workers' Compensation cases will be considered for referral to Medical Case Management (MCM) under the following circumstances. Once the confirmation is complete for the referral, the assignment will be made electronically through the TPA's or Network's website referral process to validate the documented referral. TPA and Network shall ensure immediate service.

##### **A. Catastrophic (CAT) Claims**

- Fatality
- Spinal cord injury (paraplegia and quadriplegia)
- Brain damage
- Second or third degree burns over 50% of the body
- Amputation
- Impairment of vision or hearing of 50% or more
- Nerve damage causing paralysis or loss of sensation in a limb
- Massive internal injuries affecting body organ
- Significant shattering or nonunion of a limb

##### **B. Employee Has Lost 4 Weeks From Work**

- Return to work issues fall outside of those identified by Modified Duty Assignment (MDA) for Return to Work (RTW) "Best Practice Guideline" for specific diagnosis
- There is no prognosis of care or RTW based on the DWC 73 or Evidence Based Guideline which will trigger a Field Case Management Assignment

##### **C. Multiple Work Injuries**

- The claimant has multiple injuries and/or multiple providers and there is a need for better coordination of services.

**D. Pre-existing medical conditions which may affect the course/scope of recovery of a work related injury**

**E. Other claims for which COSA or TPA deem a field medical case management is appropriate.**

## **2. *COMMUNICATION PROCESS***

### **A. Process For Medical Case Management Assignment**

- The TPA adjuster will timely consult with the Claims Supervisor when there is a perceived need for a medical case management assignment. If the Claims Supervisor approves the request, then the request will be initiated and monitored by the adjuster. The Network may also make recommendations to the adjuster for consideration. If the Claims Supervisor approves the Network's referral, the TPA will assign the medical case management to the Network.
- The request for medical case management must be specific with measurable and attainable expected outcomes which will be monitored by the respective adjuster.
- Medical case management reports will be sent only to the TPA adjuster.
- Medical case management billing will be sent through the TPA billing address.

### **B. MCM Communication**

- The adjuster will provide job descriptions as necessary and will coordinate discussions regarding return to work.
- Reports: The assigned field medical case manager shall send a "visit day report" to the adjuster, followed by a written report every 3-4 weeks on each assignment.
- All correspondence shall be sent to the appropriate adjuster with copies to the claims supervisor. The claims supervisor shall review all correspondence within 30 days.
- TPA shall prepare a monthly spreadsheet of all claims that have been assigned to medical case management for review and discussion at meetings with City, and shall provide the spreadsheet to City at least 7 days prior to the scheduled meeting. The spreadsheet shall contain such data as required by City.



## **TYPES OF MEDICAL CASE MANAGEMENT ASSIGNMENTS**

### **Medical Case Management (MCM)**

“Case Management is a collaborative process which assesses, plans, implements, coordinates, monitors and evaluates options and services to meet an individual’s health needs through communication and available resources to promote quality cost-effective outcomes.” (*CMSA-Standards of Practice for Case Management*).

**Field Case Management Assignments:** This is defined as referrals in which the directives for MCM can be met within a set number of visits. Typically visits are completed with the provider(s) and may or may not require a 1:1 visit with the injured employee.

**Catastrophic Case Management Assignments:** These referrals are made when catastrophic events occur; please see “A” above for criteria.

**Attachment E**  
**Performance Guarantees**

The Parties agree that certain performance guarantees are appropriate to set standards of performance for this Contract and that if services contracted for under this Contract are performed at a level that is less than the expectations set out in the Contract (including all of the attached exhibits), the City will not receive the full benefit of its bargain. Fee adjustments granted to the City for failure to meet the performance guarantees are intended as liquidated damages and will be calculated in accordance with the following definitions and conventions:

1. All calculations shall be rounded to two decimal places.
2. A record only incident is an incident that is reported on the City's records and may or may not involve an injury, but for which no claim for any kind of compensation, payment, or reimbursement is submitted.
3. Each date of injury for a particular claimant shall be counted as a separate claim.
4. The number of claims filed in a measurement period shall include all new indemnity and medical only claims. Since "record only" incidents do not involve submitting a claim, these incidents will not be included in calculations of performance guarantees.
5. All adjustments due the City as a result of failing to meet the performance guarantees shall be offset from current fees due and payable by the City during the term of the Contract. City shall offset amounts owed prorated over the invoices due for the 3 month period following the determination that an adjustment is due. If the adjustment exceeds the amounts due from City for the three month period, City may, at its option, demand payment from IMO of the full adjustment due, and IMO agrees to pay said adjustment within 30 days of receipt of City's demand therefor.
6. A measurement period for purposes of calculating performance guarantees shall be from October 1st through the next succeeding September 30th.
7. All claim amounts shall be determined by November 30th following a measurement period during the contract term and after the expiration of the Contract.
8. New claims will be claims for which the incident leading to the claim occurred during the measurement period and may include claims costs and lost workdays that occur after the end of the measurement period, as determined on November 30th.



9. The Parties agree that failure to meet the performance guarantees will cause the City to incur costs that it would otherwise not incur and that such costs were not determinable at the time the Contract was executed. The Parties agree that the purpose of awarding fee adjustments to the City is to provide for liquidated damages that compensate the City for these undeterminable costs.

