

**SELF-INSURED WORKERS' COMPENSATION
THIRD PARTY CLAIMS ADMINISTRATION,
RELATED SERVICES & CLAIMS ADMINISTRATION SOFTWARE**

This Agreement (hereinafter referred to as "Agreement") is entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "City"), a Texas Municipal Corporation acting by and through its City Manager or City Manager's designee and Cannon Cochran Management Services, Inc. (herein after referred to as "Consultant"), a corporation chartered under the laws of the State of Delaware, acting by and through its Chief Operating Officer Rodney J. Golden, both of which may be referred to herein collectively as "Parties", pursuant to Ordinance No. _____ passed and approved on _____.

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

I. DEFINITIONS

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

- 1.1 "City" is defined in the preamble of this Agreement and includes its successors and assigns.
- 1.2 "Consultant" is defined in the preamble of this Agreement and includes its successors.
- 1.3 "Contract Year One" means the first calendar year of the Contract, beginning January 1, 2022.
- 1.4 "Contract Year Two" means the second calendar year of this Contract, beginning January 1, 2023.
- 1.5 "Contract Year Three" means the third calendar year of this Contract, beginning January 1, 2024.
- 1.6 "Contract Year Four" means the first renewal period of this Contract, if the option to renew is exercised, beginning January 1, 2025.
- 1.7 "Contract Year Five" means the second renewal period of this Contract, if the option to renew is exercised, beginning January 1, 2026.
- 1.8 "Director" shall mean the Director of the City's Office of Risk Management.
- 1.9 "Lost Time Claims" means a claim where indemnity benefits are payable beginning the first day of incapacity for work.

II. TERM

- 2.1 Unless soon terminated in accordance with the provisions of this Agreement the term of this Agreement shall commence on January 1, 2022 and terminate on December 31, 2026.
- 2.2 At City's option, this Contract may be renewed and extended beyond the date stated above under the same terms and conditions for up to two (2) additional one (1) year periods. Renewals shall be in writing, signed by the City Manager, or the City Manager's designee, or the Director. City

shall also have the right to extend this contract under the same terms and conditions beyond the term or any renewal thereof, on a month-to-month basis, not to exceed a total of 180 days. Said renewals and month to month extensions shall not require City Council approval but are subject to and contingent upon appropriation of funds for payment of all costs to be incurred during those periods.

- 2.2 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

III. SCOPE OF SERVICES

- 3.1 Consultant agrees to provide the services described in this Article III, entitled Scope of Services, in exchange for the compensation described in Article V. Compensation to Consultant.

3.2 **Claims Administration**

- 3.2.1 Maintain or establish, prior to the start of the contract's term, an account manager, dedicated workers' compensation supervisors, and dedicated claims staff to handle the City's account. The maximum caseload per adjuster shall be no more than:

Workers' Compensation: Lost Time	135 claims
Workers' Compensation: Medical Only	270 claims

- 3.2.2 Meet with City Risk Management staff on a monthly basis, or "as needed" when determined by the City, to discuss status of active files, claims handling concerns, program operational issues and other areas of concern; conduct quarterly claims review with City's Risk Management staff, and meet with City executives on an as needed basis.

- 3.2.3 Investigate and adjust reported claims in accordance with the Texas Workers' Compensation Act, Texas Tort Claims Act and applicable City Ordinances, as may be amended from time to time, unless otherwise directed by City.

- 3.2.4 Claims with subrogation potential must be reported to City's Risk Management staff. When the claims examiner identifies a claim with potential recovery, notification must be sent to the City within fifteen (15) days after the date of receipt by the TPA.

- 3.2.5 Ensure all adjusters dedicated to the City's account maintain a valid and appropriate Texas workers' compensation adjuster's license.

- 3.2.6 Securely store all closed claim files and claim files currently in storage in locked temperature and humidity-controlled storage, at no cost to the City, during the term of the contract for paper files. Upon termination of the contract, all closed claims in paper format must be returned to the City within thirty (30) days to a facility of the City's choice. Files must be accompanied by appropriate paid printouts on each file.

- 3.2.7 Provide daily courier service for pick-up and delivery of new claims, lawsuits and other information from the City, at a time to be coordinated with the City, at no expense to the City.

- 3.2.8 Provide electronic capability to report claims directly into claims system, at no cost to the City.
- 3.2.9 Report all workers' compensation claims to Central Index Bureau (CIB) upon file creation with a copy retained in the file. Resubmit an index every six (6) months until case is closed. TPA shall NOT allocate CIB expense to the City.
- 3.2.10 Estimate, establish and maintain reserves on a "most probable" basis. In reserving practices, the TPA will take into consideration indemnity, medical, rehabilitation, and allocated expense categories, and all other major subcategories of each. Changes in reserves must be reviewed and approved by TPA claims supervisor. Any reserves established over \$25,000 and all Lifetime Cost Analyses require authorization by the Director or designee.
- 3.2.11 Use a 30-day adjuster diary system for timely file review. Each file diary review, including reserves, shall be documented in detail in the computer file notes. All reserves will be monitored and adjusted accordingly. File notes shall contain an explanation for any adjustment.
- 3.2.12 Maintain copies of all written correspondence within the claim file, preferably electronically, and make same available at any time upon the City's request at no additional cost to the City.
- 3.2.13 Keep the City fully apprised of significant changes in the State of Texas Workers' Compensation rules that may affect the City and provide notices for continuing education courses offered in San Antonio or the surrounding areas.
- 3.2.14 Conduct internal audits to ensure contract requirements are being fulfilled every six months and provide report of findings to Director.
- 3.2.15 Develop and administer a customer service survey, approved by the City, and provide quarterly results.
- 3.2.16 Cooperate with City in identifying overpayments and duplicate payments and provide explanation. If overpayments resulted from TPA's failure to discharge duties diligently, TPA shall reimburse the City within 30 days for overpayments and provide a report.
- 3.2.17 Submit to and cooperate with on-site visits and claims/operational audits performed by third-party consultants or City staff. If conflicts or perceived conflicts of interest arise, the City will determine if such conflict exists and act accordingly.
- 3.2.18 Provide periodic information to, and cooperate with, the City's actuarial service provider.
- 3.2.19 Annually prepare and mail all IRS forms 1099 Misc. for all vendors. An electronic version shall be submitted to City no later than March 30th of each year.
- 3.2.20 Have management/supervisory level personnel assign claims, utilizing appropriate cost center numbers, as provided by City.

