PROFESSIONAL SERVICES AGREEMENT
FOR
1305 WORKERS' COMPENSATION HEALTH CARE NETWORK

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Agreement (the "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 or designee, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 20____ and **Injury Management Organization, Inc.**, by and through its President and CEO ("IMO" or "Consultant"). City and Consultant 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.

ARTICLE 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 "City Council" is the City of San Antonio City Council.

1.3 "Consultant" is defined in the preamble of this Agreement and includes its successors.

1.4 "Director" shall mean the City's Director of the Office of Risk Management or designee, unless otherwise specified.

1.5 "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.

1.6 "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, as may be amended from time to time.

1.7 "Local Government Record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

1.8 "Network Claim(s)" mean workers' compensation claims occurring on or after April 1, 2019, 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.

ARTICLE II
TERM

2.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall begin March 1, 2024, and terminate on February 28, 2027.

2.2 Renewals. At City's option, this Contract may be renewed and extended beyond the date stated above under the same terms and conditions for up to two additional, one-year periods. Renewals shall be in writing and signed by Director or designee. 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. An election by City not to renew this Agreement shall require no action or notification by the City to Consultant.

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.

ARTICLE 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, Inc./IMO Med-Select Network® set forth on **Attachment C,** Division of Responsibilities for Certified Network Claims.

3.4 Consultant will work 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 an updated medical directory on a quarterly basis;

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

3.5.6 Provide bill review, utilization review (prospective, concurrent, retrospective, pre-procedure) peer review, pre-authorization, 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 Texas Insurance Code, Chapter 1305, as hereafter amended;

3.5.7 Receive and download claim feed from TPA, daily;

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

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

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

3.5.11 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;

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

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

3.5.14 Follow the City's Medical Case Management Protocol;

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

3.5.16 Perform state reporting requirements for Networks;

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

3.5.18 Implement and maintain Network complaint systems;

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

3.5.20 Notify City of complaints filed and their resolution;

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

3.5.22 Prepare TDI Network report card requirements;

3.5.23 Report Network results to TDI;

3.5.24 Maintain a Network Quality Improvement Program (QIP):

a. Conduct quality audits of office, Manager(s), Supervisor(s) and case managers, which must be scheduled and on-going; and
b. Provide formal internal audit reports to City, if requested.

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

3.5.26 Engage in Consultant monitoring and Performance Measures in accordance with **Attachment E,** Performance Standards.

3.6 Medical Cost Containment. Consultant will provide the following medical cost containment services:

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 Texas 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** attached hereto;

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, preauthorization, 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 Guidelines (ODG) treatment guidelines 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 shall have the appropriate and required designations;

3.6.11 Obtain pre-approval from City on any 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 physicians' 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 will provide Pharmacy Benefit Management Services, including but not limited to:

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 the 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 service, unrelated fees, up-coding and unbundling;

3.7.7 Properly document files regarding analysis, recommendations/reviews, preauthorization, 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, verify and maintain the data transfer function between the Network and the TPA;

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

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

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

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

3.8.2.4 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.

3.9 Liquidated Damages and Performance Incentives. Consultant understands and acknowledges this Agreement includes Performance Guarantees, attached hereto as **Attachment E**, for the protection and sole benefit of the signatories, liquidated damages, and performance incentive-based pricing structures that are in addition to any remedies the City may have in the event the selected Consultant underperforms, fails to perform, refuses to perform, is negligent in performing, or does not perform in accordance with the specific requirements of law or the Agreement. The provisions and the remedies stated herein shall survive the termination of the Agreement.

3.10 Audits/Site Visits. City, or other entities entitled or required by law, may conduct audits or site visits of Consultant. The audits conducted may focus on administrative requirements, fraud, or other issues related to the services provided for under the Agreement. Consultant agrees to cooperate with and support the efforts of the auditors and/or City. Consultant understands and agrees that City does not indemnify Consultant for any costs incurred in connection with these audits.

3.11 Time is of the essence in the performance of this Agreement. Consultant shall strictly comply with all deadlines, requirements, and standards of performance for these services.

3.12 Consultant shall discharge its duties under this Agreement as a prudent expert solely in the interests of the City with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent expert acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and like aims and in accordance with this Agreement and in a manner that avoids conflicts of interest and self-dealing.

ARTICLE IV
COMPENSATION

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:

	Year 1	Year 2	Year 3	Year 4	Year 5
Administrative Services Fee (Aka Network Access Fee) Charge Per Claim	$350.00	$350.00	$350.00	$400.00	$400.00

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 to the applicable claim file. Consultant shall send a monthly report to City showing what has been submitted to the TPA for Payment.

	Year 1	Year 2	Year 3	Year 4	Year 5
Medical Bill Audit Per Bill • For UB-92 • For CMS 1500 • For Pharmaceutical	 $9.50 $9.50 $9.50	 $9.50 $9.50 $9.50	 $9.50 $9.50 $9.50	 $10.00 $10.00 $10.00	 $10.00 $10.00 $10.00
Pre-authorization Fee (per request)	$175.00	$175.00	$175.00	$180.00	$180.00
Hospital Bill Audit • Desk Audit Fee	$100.00	$100.00	$100.00	$100.00	$100.00
Medical Record Peer Review (per Request)	$800.00	$800.00	$800.00	$800.00	$800.00
Field Case Management (per Hour)	$100.00	$100.00	$100.00	$110.00	$110.00
Independent Review Organization (IRO) (per review)	$175.00	$175.00	$175.00	$180.00	$180.00
Peer Review (per review)	$800.00	$800.00	$800.00	$800.00	$800.00
Required Medical Exam (RME) (per review)	$400.00	$400.00	$400.00	$400.00	$400.00
Designated Doctor's Exam (DDE) (per review)	$400.00	$400.00	$400.00	$400.00	$400.00
Retrospective Review (per review)	$175.00	$175.00	$175.00	$180.00	$180.00

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

4.2 Consultant may submit invoices to City for Administrative Services Fees 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. 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.

4.4 Final acceptance of work products and services require written approval by City. The approving official shall be the 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.