The Parties agree to the following performance guarantees:

**1. Cost Avoidance:**

IMO agrees that it will be responsible to retain the current Average New Claim Cost for medical and indemnity claims.

The Parties agree that the current Average New Claim Cost will be determined by an average of new claim costs calculated from the period beginning October 1, 2017 through September 30, 2018, as determined by November 30, 2018, ("Original Average New Claim Cost") and that this amount shall be adjusted as follows:

Paid losses shall be adjusted for the most recent annual increases in average new claim cost for Texas workers' compensation claims, as shown by mandated increases in maximum disability rates and DWC fee guidelines increases. The percentages of increases, if any, shall be accepted and agreed to as provided by an accredited institution or research group such as the DWC, Medforms database and the Texas Department of Insurance, Workers' Compensation Research Group and/or the Workers Compensation Research Institute (WCRI). All data provided by these resources shall be the most recent data as of November 30th following the relevant measurement period ending on the most recent September 30th. The City shall provide IMO with at least 30 days advance notice of the scheduled audit date.

New claims shall be adjusted as follows:

All "outliers and/or catastrophic/chronic claims" over and beyond the normal and customary Workers' Compensation injuries will be excluded in the final calculations of IMO's success rate. Outliers are defined as: A claim that indicates that it will exceed a \$750,000 benchmark paid of medical and indemnity over a three year period, and workers' compensation cancer claims. Catastrophic/Chronic is defined as: Life threatening to functional independence of Activities of Daily Living (surgical intervention, inpatient stays, brain injuries, paralysis, spinal cord injuries, loss of limbs and senses, death). Cases that are considered exceptions such as PLN 1s, declined network participation and non-city employees are also excluded.

Average New Claim Cost shall be measured as the adjusted total dollar value of claims paid during the measurement period divided by the number of claims incurred during the measurement period. If the Average New Claim Cost exceeds the Original Average New Claim Cost (as adjusted), the amount of the fee adjustment granted to the City shall be equal to the percentage of fees paid during the measurement period by which the Average New Claim Cost exceeds Original Average New Claim Cost (as adjusted). For example, if the Original Average New Claim Cost is \$2,079, and if the Average New Claim Cost equals \$2,100, the percentage equals 1.01% ( $\$2,100 \div \$2,079 = 1$ ). The amount of the fee adjustment granted to the City shall be 1% of the fees paid by the City for the measurement period.

## **2. Reduction of Average Lost Work Days:**

IMO agrees that it will ensure that the Average Lost Work Days will not increase above the current level. The current level will be established based on the average number of lost work days for the period beginning October 1, 2017 and ending September 30, 2018, as determined by November 30, 2018, ("Original Average Lost Work Days"). For any year in which the Average Lost Work Days exceeds the Original Average Lost Work Days, IMO will pay the City \$10,000 as liquidated damages.

The Average Lost Work Days shall be the number of lost work days related to claims occurring during the measurement period divided by the number of new claims attributable to the measurement period. This ratio will be calculated measuring from the first release prescribed by Treating Physician release to work, regardless of whether it is modified or full release. In the unlikely case that an injured employee receives a release to modified work duty and the City is unable to locate a compatible work assignment, IMO will be adjusted with a return to work for the employee as of the date of the first return to work release.

## **3. Customer Service:**

IMO agrees to provide medical intervention services by assigning a Telephonic Case Manager ("TCM") to each injured employee within two business days of when IMO is notified of the injury. If IMO fails to timely assign a TCM to at least 98% of all new claims submitted during a measurement period, IMO agrees to a one hundred dollar (\$100.00) fee adjustment for each claim in which the injured employee was not assigned a TCM within two business days of when the employee's injury was first reported to IMO.

During a review of the performance guarantees described in this Attachment E, the City, with the assistance of an outside consultant, will use sampling to determine the percentage of claims for which a TCM was not timely assigned. For purposes of this calculation, this



percentage minus the two percentage point allowance will be referred to as the "TCM Failure Percentage". The amount of the fee adjustment due the City shall be equal to the product of the total number of claims that occurred during the measurement period times \$100 times TCM Failure Percentage. (Example: 20 claims during measurement period x \$100 x 10% TCM Failure Percentage = \$200.00 fee adjustment.) IMO agrees that upon notification of a determination that a TCM was not assigned to at least 98% of the claims submitted, that IMO will grant the City a fee adjustment.

#### **4. Data Capture:**

IMO agrees to capture the primary ICD10 diagnosis code from the claimant's treatment records. If during any measurement period, IMO's failure to capture the primary diagnosis code on a claim exceeds 10% of the number of ICD10 diagnosis codes that should have been captured during the measurement period, IMO agrees to grant the City a fee adjustment in the amount of \$20,000 as liquidated damages. For purposes of determining whether or not 90% of all ICD10 codes were properly captured, pharmacy bills, exposure claims, claims where the claimant did not seek treatment and procedures performed in an emergency room shall be excluded.

IMO agrees that upon notification that the number of ICD10 codes captured during a measurement period was determined to be less than 90% of the ICD10 codes required to be captured, that it will grant the City a fee adjustment equal to \$20,000. The Parties agree that the actual costs incurred by the City as the result of the inconvenience of not having the ICD10 codes was not determinable at the time this contract was executed and that the \$20,000 fee adjustment granted pursuant to this provision is intended as liquidated damages.