- 3.2.21 Examine and report claims with indication of fraud to the Director. TPA will assign an investigator to investigate suspected fraudulent claims with City's advance written consent, and report findings to City.
- 3.2.22 TPA's account executive shall provide monthly data and trending analysis of the program's successes and opportunities for improvement, as well as participate in the budget estimates and re-estimates as requested.
- 3.2.23 Provide to the City an annual "SOC 1" Type 2 report in accordance with Statement on Standards for Attestation Engagements (SSAE) No. 16, Reporting on Controls at a Service Organization, which supersedes the SAS 70.
- 3.2.24 TPA shall provide annual audited financial statements within ninety (90) days following the end of the TPA's fiscal year.
- 3.2.25 Conduct (at least quarterly) compliance reviews and medical bill audits on a randomly selected sample of the claim files with reports to City.
- 3.2.26 Provide a check register of all indemnity, medical and expense payments no later than 24 hours after checks are issued, at no additional cost to the City, and in the format provided by the City.
- 3.2.27 TPA shall provide reports to City's excess insurance provider on each specific claim that meets the reporting criteria of each provider. Such reporting will be conditioned upon the City providing all necessary coverage and reporting criteria to the TPA. TPA shall provide status of claim(s) to carrier every 30 days, or as otherwise required by the carrier and to the City every thirty (30) days or otherwise requested by the City and shall provide loss run reports to the City on a quarterly basis.
- 3.2.28 Maintain a dedicated telephone line for City employees to report claims directly to TPA. TPA shall also have a web-based reporting system for entering claims. All claims submitted by phone or electronically during normal business hours shall be entered into the TPA's claims system by the TPA on the same business day at no additional cost to City.
- 3.2.29 Assume the role and responsibilities of the City's Reporting and Recovery Agent pursuant to the Medicare, Medicaid, SCHIP Extension Act (MMSEA) of 2007, 42 U.S.C. §1395y, as amended from time to time, at no additional cost to the City, for the purpose of fulfilling the reporting requirements contained therein.
- 3.2.30 TPA shall ensure electronic reporting to the proper authorities of all claims as required by MMSEA at no cost to City.
- 3.2.31 Prepare and submit all queries and quarterly reports to the Center for Medicare and Medicaid Services (CMS) in accordance with the Medicare, Medicaid and SCHIP Extension Act (MMSEA) of 2007, 42 U.S.C. §1395y, as hereafter amended, at no additional cost to City.
- a. Timely Respond to each Conditional Payment Notice (CPN) and each Conditional

Payment Letter (CPL) received from the Conditional Repayment Center (CRC) and take all necessary action incident thereto.

- b. Timely investigate and respond to each recovery demand letter issued by the CRC, and take all necessary action incident thereto.
- c. Investigate all noticed and demands received from the CRC to determine whether the claims listing of all items and services paid are related to the City employee's workers' compensation claim.
- d. Timely dispute any items and services that are not related to the City employee's workers' compensation claim.
- e. Handle negotiations with either Benefits Coordination and Recovery Center (BCRC) or the CRC as appropriate.
- f. When settling a workers' compensation case, initiate the Final Conditional Payment process on the Medicare Secondary Payer Recovery Portal (MSRP) when (1) the settlement is pending; and (2) no outstanding Ongoing Responsibility for Medicals exists, or as otherwise directed.
- g. Timely file an appeal when appropriate. Take all necessary action incident thereto.
- h. Submit payment, as appropriate, where City has responsibility and Medicare has made conditional payments. Submit payment of part or all of a demand amount while an appeal is pending, if approved by City, in order to avoid accrual and assessment of interest.
- i. Keep City apprised of all CPNs, CPLs, appeals and actions taken in accordance with each.

3.2.32 Indemnify, defend, and hold City harmless from all fines and penalties levied against the City, TPA, or TPA subcontractors for TPA's failure to comply with MMSEA requirements. In no way will TPA, if selected, pass along or otherwise cause City to pay fines, which are levied solely against the TPA and/or TPA's subcontractor or levied against City due to TPA's or TPA's subcontractors' negligence, error, or omission.

3.2.33 Upon termination of the contract, by expiration of the term or any other manner provided herein, TPA shall transfer all of City's hard and electronic files, including both workers' compensation and general liability claim files from TPA's RMIS system, to City or its new Consultant, as directed by City. TPA shall be responsible for the cost to transfer hard files and electronic data. TPA shall convert electronic data, upload, download, and migrate as necessary to the new system to be used by City. TPA shall work with City's new consultant, as required, in transferring all electronic data, hard copy files, and any other City owned records in TPA's possession at no additional cost to City.

3.3 **Claims Management**

3.3.1 Establish and assign claims within 24 hours from receipt of the initial report.

3.3.2 Contact lost time injured employee, medical provider, and applicable City department within 24 hours of claim assignment by telephone call, or mail contact letter if the employee cannot be reached by phone.

3.3.3 Obtain employee's signature authorizing release of medical records and obtain copies of medical bills and records.

- 3.3.4 Take recorded statements from all lost time injured employees as part of the investigation, at no cost to the City.
- 3.3.5 Obtain approval from the City on surveillances, case management referrals, peer reviews, and vocational evaluations.
- 3.3.6 Maintain personal contact with all lost time injured employees at least once every three (3) weeks in order to maintain rapport and monitor medical progress and overall status.
- 3.3.7 Notify the injured employee when impairment benefits are owed; TPA's adjusters shall issue the first lost time check to the employee and explain all the benefits owed to the employee, including medical benefits.
- 3.3.8 Pursue all applicable contributions from prior compensable injuries, before final resolution of an impairment rating.
- 3.3.9 Provide a written summary to the Independent Medical Exam doctor, Required Medical Exam doctor, and/or Designated Doctor along with copies of all medical reports and films necessary for a successful and complete examination.
- 3.3.10 Timely pay all bills related to the claim, including fees owed to third parties, and benefits owed in accordance with the Texas Workers' Compensation Act.
- 3.3.11 TPA shall abide by the understanding that the amounts charged for medical or vocational case management, PPO fees, private investigative fees, structured settlement fees and Allocated Loss Adjustment expenses shall not be paid under the indemnity or medical portions of the claim.
- 3.3.12 TPA shall abide by the understanding that no charge shall be levied against the City for the payment processing of Allocated Loss Adjustment expenses.
- 3.3.13 Obtain all relevant signatures for payment processing.
 - a. Instruments disbursing, or directing disbursement of, funds for workers' compensation related bills or benefits in the amounts of ten thousand dollars (\$10,000.00) or more shall require a minimum of one (1) original and one (1) facsimile signature of a signer authorized by TPA, or, in the absence of the original signature of a signer authorized by the TPA, one (1) of the following signatures:
 - i. Chief Financial Officer;
 - ii. Deputy Chief Financial Officer;
 - iii. Assistant Director of Finance – Accounting;
 - iv. Disbursements Administrator;
 - v. Controller; or
 - vi. Financial Reporting Manager(s) in accordance with City Ordinance 2011-12-08-1015.
 - b. Instruments disbursing, or directing disbursement of, funds for workers' compensation related bills or benefits less than ten thousand dollars (\$10,000.00)

shall require a minimum of one facsimile signature of a signer authorized by the TPA.