ARTICLE V
OWNERSHIP OF DOCUMENTS

5.1 In accordance with Texas law, Consultant acknowledges and agrees that all Local Government Records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such Local Government Records produced by or on the behalf of City pursuant to this Agreement shall be the subject of any copyright or proprietary claim by Consultant**.**

5.2 Consultant acknowledges and agrees that all Local Government Records, as described herein, produced in the course of the work required by this contract will belong to and be the property of City. Consultant will turn over to City any such records at City's request. Consultant shall not, under any circumstances, release any records created during the course of performance of this contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction**.**

5.3 In accordance herewith, Consultant agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

ARTICLE 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 (4) years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, Consultant is made aware of 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 at its sole cost and expense.

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.

6.4 S.B. 943 – Disclosure Requirements for Certain Government Contracts. For contracts (1) with a stated expenditure of at least $1 million in public funds for the purchase of goods or services by the City, or (2) that result in the expenditure of at least $1 million in public funds for the purchase of goods or services by the City in a given fiscal year, Consultant acknowledges that the requirements of the Texas Public Information Act, Government Code, Chapter 552, Subchapter J, pertaining to the preservation and disclosure of Contracting Information maintained by the City or sent between the City and a vendor, contractor, potential vendor, or potential contractor, may apply to this contract. Consultant agrees that the contract can be terminated if Consultant knowingly or intentionally fails to comply with a requirement of that subchapter.

6.5 Consultant warrants and certifies that it has not knowingly or intentionally failed to comply with this subchapter in a previous contract. City hereby relies on Consultant's certification, and if found to be false, City may terminate this Agreement for material breach.

ARTICLE 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 without cause 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 contractor 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 contractor 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 Article XIII. SBEDA;
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 by City.

7.7 Within forty-five (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.

ARTICLE 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 & CEO
5560 Tennyson Parkway, Suite 110
Plano, Texas 75026

ARTICLE IX
INSURANCE

9.1 Consultant must provide a completed Certificate(s) of Insurance to City's Office of Risk Management. The certificate must be:

9.1.1 clearly labeled with the name of this Agreement in the Description of Operations block;

9.1.2 completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (City will not accept Memorandum of Insurance or Binders as proof of insurance); and

9.1.3 properly endorsed and have the agent's signature, and phone number.

9.2 Certificates may be mailed or sent via email, directly from the insurer's authorized representative. 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 City's Risk Manager, shall have authority to waive this requirement.

9.3 If the City does not receive copies of insurance endorsement, then by executing this

Agreement, Consultant certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for this Agreement.

9.4 The City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

9.5 Consultant shall obtain and maintain in full force and effect for the duration of this Agreement, at Consultant's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted 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. If the Consultant claims to be self-insured, they must provide a copy of their declaration page so the City can review their deductibles:

INSURANCE TYPE	***LIMITS***
1. Workers' Compensation 2. Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Contractual Liability e. Independent Contractors*	For Bodily Injury and Property Damage $1,000,000 per occurrence; $2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence.
5. Professional Liability (Claims-made Coverage)	$1,000,000 per claim damages by reason of any act, malpractice, error, or omission in the professional service. Coverage shall be maintained and in effect for no less than two years subsequent to the completion of the professional service.
6. Cyber Liability	$1,000,000 per claim $1,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.
7. Employer Dishonesty Liability	$250,000
*If applicable	

9.6 Consultant must require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of Consultant and provide a certificate of insurance and endorsement that names Consultant and City as additional insureds. Consultant shall provide City with subcontractor certificates and endorsements before the subcontractor starts work. The requirements of this paragraph do not apply, however, to Consultant's contracts with health care providers for purposes of participation in Network.

9.7 If a loss results in litigation, then the City is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. Consultant must comply with such requests within 10 days by submitting the requested insurance documents to the City at the following address:

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

9.8 Consultant's insurance policies must contain or be endorsed to contain the following provisions:

- Name City and 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 City. The endorsement requirement is not applicable for workers' compensation and professional liability policies;

- Endorsement that the "other insurance" clause shall not apply to City where City is an additional insured shown on the policy. City's insurance is not applicable in the event of a claim;

- Consultant shall submit a waiver of subrogation to include, workers' compensation, employers' liability, general liability and auto liability policies in favor of City; and

- Provide 30 calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

9.9 Within five (5) calendar days of a suspension, cancellation, material change in coverage, 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 Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.10 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 required, City may order Consultant to stop work and/or withhold any payment(s) which become due to Consultant under this Agreement until Consultant demonstrates compliance with requirements.

9.11 Nothing contained in this Agreement shall be construed as limiting 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.

9.12 Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self - insurance carried by City for liability arising out of operations under this Agreement.

9.13 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of City shall be limited to insurance coverage provided.

9.14 Consultant and any subcontractor(s) are responsible for all damage to their own equipment and/or property result from their own negligence.

ARTICLE X
INDEMNIFICATION

10.1 **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. In addition, Consultant agrees to indemnify,**

defend, and hold the City harmless from any claim involving patent infringement, trademarks, trade secrets, and copyrights on goods supplied.

10.2 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.

10.3 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.

10.4 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.

ARTICLE XI
ASSIGNMENT AND SUBCONTRACTING

11.1 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.

11.2 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 Director in writing.

11.3 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 Director.

11.4 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 Director. 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.

11.5 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.

ARTICLE XII
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.

ARTICLE XIII
SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

13.1 SBEDA Program. The City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic

Development Department (EDD) website page and is also available in hard copy format upon request to the City. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of the SBEDA Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the City pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

13.2 Definitions.

13.2.1 **Affirmative Procurement Initiatives (API)** – Refers to various S/M/WBE Program tools and Solicitation Incentives that are used to encourage greater prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE Program tools, see Section III.D of Attachment A to the SBEDA Ordinance). To be eligible for the benefits of race- and gender-conscious APIs as provided in the SBEDA Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

13.2.2 **Annual Aspirational Goal** – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of San Antonio contracts is established each year for Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contract Industry Categories. This Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) based upon the M/WBE availability by industry in accordance with the City's 2015 Disparity Study findings, along with relative M/WBE availability data to be collected by the City through its CVR system, and the utilization of M/WBEs. Any adjusted Annual Aspirational Goals for a given industry should not exceed the Expected Availability for award dollar weights as found in the 2015 Disparity Study. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the Program. Percentage Goals for S/M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract.

13.2.3 **Award** – the final selection of a Consultant for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are to

be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).

13.2.4 **Best Value Contracting** – a purchasing solicitation process through which the Originating Department may evaluate factors other than price. Evaluation criteria for selection may include a Consultant's previous experience and quality of product or services procured, and other factors identified in the applicable statute.