- c. The Office of Risk Management shall provide prompt notice to TPA of any change in signature requirements, which shall automatically be incorporated in the contract.
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- 3.3.14 Have the capacity to issue income benefits electronically via direct deposit as directed by the City.
 - 3.3.15 TPA shall provide an explanation of how Temporary Income Benefits (TIBS) are calculated, including adjustments to each injured employee. TPA shall provide an example to employees and the City as requested.
 - 3.3.16 The City has engaged a law firm for legal representation for all hearings before the TDI/Division of Workers' Compensation, who also acts as City's Austin Division Representative. TPA will be required to coordinate with and work closely with this representative.
 - 3.3.17 Provide a written report to City on the proceedings of any administrative hearing within 72 hours after such hearing, at no additional cost to the City. Any representation of the City beyond administrative hearings and selection of legal counsel for these matters shall be approved by the Director.
 - 3.3.18 Provide and track a monthly status report on all open administrative proceedings (i.e., Benefit Review Conference, Contested Case Hearing, Administrative Hearings).
 - 3.3.19 Attend all meetings, administrative hearings, and legal proceedings that the City, or its outside counsel requests, at no additional expense to the City.
 - 3.3.20 Electronically transfer information required by statute or regulation to the Department of Insurance, Division of Workers' Compensation, and other involved parties in a timely manner at no expense to the City and document the claim file to support compliance and confirmation date.
 - 3.3.21 Provide quarterly executive summaries of issues, trends, opportunities and results as it relates to workers' compensation program management.
 - 3.3.22 Prepare and file, with the appropriate State agencies, all forms required for the City to maintain its qualifications as a self-insured political subdivision, as authorized under Texas Labor Code, Chapter 504, unless otherwise directed by City and evidenced in writing. Expenses related to maintaining this status under the rules and regulations of Texas shall be passed onto the City.
 - 3.3.23 Obtain all necessary information to fully complete and file all required forms with the TDI-DWC, as required by law or regulation.
 - 3.3.24 Adjusters shall mail any and all required forms to the employee or designated party such as the DWC 1, Rights and Responsibilities, medical authorization, brochure, DWC 3 (wage statement), DWC 6 (supplemental report of injury), and all Plain Language Notices (PLN) on behalf of the City at no cost.

- 3.3.25 Adjusters shall amend the First Report of Injury to include additional data when necessary, on behalf of the City prior to sending to Electronic Data Interchange.

3.4 **Medical Cost Containment**

- 3.4.1 Provide bill review, utilization review (prospective, concurrent, retrospective, pre-procedure) peer review, pre- authorization, case management, vocational and rehabilitation evaluation, discharge planning, identification of catastrophic illnesses or injury, and other workers' compensation medical cost management related services as requested and approved by the City for non-network claims (claims with a date of loss preceding April 1, 2019).
- 3.4.2 Audit medical bills in accordance with TDI-DWC fee guidelines or special discounts negotiated with providers. TPA shall not charge City for duplicate bill reviews on denied claims for non-network claims (claims with a date of loss preceding implementation of HCN on April 1, 2019).
- 3.4.3 Make appropriate application of treatment guidelines and fee schedules.
- 3.4.4 Electronically transfer required information to the TDI-DWC and other involved parties in a timely manner at no cost to the City.
- 3.4.5 Use pro-active approval and coordinate activities with the claims adjusters and supervising staff with regard to case management services. Follow the City's established protocols for case management referrals.
- 3.4.6 Monitor appropriateness of treatment, necessity and continuation of medical treatment in relation to an on-the-job injury/illness.
- 3.4.7 Review medical bills for any irregularities such as overlapping dates of services, unrelated fees, up-coding and unbundling.
- 3.4.8 Properly document files regarding analysis, recommendations/reviews, pre-authorization, etc. Documentation must show due diligence and reasonableness for any recommendations made, should these be challenged through administrative or judicial channels.
- 3.4.9 Require bill review and utilization management staff to use Official Disability Treatment Guidelines (ODG) to properly handle claims and manage overutilization for non-network claims (claims with a date of loss preceding implementation of HCN on April 1, 2019).
- 3.4.10 Provide services through experienced, qualified, and licensed professional staff. Services of a medical director may be utilized on a case-by-case basis. The case managers should have appropriate required designations.
- 3.4.11 Obtain pre-approval from City on all vocational evaluation for job analysis.
- 3.4.12 Assist with facilitating return to work.

- 3.4.13. Pay in accordance with fee schedule guidelines and Network rates, or Plan rates for the City's elected 1305 HCN.
- 3.4.14. Ensure case managers and utilization review staff are available to treating physicians during physician's business hours for non-network claims (claims with a date of loss preceding implementation of HCN on April 1, 2019).
- 3.4.15. Provide treating physicians with timely notification of decisions regarding preauthorization.
- 3.4.16. Provide monthly reporting, analysis and improvement opportunities for all cost containment and case management programs.
- 3.4.17. Perform such other responsibilities associated with medical cost containment services.

3.5 **Pharmacy Benefit Management (PBM)**

- 3.5.1. Provide bill review, utilization review (prospective, concurrent, retrospective, pre-procedure) peer review, pre- authorization, and other workers' compensation PBM related services as requested and approved by the City for non- network claims (claims with a date of loss preceding implementation of HCN on April 1, 2019).
- 3.5.2. Audit and pay pharmacy bills in accordance with TDI-DWC fee guidelines or special discounts negotiated with providers, whether City contracts directly with providers or uses TPA's plan for non-network claims (claims with a date of loss preceding implementation of HCN on April 1, 2019).
- 3.5.3. Implement early medication intervention protocols where medication peer reviews are done with suggestions of appropriate medication for non-network claims (claims with a date of loss preceding implementation of HCN on April 1, 2019).
- 3.5.4. Electronically transfer required information to the TDI-DWC and other involved parties in a timely manner at no cost to the City.
- 3.5.5. Monitor appropriateness of prescription(s), necessity, and continuation of prescription(s) in relation to an on-the- job injury/illness.
- 3.5.6. Review pharmacy bills for any irregularities such as overlapping dates of services, unrelated fees, up-coding and unbundling.
- 3.5.7. Properly document files regarding analysis, recommendations/reviews, pre-authorization, etc. Documentation must show due diligence and reasonableness for any recommendations made, should these be challenged through administrative or judicial channels.
- 3.5.8. Provide services through experienced, qualified, and licensed professional staff. Services of a medical director may be utilized on a case-by-case basis as approved by City.

- 3.5.9 Make case managers and utilization review staff available to treating physicians during physician's business hours for non-network claims (claims with a date of loss preceding implementation of HCN on April 1, 2019).
- 3.5.10 Provide treating physicians with timely notification of decisions regarding authorization.
- 3.5.11 Provide monthly reporting, analysis issues, trends, and improvement opportunities.
- 3.5.12 Comply with all rules and regulations promulgated by the Commissioner of Workers' Compensation and all requirements of the Texas Legislature pertaining to prescription medication and services.
- 3.5.13 Perform other such responsibilities associated with PBM services.

E. **Risk Management Information System (RMIS)**

- 3.6.1 TPA shall provide cloud-based application (claims platform) necessary to perform services hereunder.
- 3.6.2. TPA must identify and proceed to correct any inoperative software within 48 hours after City reports a problem.
- 3.6.3. TPA shall provide City direct access to its RMIS for as many users as City requires, for the term of this contract, including any extensions or renewals hereof, and for an additional 30 days following expiration or termination. Risk Management shall have direct access to the RMIS' electronic claims file and report writer. The current estimated number of users is 30 for workers' compensation claims and 12 for liability claims.
- 3.6.4. The City administers its self-insured general and auto liability program internally and will use the TPA's RMIS to facilitate administering its program, in addition to using TPA's RMIS for the workers' compensation program.
- 3.6.5. System Capabilities. TPA's RMIS shall be capable of, though not limited to, the following:
 - a. Secured data;
 - b. Access via standard Internet connection 24 hours a day, 7 days a week, 365 days per year;
 - c. Direct claim reporting of new claims (DWC 1, 3 and 6) 24 hours a day, 7 days a week throughout the year;
 - d. All usual and necessary statistical claim information data;
 - e. Capturing detailed information on: medical bills, other payments, client, injured worker, injured worker history, provider, diagnosis and treatment;
 - f. Reporting the number of claims for a specific time period by injury date and by report date;
 - g. Accurately calculating the number of full and partial days of disability for each claim, accounting for all periods of intermittent changes in the claimant's work status;
 - h. Producing monthly reports on employees who, in addition to the claim filed in a particular month, have filed one or more prior claims with City;

- i. Accurately reflecting paid and incurred amounts of net subrogation recoveries;
- j. Accurately capturing the number of lost time claims reported during a specific period for medical only claims, reopened claims, and prior claims;
- k. Capturing return to work dates;
- l. Capturing North American Industrial Classification System Codes;
- m. Distinguishing among the different types of payments made for cost containment services, and tracking same, including, but not limited to, state fee schedule, utilization review results and clinical edit reductions;
- n. Tracking and differentiating between DWC Form PLN 1 and PLN 11 denials and disputes by the reason for the denial/dispute, such as unallowed condition, wage calculation, waiting period and vocational rehabilitation;
- o. Electronically making payment for indemnity and death benefits, programmed specific to Texas, and calculating the amount due based upon wages earned and the type of allowance, offering accuracy, timeliness, edit and audit processing, approval review and check production
- p. Tracking Benefit Review Conferences and Contested Case Hearings through a diary system, which can be altered based upon the City's needs and the nature of the claim; and
- q. Tracking claims by City location codes, which can then be extracted by department, division, and section.

3.6.6 TPA shall provide reports through its web based RMIS monthly or as requested by City. All reports shall be available online and may be run at any frequency requested by City. Custom formatting and detailing of data fields shall be available. Available reports shall include, but are not limited to:

- a. All Open Claims;
- b. Claims Summary by Claim Year, including claim counts;
- c. Claims Lost Detail;
- d. Claims Paid;
- e. TPA shall provide City with a loss run, which shall include a record of overpayments recovered by fiscal year each month. This report shall be submitted to City by the 15th working day of each month;
- f. TPA shall provide City with a report of gross billings, number of audited bills, cost of audit, fee guideline reductions and PPO discounts, net amount and percentage of savings on a monthly basis. This report shall be submitted to City by the 15th working day of each month;
- g. TPA shall make available to City, a copy of all status reports to the excess insurance carrier as warranted by the severity and complexity of the claim;
- h. TPA shall provide City with the monthly recap report via electronic mail no later than 15 days after the last day of the month; and
- i. TPA shall provide all other monthly reports to the City, as requested, at no additional cost to City.

3.6.7 TPA shall enable City to do ad hoc reporting from its RMIS on any other information requested by City, whether for workers' compensation or liability claims.

3.6.8 TPA shall provide City with RMIS training for all users, whether the use is for workers' compensation or liability claims. Training shall occur on a quarterly basis, or as deemed necessary by City. The first training session shall be held within 10 days of the start of

the Contract and will occur at a City-designated facility. Length of training sessions shall be sufficient, as determined solely by City, to ensure adequate knowledge for use of the RMIS, including, but not limited to, running reports.

- 3.6.9 TPA shall retain all ownership and copyright interest in and to any and all software, computer programs, business methods, related documentation, technology, know-how and processes developed by TPA.
- 3.6.10 TPA will grant City a paid-up, non-exclusive, non-transferable license for its RMIS/Claims Administration Software, and will procure on City's behalf a paid-up, non-exclusive, non-transferable license for any required third-party software that may be necessary for use in conjunction with TPA's software, for an unlimited number of City users. The term of the licenses shall be for the duration of the Contract, including any extensions or renewals thereof and for 30 days after contract termination or expiration.
- 3.6.11 City will acknowledge that the licenses granted will be limited to City's own use exclusively and that City will not have the right to sub-license any of the software in either its original or modified form.
- 3.6.12 TPA's application contemplated for the provision of services under the Contract should be web-based, and as such, fully compatible with City's existing software and hardware, and City shall not incur any additional expenses, other than providing access to the Internet, in order to access and use TPA's application as described herein.
- 3.6.13 TPA shall perform regularly scheduled backups of its RMIS system, daily at a minimum.
- 3.6.14 Add new vendors to TPA's system to enable payment, establishing a Vendor ID, for both workers' compensation claims and general liability claims. Vendors must be added within five (5) business days of City's request.
- 3.6.15 For City's general liability claims, TPA shall:
 - a. Establish separate branch and client organization structure for Liability Claims in RMIS based on City's existing branch and client organization structure in the RMIS currently in use;
 - b. Restrict access to City's Liability Claims in RMIS to City's Registered Users; and
 - c. TPA's RMIS must interface with City's SAP system, so that General Liability payments issued through the City's SAP system will be reflected in the claim file in TPA's RMIS system without requiring manual entry.

3.7 **Account Funding/Banking**

- 3.7.1 TPA must be able to receive an electronic transmission from the City containing basic employee information. The City currently uses the SAP system.
- 3.7.2 TPA shall issue checks on a "positive pay" basis tied to a zero-balance checking account, established at the City's depository for payments to employees, medical providers, vendors, citizens and attorneys.
- 3.7.3 TPA shall provide, at a minimum, a weekly check register and void list to the Office of

Risk Management and the Finance Department in a format that can be uploaded into the SAP system.