13.2.5 **Centralized Vendor Registration System (CVR)** – a mandatory electronic system of hardware and software programs by which the City recommends all prospective respondents and subcontractors that are ready, willing, and able to sell goods or services to the City to register. All businesses awarded a City contract shall be required to register in the CVR. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

13.2.6 **Certification** – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City may accept any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6.

13.2.7 **City** – refers to the City of San Antonio, Texas.

13.2.8 **Commercially Useful Function** – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it

is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed.

13.2.9 **Control** – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

13.2.10 **Economic Inclusion** – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.

13.2.11 **Emerging SBE (ESBE)** – a certified SBE corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is independently owned and operated by Individuals legally residing in, or that are citizens of, the United States or its territories whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

13.2.12 **Emerging M/WBE** – a certified M/WBE firm whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined herein.

13.2.13 **Evaluation Preference** – an API that may be applied by the Goal Setting Committee to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Respondents.

13.2.14 **Formal Solicitation** – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a City department for a contract that requires City Council approval, in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.

13.2.15 **Goal Setting Committee (GSC)** – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive Team that includes, at a minimum, the EDD Director or designee, and the Director of Finance or Director of Transportation and Capital Improvements (TCI) or their designees, the Director or designee of the Originating Department (if the Originating Department is neither Finance nor TCI,) all without duplication of designees and two citizens appointed by City Council who are eligible to vote during the goal setting committee on contracts valued at $3,000,000 and above. The City Manager or designee may also appoint two ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE Program Goals for the City of San Antonio (e.g., Annual Aspirational Goals, Contract-by-Contract Subcontracting Goals, and determining which M/WBE segments are eligible for Segmented Subcontracting Goals annually) based upon Industry Categories, vendor availability, project-specific characteristics, and M/WBE utilization. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

13.2.16 **Good Faith Efforts** – documentation of the Consultant's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation reflecting the Consultant's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Consultant; and documentation of consultations with trade associations and contractors that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.)

13.2.17 **HUBZone Firm** − a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

13.2.18 **Independently Owned and Operated** – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

13.2.19 **Individual** – an adult person that is of legal majority age.

13.2.20 **Industry Categories** – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale, and retail distribution of commodities). This term may sometimes be referred to as "business categories."

13.2.21 **Joint Venture Incentives** – an API that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in responses to solicitations and performing a Prime Contract to supply goods to, or to perform non-Construction services on behalf of, the City. Joint ventures are manifested by written agreements between two or more Independently Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this API may include Evaluation Preferences that are tied to the percentage of SBE or M/WBE participation in the joint venture, expedited issuance of building permits and extra contract option years in certain Other Services and Goods & Supplies contracts.

13.2.22 **Minority/Women Business Enterprise (M/WBE)** – firm that is certified as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

13.2.23 **M/WBE Directory** – a listing of M/WBEs that have been certified for participation in the City's M/WBE Program APIs.

13.2.24 **M/WBE Subcontracting Program** – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified M/WBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein:

(1) There have been ongoing disparities in the utilization of available M/WBE Subcontractors; or

(2) Race-Neutral efforts have failed to eliminate persistent and significant disparities in the award of prime contracts to M/WBEs in a particular Industry Category or industry segment (e.g., Construction contracts, Professional Services contracts, and Architectural and Engineering contracts), and subcontract opportunities are limited outside of City contracts.

When specified by the GSC, the M/WBE Subcontracting Program may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for M/WBE firms.

13.2.25 **M/WBE Evaluation Preference** – an API that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts that are issued pursuant to a Best Value Contracting method or other methods of procurement wherein criteria other than lowest price are factored into the selection process. M/WBEs that submit responses for these kinds of solicitations are awarded additional Points in the scoring of their responses when evaluating and ranking their responses against those submitted by non-minority firms. Where specified in contract specifications as approved by the Goal Setting Committee, the M/WBE Evaluation Preference may be limited to Emerging M/WBE firms.

13.2.26 **Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term "MBE" as used in the SBEDA Ordinance is not inclusive of women-owned business enterprises (WBEs).

13.2.27 **Minority Group Members** – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons with origins in any of the black racial groups of Africa.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

13.2.28 **Originating Department** – the City department or authorized representative of the City which issues solicitations or for which a solicitation is issued.

13.2.29 **Payment** – dollars actually paid to Prime Contractors and/or Subcontractors and vendors for City contracted goods and/or services.

13.2.30 **Points** – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts (e.g., up to 20 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

13.2.31 **Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City.

13.2.32 **Race-Conscious** − any business classification or API wherein the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed herein under the heading of "Race-Conscious"). To be eligible for the benefits of race- and gender-conscious APIs as provided in this Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined herein.

13.2.33 **Race-Neutral** − any business classification or API wherein the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed herein under the heading of "Race-Neutral").

13.2.34 **Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

13.2.35 **Respondent –** a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.

13.2.36 **Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

13.2.37 **Responsive** – a firm's submittal (bid, response, or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

13.2.38 **San Antonio Metropolitan Statistical Area (SAMSA)** – also known as the Relevant Marketplace, the geographic market area from which the City's 2015 Disparity Study analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

13.2.39 **Segmented M/WBE Goals** – the application of multiple goals for M/WBE participation within Annual Aspirational Goals or for M/WBE Subcontracting Goals on an individual City contract wherein an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals. Such segmented goals specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.

13.2.40 **SBE Directory** – a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

13.2.41 **Significant Business Presence** – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

13.2.42 **Small Business Enterprise (SBE)** – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

13.2.43 **Small Business Office (SBO)** – the office within the Economic Development Department (EDD) of the City that is primarily responsible for general oversight and administration of the S/M/WBE Program.

13.2.44 **Small Minority Women Business Enterprise Program (S/M/WBE Program)** – the combination of SBE Program and M/WBE Program features contained in this Ordinance.

13.2.45 **Solicitation Incentives** – additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for Construction, Architecture and Engineering services, Professional Services, Other Services, and Goods & Supplies contracts, including change orders and amendments.

13.2.46 **Subcontractor** – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of the binding agreement between the Prime Contractor and the Subcontractor shall be submitted prior to the City's issuance of a notice to proceed.

13.2.47 **Suspension** – the temporary stoppage of an SBE or M/WBE firm's beneficial participation in the City's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7, or pursuant to the Penalties and Sanctions set forth in Section III.E.13.