- 3.7.4 City shall place funds in the account on a daily basis in an amount determined by the daily check register provided by TPA, taking into consideration required City approval for payments as described herein.
- 3.7.5 TPA shall, at no additional cost to City, provide the checks which comply with the City's financial institution minimum standards.
- 3.7.6 Upon termination of the contract, by expiration of the term or any other manner provided therein, TPA shall have all outstanding invoices received through the date prior to termination paid and processed and shall have all files completed and updated in a neat and orderly manner.

3.8 **Performance Standards**

- 3.8.1 Listed below are Performance Standards, which must be met by the TPA throughout the contract term, excluding an initial 90-day transition period at the start of the contract, and including any renewal terms. Also listed below are the amounts at risk for failure to meet the respective Performance Standards. The amount of fee to be withheld is not to be considered as a penalty, but shall be deemed, taken or treated as reasonable liquidated damages, fixed and agreed upon by and between TPA and City because of the impracticality and difficulty of fixing and ascertaining the actual damages City would sustain in the event of a failure or refusal to meet each performance standard, and the above-mentioned amounts are agreed to be the amount of damages that City would sustain. The Amount at Risk is stated as a percentage of the TPA's annual Basic Claims Administration Fee. The City's actual withholding from the TPA's fees for failure to meet the performance standards shall not, in any contract year, exceed 10% of the annual contract cost. However, this sum does not include any liquidated damages that may be assessed for failing to meet the guarantee described below related to the Performance Based Oversight (PBO) Audit performed by the State.
- 3.8.2 If the TPA materially breaches one or more of the Performance Standards, it agrees to pay the aggregate of the respective amounts at risk in the form of a reduction in the Basic Claims Administration Fee due and payable under the Agreement. Such amount will be deducted from the Basic Claims Administration Fee due the month following the determination that the Performance Standards have been breached. If such determination is made after termination of the Agreement or at the end of the Contract Term, the TPA agrees to pay the City an amount equal to the aggregate of the respective amounts at risk in a lump sum payment within 30 days following written notification from the Director of the amount due. The TPA's performance under the Performance Standards will be evaluated by the City's third-party claims auditor. In the absence of an auditor, the Performance Standards will be jointly reviewed and evaluated by the TPA and the Director. Repayment of the amounts specified herein shall not be the City's sole remedy in the event that the TPA materially breaches one (1) or more of the Performance Standards and shall not prejudice the City's right to terminate this Agreement for cause.

PERFORMANCE STANDARD	AMOUNT AT RISK
a) Completing and documenting quality facts pertaining to three (3) or four (4) point contact for each claim, namely injured workers, the supervisor, medical provider and witnesses, if applicable, within twenty-four (24) hours of receipt of the claim on one hundred percent (100%) of a randomly selected representative sample. If contacts are not completed, daily attempts must be continued until completed.	1%
b) <u>Documenting quality claim file notes when contacting all lost time injured employees and medical providers at least once every three weeks in order to maintain rapport, monitor medical progress and overall status.</u>	1%
c) Taking quality recorded statements, documenting daily attempts, or reasons a recorded statement cannot be taken on all lost time Claims within 24 hours of receipt of claim in ninety percent (90%) of a randomly selected representative sample.	.33%
d) Documenting claim file notes within 48 hours of claim receipt regarding prior claims history of injured workers from city historical claims and other sources and evidencing awareness of contribution applicability to subject claim in ninety-five percent (95%) of a randomly selected representative sample.	.67%
e) Initiating initial and subsequent weekly benefits within the statutory time constraints on one-hundred percent (100%) of a randomly selected representative sample.	2%
f) Performing the claims management function in such a way as to readily demonstrate a functional diary system for adjusters and supervisors in ninety-five percent (95%) of a randomly selected representative sample. This includes documenting claim file notes with a clear strategy and action plan for disposition.	.67%
g) Maintaining a manageable workload of 135 active (meaning TIBs are being currently paid or were paid) Lost Time claims. If the Adjuster's caseload exceeds 135 active lost time claims, the TPA agrees to reduce same within thirty (30) days. Caseloads will be reported to the City once a month.	.33%
h) All open cases will be maintained on an open diary and all files must be reviewed every 30 days (with the exception of medical maintenance files which can be reviewed every 90 days) on ninety percent (90%) of a randomly selected representative sample. Unless clearly documented, no file is to go more than thirty (30) days without being reviewed. Each open indemnity case must have a plan of action with a timeline, which provides adequate information to demonstrate how the adjuster intends to move the claim to closure. An initial action plan will be documented within 15 days of receipt of claim. If for any reason a diary date is expected to exceed thirty (30) days, the adjuster must document with supervisor acknowledgment.	.66%
i) The supervisor must review all Lost Time Claims files after the Adjuster has completed their three-point contact, investigation, reserves and plan of action. The supervisor must document the initial review within 14 days of receipt of claim with subsequent supervisor reviews documented every 60 days until file closure on ninety-five percent (95%) of a randomly selected representative sample.	.67%

j) Provide quarterly reports to City's excess insurance provider on each specific claim that meets the reporting criteria of each provider. TPA shall provide status of claim(s) to City on one hundred percent (100%) of a randomly selected representative sample.	1%
k) Document and provide monthly reports of actual lost time duration to MD guidelines on all claims involving lost time on one hundred percent (100%) of a randomly selected representative sample.	.67%
l) Referring claims for telephonic or field case management per the referral triggers as outlined in the City's Medical Case Management protocol on one hundred percent (100%) of a randomly selected representative sample.	1%
TOTAL	10%

3.9 **Performance Based Oversight (PBO)**

3.9.1 As a measure of performance, TPA must score 90% or higher on any Performance Based Oversight (PBO) audits conducted by the State of Texas, through any of its departments or agencies, during the first 180 days of the awarded contract, and 95% or higher for the remainder of the contract term and any renewals. If TPA fails to achieve this performance measure, TPA shall pay City the sum of \$1,000 for each percentage point, rounded to the nearest whole number, which TPA falls below the guarantee, as liquidated damages. TPA shall apply this sum as a credit on the next invoice TPA submits to the City after receipt of notice from City. If no further invoices are due, TPA shall pay this sum within 30 days of City's demand for same. TPA and City agree that the actual damages that City may sustain by reason of the breach by TPA of this guarantee are uncertain and correct ascertainment would be difficult, and that the sum specified above would be a reasonable compensation for such breach.

3.10 **Types of Medical Case Management Assignments**

3.10.1 Definitions

- a. **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*).
- b. **Field Case Management Assignments**: 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.
- c. **Catastrophic Case Management Assignments**: These referrals are made when catastrophic events occur; please see 3.11 below for criteria.

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

3.11.1 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

3.11.2 Employee has lost four (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.

3.11.3 Multiple work injuries

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

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

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

3.12 **Communication Process**

3.12.1 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 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.