13.2.48 **Subcontractor/Supplier Utilization Plan** – a binding part of this contract agreement which states the Consultant's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of Consultant's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

13.2.49 **Women Business Enterprises (WBEs)** - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that

is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Ordinance is not inclusive of MBEs.

13.3 SBEDA Program Compliance – General Provisions

As Consultant acknowledges that the terms of the City's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the City's SBEDA Policy & Procedure Manual are in furtherance of the City's efforts at economic inclusion and, moreover, that such terms are part of Consultant's scope of work as referenced in the City's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. Consultant voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the City. Without limitation, Consultant further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

13.3.1 Consultant shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding Consultant's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its subcontractors with this term;

13.3.2 Consultant shall cooperate fully with any City or SBO investigation (and shall also respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Consultant or its Subcontractors or suppliers;

13.3.3 Consultant shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

13.3.4 Consultant shall notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Consultant's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Consultant to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Consultant of work previously designated for

performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

13.3.5 Consultant shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the City, as well as any transfer or change in its ownership or business structure.

13.3.6 Consultant shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.

13.3.7 In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Consultant's Subcontractor / Supplier Utilization Plan, the Consultant shall not be given credit for the participation of its S/M/WBE or HUBZone Subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the Consultant and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

13.3.8 Consultant acknowledges that the City will not execute a contract or issue a Notice to Proceed for this project until the Consultant for this project has registered and/or maintained active status in the City's Centralized Vendor Registration System (CVR), and Consultant has represented to City which primary commodity codes each Subcontractor will be performing under for this contract. City recommends all Subcontractors to be registered in the CVR. For more information, please see link: http://www.sanantonio.gov/SBO/Compliance.

13.4 SBEDA Program Compliance – Affirmative Procurement Initiatives.

13.4.1 SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 5. (a), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, Consultant affirms that if it is presently certified as an SBE (see Small Business Enterprise definition), Consultant agrees not to subcontract more than **49%** of the contract value to a non-SBE firm.

13.4.2 M/WBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 6. (d), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, Consultant affirms that if it is presently certified as an M/WBE (see Minority/Women Business Enterprise definition), Consultant agrees not to subcontract more than **49%** of the contract value to a non-M/WBE firm.

13.4.3 M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 6. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. Consultant agrees to subcontract or self-perform at least **twelve percent (12%)** of its prime contract value to certified M/WBE firms headquartered or having a Significant Business Presence within the San Antonio Metropolitan Statistical Area (SAMSA). If the Prime Consultant is a certified M/WBE firm, then the Consultant is allowed to self-perform up to the entire M/WBE subcontracting goal amount with its own forces. To the extent that the certified M/WBE Prime Consultant does not self-perform a portion of the M/WBE subcontracting goal, it shall be responsible for complying with all other requirements of this API for that portion of work that is subcontracted.

13.5 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the Consultant represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Consultant shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Consultant's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Consultant shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

13.6 Prompt Payment. Upon execution of this contract by Consultant, Consultant shall be required to submit to City accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the Consultant's reported subcontract participation is accurate. Consultant shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from City. In the event of Consultant's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to Consultant, and no new City contracts shall be

issued to the Consultant until the City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

13.7 Violations, Sanctions and Penalties. In addition to the above terms, Consultant acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

13.7.1 Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

13.7.2 Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

13.7.3 Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;

13.7.4 Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and

13.7.5 Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions, and remedies available under law including, but not limited to:

1. Suspension of contract;

2. Withholding of funds;

3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance; and

4. Disqualification of Consultant or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

ARTICLE XIV
AMENDMENTS

14.1 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.

14.2 It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto and shall become a part hereof as of the effective date of the rule, regulation, or law.

ARTICLE XV
COMPLIANCE

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

15.2 Consultant will maintain the confidentiality of all medical and other patient-identifiable health information in accordance with all applicable federal and state laws and regulations, including the Privacy Rule and the Security Rule of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as may be amended from time to time.

15.3 Consultant will implement policies and procedures to specify proper physical and logical controls and breach notification in accordance with HIPAA and Health Information Technology for Economic and Clinical Health (HITECH) Act.

15.4 Consultant will have in place policies and procedures regarding the transfer, removal, disposal, and re-use of electronic media, to ensure appropriate protection of electronic protected health information (e-PHI), including but not limited to:

a) Ensuring the confidentiality, integrity, and availability of all e-PHI created, received, maintained or transmitted, ensuring that data is encrypted at rest and in transit;

b) Identifying and protecting against reasonably anticipated threats to the security and integrity of e-PHI information;

c) Implementing security controls based on an appropriate risk assessment;

d) Ensuring that all relevant system components are patched in a timely manner;

e) Providing proof of an implemented information security program to ensure the privacy, safety, and integrity of PHI, such as data protection solutions that proactively classify and protect data from unauthorized access, transfer, or use;

f) Reviewing and modifying Consultant's security measures used to protect e-PHI when there are changes to Consultant's operating environment;

g) Protecting against reasonably anticipated, impermissible uses or disclosures;

h) Ensuring HIPAA compliance by Consultant's workforce;

i) Providing proof of annual HIPAA training for employees; and

j) Ensuring system access reviews are performed quarterly.

15.5 Consultant shall comply with the electronic transmission standards and with all other regulations as might be adopted by HIPAA.

15.6 Consultant shall abide by the terms of the Business Associate Agreement executed by the parties, attached hereto as **Attachment F** and incorporated herein by reference.

15.7 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.

ARTICLE XVI
INTELLECTUAL PROPERTY

16.1 Consultant shall pay all royalties and licensing fees necessary for performing its obligations under this Agreement. Consultant shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, trademarks, trade secrets, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if Consultant has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

16.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware or any other intellectual property infringe upon any United States or International patent, copyright or trademark, Consultant will immediately:

Either:

16.2.1 Obtain, at Consultant's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, both the programs and hardware or any other intellectual property as the case may be; or

16.2.2 Alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated; and

16.2.3 Reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.

16.3 Consultant further agrees to:

16.3.1 Assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent, copyright, trademark or any other intellectual property rights arising from the use and/or sale of the equipment or software under this Agreement;

16.3.2 Assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses; and

16.3.3 Indemnify the City against any monetary damages and/or costs awarded in such suit;

Provided that:

16.3.4 Consultant is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Consultant agrees to consult with the City Attorney of the City during such defense or negotiations and make a good faith effort to avoid any position adverse to the interest of the City;

16.3.5 The Software or the equipment is used by the City in the form, state, or condition as delivered by Consultant or as modified without the permission of Consultant, so long as such modification is not the source of the infringement claim;

16.3.6 The liability claimed shall not have arisen out of the City's negligent act or omission; and

16.3.7 The City promptly provides Consultant with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Consultant assumes responsibility under this section.