3.12.2 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 thirty (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 seven (7) days prior to the scheduled meeting. The spreadsheet shall contain such data as required by City.

3.13 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 VIII. 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. City shall notify Consultant in writing of any decision to withhold payment. Should City elect to terminate, it will do so in accordance with the provisions for Defaults with Opportunity for Cure contained in this Agreement.

IV. COMPENSATION TO CONSULTANT

4.1 In consideration of Consultant's performance in a satisfactory and efficient manner, as determined solely by Director, for the services and activities set forth in this Agreement, City agrees to pay Consultant as follows, and further evidence in Attachment D: Price Schedule incorporated herein:

4.1.1 Year One: City shall pay Consultant \$1,697,860 for Claims Administration as identified in Article III. Scope of Services performed during year one of original contract term, except for those services identified below in 4.1.8.

4.1.2 Year Two: City shall pay Consultant \$1,782,753 for Claims Administration as identified in Article III. Scope of Services performed during year two of original contract term, except for those services identified below in 4.1.8.

4.1.3 Year Three: City shall pay Consultant \$1,871,891_____ for Claims Administration as identified in Article III. Scope of Services performed during year three of original contract term, except for those services identified below in 4.1.8.

4.1.4 Optional Year Four: City shall pay Consultant \$1,965,485 for Claims Administration as identified in Article III. Scope of Services performed for the first renewal term (year four), if renewed, except for those services identified below in 4.1.8.

4.1.5 Optional Year Five: City shall pay Consultant \$2,063,759 for Claims Administration as identified in Article III. Scope of Services performed for the second renewal term (year five), if renewed, except for those services identified below in 4.1.8.

4.1.6 Monthly extensions: If City extends this contract in accordance with section 2.2, City shall pay Consultant's Claims Administration Fee in accordance with the rates stated in section 4.1.5 above. Services charged to the claims file during such extensions shall be paid at the rates shown for Year 5 in section 4.1.8 below.

- 4.1.7 City shall pay the fees owed to Consultant described in section 4.1.1 - 4.1.6 above in equal monthly installments in arrears. Consultant shall submit monthly invoices to City, in a form acceptable to City, no earlier than the 30th day of each month. City shall pay properly submitted invoices within 30 days of receipt and approval by Director, or Director's designee. Invoices shall be submitted to: City of San Antonio, Accounts Payable, P.O. Box 839976, San Antonio, Texas 78283-3976, with a copy to City of San Antonio, Finance Department, Risk Management Division, P.O. Box 839966, San Antonio, Texas 78283-3966.
- 4.1.8 Throughout the initial term of this Agreement, and any additional renewals and extensions, all Medical Cost Containment fees will be billed directly to the TPA and paid from the claim file at the rates indicated in Attachment D: Price Schedule for Medical Cost Containment Services. All bills for medications are processed as all other medical provider bills and paid from the claim file.
- 4.2 No additional fees or expenses of Consultant shall be charged by Consultant nor be payable by City. The parties hereby agree that all compensable expenses of Consultant have been provided for in the total payment to Consultant as specified in section 4.1 above. Total payments to Consultant cannot exceed that amount set forth in section 4.1 above, without prior approval and agreement of all parties, evidenced in writing and approved by City in accordance with Article XVII. Amendments. No additional fees or expenses may be charged to the claims file, other than that as provided in Section 4 above, without the express written approval from the City Attorney.
- 4.3 Final acceptance of work products and services require written approval by City. The approval official shall be Director. Payment will be made to Consultant following written approval of the final work products and services by Director. City shall not be obligated or liable under this Agreement to any party, other than Consultant, for the payment of any monies or the provision of any goods or services.

V. GENERAL ASSURANCES

- 5.1 Consultant covenants and agrees to perform all services described in this Agreement in a workmanlike and professional manner with a high degree of care to ensure accuracy and timeliness. Consultant shall perform its services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances. This includes the knowledge and experience ordinarily required of a member of that profession, and includes performing the skills necessary to adequately cope with problems that arise in performing its services, which skills are not possessed by ordinary laymen.
- 5.2 Consultant agrees to employ, at its own expense, all personnel required to perform the services described in this Agreement. Personnel employed by Consultant shall neither be employees of nor have any contractual relationship with City. All Consultant personnel engaged in providing services under this Agreement shall be fully qualified and shall be authorized or licensed to perform such work as required.

VI. OWNERSHIP OF DOCUMENTS

- 6.1 Consultant covenants and agrees to perform all services described in this Agreement in a

workmanlike and professional manner with a high degree of care to ensure accuracy and timeliness. Consultant shall perform its services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances. This includes the knowledge and experience ordinarily required of a member of that profession, and includes performing the skills necessary to adequately cope with problems that arise in performing its services, which skills are not possessed by ordinary laymen.

- 6.2 Consultant agrees to employ, at its own expense, all personnel required to perform the services described in this Agreement. Personnel employed by Consultant shall neither be employees of nor have any contractual relationship with City. All Consultant personnel engaged in providing services under this Agreement shall be fully qualified and shall be authorized or licensed to perform such work as required.
- 6.3 Any and all writings, documents or information in whatsoever form and character produced by Consultant pursuant to the provisions of this Agreement is the exclusive property of City; and no such writing, document or information shall be the subject of any copyright or proprietary claim by Consultant.
- 6.4 Consultant understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, City has the right to use all such writings, documents and information as City desires, without restriction.

VII. RECORDS RETENTION

- 7.1 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.
- 7.2 Consultant shall retain any and all documents produced as a result of services provided hereunder for a period of four years (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, Consultant shall retain the records until the resolution of such litigation or other such questions. Consultant acknowledges and agrees that City shall have access to any and all such documents at any and all times, as deemed necessary by City, during said retention period. City may, at its election, require Consultant to return the documents to City at Consultant's expense prior to or at the conclusion of the retention period. In such event, Consultant may retain a copy of the documents.
- 7.3 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.