ARTICLE XVII
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.

ARTICLE 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.

ARTICLE XIX
LAW APPLICABLE & LEGAL FEES

19.1 **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.**

19.2 Unless this contract provides otherwise, all claims, counterclaims, disputes, and other matter in question between City and Consultant arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction. 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.

19.3 Unless provided otherwise in this Agreement, the Parties hereto expressly agree that, in the event of litigation, each Party hereby waives its right to payment of attorneys' fees.

ARTICLE XX
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.

ARTICLE XXI
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.

ARTICLE XXII
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.

ARTICLE XXIII
CONFIDENTIAL INFORMATION

23.1 Consultant shall secure the confidentiality of records and information that Consultant may have access to in accordance with applicable Federal, State, and local laws and regulations. This provision shall not be construed as limiting City's or its authorized representatives' right of access to records or other information under this Agreement.

23.2 No reports, information, project evaluation, project designs, data or other documentation developed by, given to, prepared by or assembled by Consultant under this contract shall be disclosed or made available to any individual or organization by Consultant without the prior written approval of the City.

23.3 If Consultant receives inquiries regarding documents within its possession pursuant to this contract, Consultant shall immediately forward such request to the City for disposition.

ARTICLE XXIV
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.

ARTICLE XXV
STATE PROHIBITIONS ON CONTRACTS

25.1 This Article only applies to a contract that:

(1) is between a governmental entity and a company with 10 or more full-time employees; and

(2) has a value of $100,000 or more that is to be paid wholly or partly from public funds of the governmental entity.

25.2 "Company" means a for-profit 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. This term does not include a sole proprietorship.

25.3 Prohibition on Contracts with Companies Boycotting Israel. Texas Government Code §2271.002 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.

"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.

By 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 hereby relies on Company's verification. If found to be false, City may terminate this contract for material breach.

25.4 Prohibition on Contracts with Companies Boycotting Certain Energy Companies. Texas Government Code §2274 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 energy companies; and (2) will not boycott energy companies during the term of the contract.

"Boycott energy company" means, without an ordinary business purpose, 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 with a company because the company: (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or (B) does business with a company described in (A).

By executing contract documents with the City of San Antonio, Company hereby verifies that it does not boycott energy companies and will not boycott energy companies during the term of the contract. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

25.5 Prohibition on Contracts with Companies that Discriminate Against Firearm and Ammunition Industries. Texas Government Code §2274 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 have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association.

"Discriminate against a firearm entity or firearm trade association": (A) means, with respect to the entity or association, to: (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association; (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association; or (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association.

By executing contract documents with the City of San Antonio, Company hereby verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and will not discriminate during the term of the contract against a firearm entity or firearm trade association. City hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach

ARTICLE XXVI
PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §§2270.0201 or 2252.153. Consultant hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Consultant's certification. If found to be false, or if Consultant is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

ARTICLE XXVII
CONFLICT OF INTEREST

27.1 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.

27.2 Pursuant to the subsection above, Consultant warrants and certifies, and this Agreement is made in reliance thereon, that by contracting with the City, Consultant does not cause a City employee or officer to have a prohibited financial interest in this Agreement. Consultant further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

ARTICLE XXVIII
EXECUTION IN COUNTERPART

This Agreement and any amendments thereto may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement. In the event that any signature is delivered by facsimile transmission or by email delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

ARTICLE XXIX
AUTOPEN OR ELECTRONIC SIGNATURE

This Agreement and any amendments hereto may be signed by autopen or electronic signature (e.g., DocuSign or similar electronic signature technology) and may be transmitted by electronic means. Copies of this Agreement and any amendments hereto that are so executed and delivered have the same force and effect as if executed with handwritten signatures and physically delivered.

ARTICLE XXX
PROHIBITED CONTRIBUTIONS

30.1 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.

30.2 Consultant acknowledges that the City has identified this Agreement as high profile.

30.3 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.

ARTICLE XXXI
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:

Attachment A Required Provisions Under Texas Insurance Code Chapter 1305

Attachment B Contingency Plan

Attachment C Division of Responsibilities for Certified Network Claims

Attachment D Medical Case Management Protocol

Attachment E Performance Standards

Attachment F HIPAA Business Associate Agreement

ARTICLE XXXII
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 XIV. Amendments.

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

CITY OF SAN ANTONIO	**INJURY MANAGEMENT ORGANIZATION, INC.**
	Catherine Benavidez
(Signature)	*(Signature)*
Printed Name: **Debra Ojo**	Printed Name: **Catherine Benevidez**
Title: **Director, Office of Risk Management**	Title: **President and CEO**
Date:	Date: 2/6/2024

Approved as to Form:

_____
Assistant City Attorney

Attachment A
Required Provisions Under Texas Insurance Code Chapter 1305

Notwithstanding any provision in the Agreement to the contrary, the Parties incorporate into the Agreement and agree to the following provisions in compliance with Chapter 1305 of the Texas Insurance Code and the rules promulgated by the Texas Department of Insurance in regard to certified workers' compensation health care networks:

1. This Agreement and any Network Agreement with a health care provider, management contractor, or other third party must not be interpreted to involve a transfer of risk as defined under Tex. Ins. Code section 1305.004(a)(26) concerning Definitions.

2. The functions that City delegates to Network or its delegated entity and the reporting requirements for each function, consistent with the requirements of Tex. Ins. Code section 1305.154(b), are fully set forth in Article III and Attachment C to this Agreement.

3. As required by 28 Tex. Admin. Code section 10.41(a)(2), Network, any management contractor, or any delegated third party will perform all delegated functions in full compliance with Tex. Ins. Code Chapter 1305, concerning Workers' Compensation Health Care Networks, the Texas Workers' Compensation Act, Labor Code Title 5, Subtitle A, concerning Workers' Compensation, and the rules of the Department of Insurance and the Division of Workers' Compensation.