VIII. TERMINATION

- 8.1 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.
- 8.2 Termination Without Cause. This Agreement may be terminated by City upon 30 calendar days' written notice, which notice shall be provided in accordance with Article IX. Notice.
- 8.3 Termination for Cause. Upon written notice, which notice shall be provided in accordance with Article VIII. Notice, City may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one or more of the following events, each of which shall constitute an Event for Cause under this Agreement:
- 8.3.1 The sale, transfer, pledge, conveyance or assignment of this Agreement without prior approval, as provided in Article XIV. Assignment and Subcontracting;
- 8.3.2 Any material breach of the terms of this Agreement, as determined solely by City.
- 8.4 Defaults With Opportunity for Cure. Should Consultant default in the performance of this Agreement in a manner stated in this section 8.4 below, same shall be considered an event of default. City shall deliver written notice of said default specifying such matter(s) in default. Consultant shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII. Notice, to cure such default. If Consultant fails to cure the default within such 30-day cure period, City shall have the right, without further notice, to terminate this Agreement in whole or in part as City deems appropriate, and to contract with another consultant to complete the work required in this Agreement. City shall also have the right to offset the cost of said new Agreement with a new consultant against Consultant's future or unpaid invoice(s), subject to the duty on the part of City to mitigate its losses to the extent required by law.
- 8.4.1 Failure to comply with the terms and conditions stated in Attachment A – SBEDA
- 8.4.2 Bankruptcy or selling substantially all of company's assets
- 8.4.3 Failing to perform or failing to comply with any covenant herein required
- 8.4.4 Performing unsatisfactorily
- 8.5 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.
- 8.6 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 VII. 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. Any City funds held in any escrow account(s) shall be returned to the

City within 30 calendar days after the effective termination date.

- 8.7 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.
- 8.8 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.
- 8.9 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.

IX. NOTICE

- 9.1 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 to the addresses set forth below the communication is:
- delivered personally (with receipt acknowledged);
 - three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid;
 - upon receipt if sending the same by certified mail, return receipt requested;
 - 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; or
 - by electronic mail ("email") to the email address listed below. Electronic service is deemed given on the date sent, upon receipt of confirmation of such electronic transmission (including PDF); service after 5:00 p.m. local time of recipient shall be deemed served on the following business day.

Either party may designate a different mailing or email address at any time upon written notice to the other party.

If intended for City, to:

If intended for Consultant, to:

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

Email: _____

Email: _____

V. INTELLECTUAL PROPERTY

10.1 Intellectual Property. Consultant agrees to abide by the following regarding intellectual property rights:

10.1.1 Consultant shall pay all royalties and licensing fees. 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, 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.

10.1.2 Upon receipt of notification that a third-party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Consultant will immediately either:

- a. obtain, at Consultant's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,
- b. alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and
- c. 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.

10.1.3 Consultant further agrees to:

- a. assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement,
- b. assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and indemnify the City against any monetary damages and/or costs awarded in such suit;

Provided that:

- a. 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 good faith effort to avoid any position adverse to the interest of the City,
- b. 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,
- c. the liability claimed shall not have arisen out of the City's negligent act or omission, and the City promptly provide Consultant with written notice within fifteen (15) days following the formal assertion of any claim with respect to which the City asserts that Consultant assumes responsibility under this section.

10.2 Ownership and Licenses. 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 Consultant pursuant to the resulting contract shall be the subject of any copyright or proprietary claim by Consultant.

- 10.3 The term “local government record” as used in this document means 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.
- 10.4 Consultant acknowledges and agrees that all local government records, as described in this document, produced in the course of the work pursuant to this Agreement, will belong to and be the property of City. Consultant will be required to turn over to City, all such records as required by said contract. Consultant shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City’s written permission, unless required to do so by a Court of competent jurisdiction.
- 10.5 Consultant agrees to comply with all applicable federal, state, and local law, rules and regulations governing documents and ownership, access and retention.

VI. NON-DISCRIMINATION

- 11.1 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.

VII. INSURANCE

- 12.1 Prior to the commencement of any work under this Contract, Consultant shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City’s Risk Management Department, which shall be clearly labeled “SELF-INSURED WORKERS’ COMPENSATION THIRD PARTY CLAIMS ADMINISTRATOR” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent’s signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Contract until such certificate and endorsements have been received and approved by the Office of Risk Management. No officer or employee, other than the Director, shall have authority to waive this requirement.
- 12.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Contract and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by Director based upon changes in statutory

law, court decisions, or circumstances surrounding this Contract. In no instance will City allow modification whereby City may incur increased risk.

- 12.3 A consultant’s financial integrity is of interest to City; therefore, subject to Consultant’s right to maintain reasonable deductibles in such amounts as are approved by City, Consultant shall obtain and maintain in full force and effect for the duration of this agreement, and any extension hereof, at Consultant’s sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

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	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 basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. Commercial Crime Coverage	\$ 1,000,000 Per Claim on First Party Coverage
7. Cyber Liability	\$1,000,000 per claim; \$2,000,000 general aggregate, or its equivalent in Umbrella or Excess Liability Coverage.

- 12.4 Consultant agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Consultant herein, and provide a certificate of insurance and endorsement that names Consultant and City as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Consultant. Consultant shall provide City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by Director, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by Director, which shall become a part of the contract for all purposes.

- 12.5 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Consultant shall be required to comply with any such requests and shall submit requested

documents to City at the address provided below within 10 days. Consultant shall pay any costs incurred resulting from provision of said documents.

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

- 12.6 Consultant agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
 - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
 - Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.
- 12.7 Within five calendar days of a suspension, cancellation or non-renewal of coverage, Consultant shall provide a replacement certificate of insurance and applicable endorsements to City. City shall have the option to suspend Consultant's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this agreement.
- 12.8 In addition to any other remedies City may have upon Consultant's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order Consultant to stop work hereunder, and/or withhold any payment(s) which become due to Consultant hereunder until Consultant demonstrates compliance with the requirements hereof.
- 12.9 Nothing herein contained shall be construed as limiting in any way the extent to which Consultant may be held responsible for payments of damages to persons or property resulting from Consultant's or its subcontractors' performance of the work covered under this Agreement.
- 12.10 It is agreed that Consultant's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this agreement.
- 12.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- 12.12 Consultant and any subcontractors are responsible for all damage to their own equipment and/or property.

V. INDEMNIFICATION

13.1 **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.

13.2 The provisions of this indemnity are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Consultant shall advise City in writing within 24 hours of any claim or demand against City or Consultant known to Consultant related to or arising out of Consultant's activities under this Agreement and shall see to the investigation and defense of such claim or demand at Consultant's cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving Consultant of any of its obligations under this paragraph.

13.3 Defense Counsel - City shall have the right to select or to approve defense counsel to be retained by Consultant in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Consultant shall retain City approved defense counsel within 7 business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Consultant fails to retain Counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Consultant shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

13.4 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.

VI. ASSIGNMENT AND SUBCONTRACTING

- 14.1 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.
- 14.2 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: _____ . Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by City of San Antonio City Council ("City Council"), as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.
- 14.3 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of Consultant. City shall in no event be obligated to any third party, including any subcontractor of Consultant, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.
- 14.4 Except as otherwise stated herein, Consultant may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, Consultant shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Consultant, assignee, transferee or subcontractor.
- 14.5 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 VIII. 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.

XV. INDEPENDENT CONTRACTOR

- 15.1 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 "respondent 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.