4. As required by Tex. Ins. Code section 1305.154(c)(3) and 28 Tex. Admin. Code section 10.41(a)(3)(A) – (B), the Agreement may not be terminated without cause by either Party without 90 days' prior written notice. The Agreement must be terminated immediately if cause exists.

5. Network, any management contractor, any party to which Network delegates a function, and Network's contracted providers are prohibited from billing or attempting to collect any amounts from employees for health care services under any circumstances, including City's or Network's insolvency, except as provided by Tex. Ins. Code section 1305.451(b)(6).

6. City and Network retain ultimate responsibility for ensuring that all delegated functions and all management contractor functions are performed in accordance with applicable statutes and rules, and the Agreement may not be construed to limit in any way City's or Network's responsibility, including financial responsibility, to comply with all statutory and regulatory requirements.

7. Network's role is to provide the services listed in Tex. Ins. Code section 1305.154(b), and any other services or functions that the City delegates, including those delegated to a management contractor, subject to City's oversight and monitoring of Network's performance.

8. Network will provide the City, on at least a monthly basis, and in a form usable for audit purposes, the data necessary for City to comply with reporting requirements of the Texas

Department of Insurance and its Division of Workers' Compensation with respect to any services provided pursuant to the Agreement, including the following data: (A) last name, first name, date of injury, date of birth, sex, address, telephone number, claim number, and social security number of each injured employee who is being served by the Network, and name and license number of the injured employee's treating doctor; (B) initial date of health care services delivered by the 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.

9. City, Network, any management contractor and any third party to which Network delegates a function must comply with the data reporting requirements of the Texas Workers' Compensation Act and the rules of the commissioner of workers' compensation.

10. This Agreement incorporates a Contingency Plan as described in Attachment B. Under this plan City would, in the event of termination of the Agreement or failure to perform, reassume one or more functions of Network under the Agreement, including (A) payment to providers and employee notification, (B) quality of care, (C) utilization review, (D) continuity of care, including a plan for identifying and transitioning employees to new providers, and (E) collecting and reporting of data necessary to comply with the reporting requirements described in 28 Tex. Admin. Code 10.41(b)(7).

11. Any agreement by which Network delegates any function to a third party must be in writing and must require the delegated third party to be subject to all requirements of Tex. Ins. Code Subchapter D, Chapter 1305 and 28 Texas Administrative Code Chapter 10.

12. Network will provide City and the Texas Department of Insurance with the license number of a management contractor or any delegated third party performing any function that requires a license under the Texas Insurance Code or any other Texas insurance law, including a Utilization Review Agent license under Tex. Ins. Code Chapter 4201 concerning Utilization Review Agents. City, any management contractor, and any third party to which Network delegates a function must cooperate with Network to comply with this requirement.

13. The Parties acknowledge that (A) any management contractor or third party to whom Network delegates a function must comply with Tex. Ins. Code Chapter 1305 and other applicable laws and rules and the management contractor or third party is subject to City's and Network's oversight and monitoring of its performance and (B) if the management contractor or third party fails to meet monitoring standards established to ensure that functions delegated or assigned to the management contractor or third party under the delegation Agreement are in full compliance with all statutory and regulatory requirements, City or Network may cancel the delegation of any or all delegated functions.

14. Network and any management contractor or third party to which Network delegates a function must provide all necessary information to allow City to provide information to employers or employees as required by Tex. Ins. Code section 1305.451 and 28 Tex. Admin. Code section 10.60 (relating to Notice of Network Requirements; Employee

Information).

15. Network, in contracting with a third party, must require the third party to permit the Commissioner of Insurance 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 that has been delegated to the third party.

16. If Network delegates the complaint function, the delegate must (A) implement and maintain a complaint system in accordance with requirements under Tex. Ins. Code section 1305.401 concerning Complaint System Required and 28 Tex. Admin. Code section 10.120 (relating to Complaint System required) and (B) make the complaint log and complaint files available to City and Network upon request to the extent permitted by law.

17. Any Network Agreement with a provider or third party must allow City to effect a contingency plan in the event that City is required to reassume functions from Network as contemplated under Tex. Ins. Code section 1305.155 concerning Compliance Requirements.

18. Any Network Agreement with a provider or third party must comply all applicable statutory and regulatory requirements under federal and state law, including Insurance Code §1305.152 concerning Network Agreements with Providers and 28 Texas Administrative Code §10.42 (relating to Network Agreements with Providers).

19. If Network's delegate subdelegates a Network function, the delegate must first obtain Network's consent to the subdelegation and have a delegation agreement that complies with 28 Texas Administrative Code §10.41.

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 form 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.

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)

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

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.

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 MANAGEMET (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. COMUNICATION 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 Agreement and that if services contracted for under this Agreement are performed at a level that is less than the expectations set out in the Agreement (including all of the attached exhibits), City will not receive the full benefit of its bargain. Therefore, fee adjustments shall be granted to City for Consultant's failure to meet the performance guarantees, intended as liquidated damages, and in the amounts, if any, 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 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, such incidents will not be included in calculations of performance guarantees.

5. All fee adjustments granted to the City as a result of failing to meet the performance guarantees shall be offset from current fees due and payable by City during the term of this Agreement. City shall offset amounts owed by Consultant pro rata over the invoices due for the 3 month period following the determination that an adjustment is warranted. If the fee adjustment exceeds the amounts due from City for the 3 month period, City may, at its option, demand payment from Consultant in the amount of the full fee adjustment due, and Consultant agrees to pay said fee adjustment within 30 days of receipt of City's demand therefor.

6. The "Measurement Period" for purposes of calculating performance guarantees shall be from October 1st through September 30th of the following calendar year, as determined by November 30th of that year, with the exception of the initial year of the contract term, for which the Measurement Period shall be March 1st through September 30th of the same year, as determined by November 30th of that initial year.

7. 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.

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

NOTWITHSTANDING THE FOREGOING, THE PARTIES AGREE THAT NOTHING IN THESE PERFORMANCE GUARANTEES SHALL OPERATE AS, OR BE CONSTRUED AS, A TRANSFER OF RISK FROM CITY TO CONSULTANT.

The Parties agree to the following performance guarantees:

1. Cost Avoidance:

Consultant agrees that it will be responsible for retaining or reducing the Original "Adjusted Average New Claim Cost" for medical and indemnity claims.