XVI. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

- 16.1 Consultant shall comply with the requirements of the City of San Antonio Small Business Economic Development Advocacy Ordinance (Ordinance No, 2010-06-17-0531, as amended), as further described in Exhibit C hereto (the "SBEDA Requirements") for City funds being used in the performance and accomplishment of this Agreement.

XVII. CONFLICT OF INTEREST

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

XVIII. AMENDMENTS

- 18.1 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.

XIX. SEVERABILITY

- 19.1 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.

XX. LICENSES/CERTIFICATIONS

- 20.1 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.

XXI. CONFIDENTIALITY & NETWORK SECURITY

- 21.1 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by Consultant under this Agreement shall be disclosed or made available to any individual or organization by Consultant, other than as expressly permitted by this Agreement, without the express prior written approval of City. In the event Consultant receives any such request, Consultant shall forward such request to City immediately.
- 21.2 Consultant shall establish a method to secure the confidentiality of records and information that Consultant may have access to hereunder in accordance with the applicable federal, state, and local laws, rules and regulations. This provision shall not be construed as limiting City's right of access to records or other information under this Agreement.
- 21.3 If City's access to claims data requires a network connection (the "Network Connection") between City's wide area network and TPA's wide area network, TPA and City shall take reasonable and customary precautions to prevent the unauthorized access to or use of the Network Connection through their respective networks. The parties agree, however, that each party is responsible for the security of its own network. Neither party shall be liable to the other for unauthorized access to the Network Connection, so long as the accused party shall have taken reasonable and customary precautions to prevent such unauthorized access.
- 21.4 Whether or not marked as such, and without regard to the media in which such records are stored, "Confidential Information" shall mean:
- 21.4.1 any business or technical information pertaining to the parties herein or to third parties, which is furnished, disclosed or made available by one party to the other, including, without limitation, specifications, prototypes, software, marketing plans, financial data and personnel statistics; and
 - 21.4.2 medical records, reports and information, as well as any other non-medical records, reports or information pertaining to claimants under the Program.
- 21.5 "Confidential Information" shall not mean this contract document, or any other document required or permitted to be disclosed pursuant to the Texas Public Information Act.
- 21.6 Each party agrees to protect Confidential Information received hereunder with the same degree of care that such party exercises with its own confidential information (but in no event less than reasonable care) and to limit access and disclosure of Confidential Information only to their employees, agents and contractors who have a "need to know," and who agree to maintain confidentiality in accordance with this section. Notwithstanding the foregoing, City agrees to

permit TPA to compile and disseminate aggregate, de-identified information for benchmarking purposes or forward to a data collection facility data for Qualified Claims handled pursuant to this Agreement, provided that such facility agrees in writing to keep City's data confidential. Further, TPA shall be entitled, without violation of this section and without prior consent of City, to retain claims administration information and to forward claims administration information to government agencies to the extent required by law for the proper performance of the services set forth herein. The dissemination of information referred to in this paragraph is that dissemination of information as required for TPA to perform its obligations under this Agreement.

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

XXII. COMPLIANCE

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

XXIII. NONWAIVER OF PERFORMANCE

23.1 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.

XXIV. LAW APPLICABLE & LEGAL FEES

24.1 **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.**

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

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

XXV. LEGAL AUTHORITY

25.1 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.

XXVI. PARTIES BOUND

- 26.1 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.

XXVII. CAPTIONS

- 27.1 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.

XXVIII. INCORPORATION OF ATTACHMENTS

- 28.1 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" – SBEDA Program Compliance
 - Attachment "B" – Consultant's SBEDA Utilization Plan
 - Attachment "C" -- Medical Case Management Protocol
 - Attachment "D" – Price Schedule

XXIX. ENTIRE AGREEMENT

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

XXX. PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

- 30.1 Texas Government Code §2271 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.
- 30.2 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- 30.3 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.
- 30.4 This section applies only to a contract that:
- (1) is between a governmental entity and a company with ten (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.

30.5 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

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

XXXI. PROHIBITION ON CONTRACTS WITH COMPANIES ENGAGED IN BUSINESS WITH IRAN, SUDAN, OR FOREIGN TERRORIST ORGANIZATION

31.1 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 §2252.153 or §2270.0201. By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that: it is not identified on such a list; and that it will notify City should it be placed on such a list during the term of this contract. City hereby relies on Consultant's verification. If found to be false, or if Consultant is identified on such list during the term of this contract, City may terminate this contract for material breach.

XXXII. PROHIBITION ON CONTRACTS WITH COMPANIES THAT DISCRIMINATE AGAINST FIREARM AND AMMUNITION INDUSTRIES

32.1 Texas Government Code §2274 (enacted by SB 19, 87th Texas Legislature, Regular Session (2021)), provides that a governmental entity may not enter into a contract with a company for the purchase of 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.

32.2 This section applies only to a contract that:

- (1) is between a governmental entity and a company with at least ten (10) full-time employees; and
- (2) has a value of at least \$100,000 that is to be paid wholly or partly from public funds of the governmental entity.

32.3 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies 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 this contract against a firearm entity or firearm trade association.

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

**XXXIII. PROHIBITION ON CONTRACTS WITH COMPANIES
BOYCOTTING CERTAIN ENERGY COMPANIES**

- 33.1 Pursuant to Texas Government Code §2274 (enacted by SB 13, 87th Texas Legislature, Regular Session (2021)), 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 this contract.
- 33.2 This section only applies to a contract that:
- (1) is between a governmental entity and a company with ten (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.
- 33.3 By submitting an offer to or executing contract documents with the City of San Antonio, Company hereby verifies that it:
- (1) does not boycott energy companies; and
 - (2) will not boycott energy companies during the term of this contract.
- 33.4 City's hereby relies on Company's verification. If found to be false, City may terminate the contract for material breach.

XXXIV. COUNTERPARTS; FACSIMILE OR EMAIL SIGNATURES

- 34.1 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of such counterparts shall constitute one agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile or email counterparts of the signature pages.

XXXV. PROHIBITED CONTRIBUTIONS

- 35.1 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.
- 35.2 Consultant acknowledges that the City has identified this Agreement as high profile.
- 35.3 Consultant warrants and certifies, and this Agreement is made in reliance thereon, that the individual signing this Agreement has not made any contributions in violation of City Code section 2-309, and will not do so for 30 calendar days following the award of this Agreement. Should the signor of this Agreement violate this provision, the City Council may, in its discretion, declare this

Agreement void.

EXECUTED and AGREED to as of the dates indicated below.

CITY OF SAN ANTONIO

(Signature)

Printed Name: _____

Title: _____

Date: _____

(Signature)

Printed Name: _____

Title: _____

Date: _____

Approved as to Form:

Assistant City Attorney

DRAFT

DRAFT

Attachment "B" – Consultant's SBEDA Utilization Plan

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Attachment "C" -- Medical Case Management Protocol

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Attachment "D" – Price Schedule

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