The Parties agree that the Original Adjusted Average New Claim Cost is, and each following year's Adjusted Average New Claim Cost shall be, the total dollar value of claims paid during the Measurement Period (as adjusted) divided by the number of claims incurred during the Measurement Period. The total dollar value of claims paid during the Measurement Period 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, DWC fee guidelines increases, and the Medicare Economic Index. 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. City shall provide Consultant with at least 30 days advance notice of the scheduled audit date.

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 Consultant'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, long-term COVID, and other long-term pandemic-related diseases). Cases that are considered exceptions and thus removed from the calculation include PLN ls, declined network participation, and employees living outside of the network coverage area.

The Parties agree that the **Original Adjusted Average New Claim Cost is $3,700.00.**

If any year's Adjusted Average New Claim Cost exceeds the Original Adjusted Average New Claim Cost, the amount of the fee adjustment granted to City shall be equal to the percentage of fees paid during the Measurement Period by which the Adjusted Average New Claim Cost exceeds the Original Adjusted Average New Claim Cost. For example, if the Original Adjusted Average New Claim Cost is $2,079, and if the following year's Adjusted Average New Claim Cost is $2,100, the percentage equals 1.01% ($2, 100 -:- $2,079 = 1). The amount of the fee adjustment granted to City shall be 1% of the fees paid by City for the Measurement Period.

2. Reduction of Average Lost Work Days:

Consultant agrees that it will ensure that the "Average Lost Work Days" will not increase above the Original Average Lost Work Days.

The Parties agree that the Original Average Lost Work Days is, and each following year's 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 incurred during the Measurement Period. The number of lost work days related to claims is measured from the first release to work prescribed by the Treating Physician, 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 City is unable to locate a compatible work assignment, the number of lost work days shall be adjusted for the employee and measured as of the date of the first return to work duty.

The Parties agree that the **Original Average Lost Work Days is 9.3 days.**

If any year's Average Lost Work Days exceeds the Original Average Lost Work Days, Consultant shall pay City $10,000 as liquidated damages for each exceeding year.

3. Customer Service:

Consultant agrees to provide medical intervention services by assigning a Telephonic Case Manager ("TCM") to each injured employee within two business days of when Consultant is notified of the injury. If Consultant fails to timely assign a TCM to at least 98% of all new

claims submitted during a Measurement Period, Consultant agrees to a $100 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 Consultant.

During a review of the performance guarantees described in this Attachment E, 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 to City shall be equal to the product of the total number of claims that occurred during the Measurement Period times $100 times the TCM Failure Percentage. (Example: 20 claims during measurement period x $100 x 10% - TCM Failure Percentage= $200 fee adjustment.) Consultant agrees that upon notification of a determination that a TCM was not assigned to at least 98% of the claims submitted, Consultant will grant City the calculated fee adjustment.

4. Data Capture:

Consultant agrees to capture the primary ICD10 diagnosis code from the claimant's treatment records. If during any Measurement Period, Consultant'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, Consultant agrees to grant City a fee adjustment in the amount of $20,000 as liquidated damages. For purposes of determining whether or not 95% of all ICDlO 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.

Consultant 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, it will grant City a fee adjustment equal to $20,000. The Parties agree that the actual costs incurred by 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.

ATTACHMENT F

WITNESSETH:

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement is entered into by and between the City of San Antonio ("Covered Entity"), and Injury Management Organization, Inc., a Business Associate ("BA").

WHEREAS, the City of San Antonio and BA have entered into a Professional Services Contract ("Service Contract"), executed on _____, whereby BA provides 1305 Workers' Compensation Health Care Network Services to the Covered Entity; and

WHEREAS, Covered Entity and BA may need to use, disclose and/or make available certain information pursuant to the terms of the Service Contract, some of which may constitute Protected Health Information ("PHI"); and

WHEREAS, Covered Entity and BA intend to protect the privacy and provide for the security of PHI disclosed to each other pursuant to the Service Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations"), Health Information Technology for Economic and Clinical Health Act ("HITECH Act") and other applicable laws; and

WHEREAS, the purpose of this Agreement is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations ("C.F.R."), as the same may be amended from time to time;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

A. Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them:

(1) "Disclosure" with respect to PHI, shall mean the release, transfer, provision of access to or divulging in any other manner of PHI outside the entity holding the PHI.

(2) "Health Information" is defined in 45 C.F.R. 160.103 as any information, including genetic information, whether oral or recorded in any form or medium that: (1) is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

(3) "Individual" shall have the same meaning as the term "Individual" in 45 C.F.R. 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. 164.502(g).

(4) "Individually Identifiable Health Information" is defined in 45 C.F.R. 160.103 as information that is a subset of health information, including demographic information

collected from an individual, and: (1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(5) "Parties" shall mean Covered Entity and BA. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103.

(6) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and Part 164, subparts A and E.

(7) "Security Rule" shall mean the HIPAA regulation that is codified at 45 C.F.R. Part 164.

(8) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. 160.103, limited to the information created or received by BA from or on behalf of Covered Entity. PHI includes "Electronic Protected Health Information" or "EPHI" and shall have the meaning given to such term under the HIPAA Rule, including but not limited to 45 CFR Parts 160, 162, 164, and under HITECH.

(9) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.103.

(10) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

(11) "PHI Breach" shall mean an acquisition, access, use, or disclosure of PHI in a manner not permitted by the Privacy Rules and such action compromises the security or privacy of the PHI.

(12) The Health Information Technology for Economic and Clinical Health ("HITECH") Act shall mean Division A, Title XII of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

B. BA Obligations and Activities. BA agrees that it shall:

(1) Not use or disclose the PHI other than as permitted or required by this Agreement or as Required by Law;

(2) Establish and maintain appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect, consistent with the services provided under this Agreement, the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of covered entity;

(3) Mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA in violation of the requirements of this Agreement;

(4) Report to Covered Entity any use or disclosure of PHI of which BA is aware or becomes aware that is not provided for or allowed by this Agreement as well as any security incident that BA becomes of aware of;

(5) Ensure that a business associate agreement is in place with any of its agents or subcontractors (other than health care providers with whom BA contracts for purposes of participation in Network) with which BA does business and to whom it provides PHI in which the agents or subcontractors acknowledge that they are aware of and agree to the same restrictions and conditions that apply through this Agreement to BA with respect to such information and further agree to implement reasonable and appropriate administrative, physical and technical safeguards that render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI;

(6) Provide access, at the request of Covered Entity, and in a reasonable time and manner as agreed by the Parties, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements 45 C.F.R. §164.524;

(7) Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of the Covered Entity or an Individual, and in a reasonable time and manner agreed to by the Parties;

(8) Make available to the Covered Entity or to the Secretary of the U.S. Department of Health and Human Services all internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the BA on behalf of the Covered Entity, for purposes of the Secretary of the U.S. Department of Health and Human Services in determining Covered Entity's compliance with the Privacy Rule;

(9) Document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;

(10) Provide Covered Entity or an Individual, in a reasonable time and manner as agreed to by the Parties, information collected in accordance with Section B(9) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528;

(11) Will immediately, and in no event later than three days from discovery, notify Covered Entity of any breach of PHI, including ePHI, and will coordinate with Covered Entity to identify, record, investigate, and report to an affected individual and US Department of Health and Human Services, as required, any covered PHI breach. Breach notification to Covered Entity must include: names of individuals with contact information for those who were or may have been impacted by the HIPAA Breach; a brief description of the circumstances of the HIPAA Breach, including the date of the breach and date of discovery; a description of the types of unsecured PHI involved in the breach; a brief description of what the BA has done or is doing to investigate the breach and mitigate

harm. BA will appoint a breach liaison and provide contact information to provide information and answer questions Covered Entity may have concerning the breach;

(12) Comply with all HIPAA Security Rule requirements;

(13) Comply with the provisions of HIPAA Privacy Rule for any obligation Covered Entity delegates to BA;

(14) Under no circumstances may BA sell PHI in such a way as to violate Texas Health and Safety Code, Chapter 181.153, effective September 1, 2012, nor shall BA use PHI for marketing purposes in such a manner as to violate Texas Health and Safety Code Section 181.152, or attempt to re-identify any information in violation of Texas Health and Safety Code Section 181.151, regardless of whether such action is on behalf of or permitted by the Covered Entity.

C. Permitted Uses and Disclosures by BA

(1) Except as otherwise limited in this Agreement, BA may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Service Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

(2) Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA, provided that disclosures are Required By Law, or BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.

(3) Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).

(4) BA may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 502(j)(1).

D. Obligations of Covered Entity. Covered Entity shall inform BA of its privacy practices and restrictions as follows. Covered Entity shall:

(1) notify BA of any limitations in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect BA's use or disclosure of PHI;

(2) notify BA of any changes in, or revocation of, permission by any Individual to use or disclose PHI, to the extent that such changes may affect BA's use or disclosure of PHI;

(3) notify BA of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522 to the extent that such changes may

affect BA's use or disclosure of PHI.

(4) coordinate with BA regarding any PHI breach and make timely notification to affected individuals within 60 days of discovery.

E. Permissible Requests by Covered Entity.

Covered Entity shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that the Business Associate may use or disclose PHI for data aggregation or management and administrative activities of the BA.

F. Term and Termination.

(1) The term of this Agreement shall commence on the date on which it is fully executed or contract start date of March 1, 2024, whichever is later. This Agreement shall terminate when all PHI encompassed by this Agreement is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy the PHI, protections are extended to such information in accordance with the termination provisions in this Section.

(2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by BA, Covered Entity shall either (a) provide an opportunity for BA to cure the breach in accordance with the terms of the Service Contract or, if the BA does not cure the breach or end the violation within the time for cure specified in the Service Contract, end the violation and terminate this Agreement and the Contract; or (b) immediately terminate this Agreement and the Service Contract if BA has breached a material term of this Agreement and cure is not possible. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

(3) Effect of Termination.

(a) Except as provided below in paragraph (b) of this Section F(3), upon termination of this Agreement for any reason, BA shall return or destroy all PHI received from the Covered Entity, or created or received by BA on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of BA or its subcontractors or agents. BA shall not retain any copies of PHI.

(b) In the event that BA determines that returning or destroying PHI is infeasible, BA shall provide to Covered Entity written notification of the condition that makes the return or destruction of PHI infeasible. Upon BA's conveyance of such written notification, BA shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make its return or destruction infeasible, for so long as BA maintains such PHI.

(4) Notwithstanding any other provision under this Agreement, the Parties agree that the Service Contract may be terminated by either Party without penalty should the other Party violate a material obligation under this Agreement.

G. Amendment to Comply with Law. The Parties agree to take written action as is necessary to amend this Agreement to comply with any Privacy Rules and HIPAA legal requirements for Covered Entity without the need for additional council action.

H. Survival. The respective rights and obligations of the BA under Sections B, C (2) and (4), and F(3) shall survive the termination of this Agreement.

I. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit Covered Entity to comply with the Privacy Rule.

J. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or amended.

K. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer upon any person other than Covered Entity, BA, and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

L. ***INDEMNIFICATION. BA WILL INDEMNIFY, DEFEND AND HOLD COVERED ENTITY AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS, FROM AND AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY CLAIM BASED UPON ANY BREACH OF THIS AGREEMENT BY BA IN ACCORDANCE WITH THE INDEMNITY PROVISIONS IN THE SERVICE AGREEMENTS, WHICH ARE HEREBY INCORPORATED BY REFERENCE FOR ALL PURPOSES.***

M. **Reimbursement.** BA will reimburse Covered Entity for reasonable costs incurred responding to a PHI breach by BA or any of BA's subcontractors.

N. **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

O. **Assignment.** Neither Party may assign (whether by operation of law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.

P. **Entire Agreement.** This Agreement constitutes the complete agreement between Business Associate and Covered Entity relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Service Contracts or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Service Contract comply with the Privacy Standards and the Security Standards. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party. This Agreement is for the benefit of, and shall be binding upon the Parties, their affiliates and respective successors and assigns. No third

party shall be considered a third-party beneficiary under this Agreement, nor shall any third

party have any rights as a result of this Agreement.

Q. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Texas.

EXECUTED to be effective _____, by the **City of San Antonio,** signing by and through its Director of the Office of Risk Management.

COVERED ENTITY
By City of San Antonio

By: _____

Print Name: Debra Ojo

Print Title: Office of Risk Management, Director

BUSINESS ASSOCIATE:
Injury Management
Organization, Inc.

By: Catherine Benavidez

Print Name: Catherine Benavidez

Print Title: President and CEO

APPROVED AS TO FORM:

_____
Assistant City Attorney