

**COUNTY OF ORANGE
PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT FOR PROFESSIONAL SERVICES ("Agreement") is made and entered into this _____ day of _____, 20____, by and between the County of Orange ("COUNTY"), a public agency, and _____ ("Physician").

RECITALS

WHEREAS, COUNTY requires the services of Physician to provide independent medical evaluations with respect to workers' compensation claims; and

WHEREAS, based on experience and reputation, Physician is qualified to provide the necessary services for the Workers' Compensation Alternative Dispute Resolution Program ("ADR Program") and desires to provide such services; and

WHEREAS, COUNTY desires to retain the services of Physician for the ADR Program.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, COUNTY agrees to engage, and Physician agrees to provide, professional services as follows:

AGREEMENT

1. PROFESSIONAL SERVICES

1.1 Scope of Services

In compliance with all terms and conditions of this Agreement, Physician shall provide those services specified in the "Statement of Work" ("SOW"), attached hereto as Exhibit 1. Physician warrants that all services shall be performed in a competent, professional, and satisfactory manner in accordance with all standards prevalent in the industry. In the event of any inconsistency between the terms contained in the SOW and the terms set forth in the main body of this Agreement, the terms set forth in the main body of this Agreement shall govern.

1.2 Compliance with Law

All services rendered hereunder shall be provided in accordance with all applicable legal requirements, including all laws, ordinances, resolutions, statutes, rules and regulations of COUNTY and of the federal, state and other local government.

1.3 Licenses and Permits

Physician shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for its operations and the performance of the services required by this Agreement.

2. TIME FOR COMPLETION

The time for completion of the services to be performed by Physician is an essential condition of this Agreement. Physician shall perform regularly and diligently the work of this Agreement according to the schedules set forth in the SOW. Physician shall not be accountable for delays in the progress of its work caused by any condition beyond its control and without the fault or negligence of the Physician, and shall inform COUNTY within five business days of any such cause that would timely affect its performance. Delays shall not entitle Physician to any additional compensation regardless of the party responsible for the delay.

3. COMPENSATION OF FIRM

3.1 Compensation of Firm

For the services rendered pursuant to this Agreement, Physician shall be compensated and reimbursed, in accordance with the terms set forth in the Fees for Physician Services, attached hereto as Exhibit 2.

3.2 Method of Payment

Payment shall be made by COUNTY's Third Party Administrator ("TPA") pursuant to the terms and conditions set forth in the Fees for Physician Services.

3.3 Changes

In the event any change in the scope of work is requested by COUNTY, the parties hereto shall execute an addendum to this Agreement signed by both parties, setting forth with particularity all terms of such addendum, including, but not limited to, any additional fees. Such changes will not become effective until they are approved by the County of Orange, Board of Supervisors, but only if such approval is necessary. Reasons addenda may be entered into include, but are not limited to, the following:

A. To provide for revisions or modifications to documents or other work product as required by a subsequent change in law.

B. To provide for additional services not included in this Agreement or not customarily furnished in accordance with generally accepted practice in Physician's profession.

3.4 Appropriations

This Agreement is subject to and contingent upon funds being appropriated by the COUNTY Board of Supervisors for each fiscal year covered by the Agreement. If such appropriations are not made, this Agreement shall automatically terminate without penalty to COUNTY.

4. PERFORMANCE SCHEDULE

4.1 Time of Essence

Time is of the essence in the performance of this Agreement. All services rendered pursuant to this Agreement shall be performed within the time periods prescribed in the SOW. The extension of any time period specified in the SOW must be approved in writing by the Contract Officer, as defined in Section 5.1 below.

4.2 Term

Unless earlier terminated in accordance with Section 8.5 of this Agreement, this Agreement shall continue in full force and effect for the duration of the ADR Program.

5. COORDINATION OF WORK

5.1 Contract Officer

The Contract Officer shall be the COUNTY's Director of Risk Management, or designee, unless otherwise designated in writing by COUNTY. It shall be the Physician's responsibility to keep the Contract Officer fully informed of the progress of the performance of the services and Physician shall refer any decisions that must be made by COUNTY to the Contract Officer. Unless otherwise specified herein, any approval of COUNTY required hereunder shall mean the approval of the Contract Officer.

5.2 Prohibition against Subcontracting or Assignment

The experience, knowledge, capability, and reputation of Physician, its principals and employees, were a substantial inducement for COUNTY to enter into this Agreement. Therefore, Physician shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of COUNTY or its workers' compensation TPA. In addition, neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of COUNTY.

5.3 Independent Contractor Status

Neither COUNTY nor any of its employees shall have any control over the manner, mode, or means by which Physician, its agents or employees perform the services required herein, except as otherwise set forth herein. Physician shall perform all services required herein as an independent contractor and shall remain at all times as to COUNTY a wholly independent contractor with only such obligations as are consistent with that role. Under no circumstances shall Physician, or any of Physician's employees or agents, look to COUNTY as its employer, partner, agent, principal, trust, or joint venturer. Physician shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of COUNTY.

6. INSURANCE, INDEMNIFICATION AND BONDS

6.1 Insurance

Physician shall procure and maintain, at its cost, and submit concurrently with its execution of this Agreement, the following basic insurance provisions:

- General Liability including operations, products and completed operations: \$1,000,000 combined single limit for bodily injury, personal injury and property damage/\$2,000,000 aggregate;
- Professional Liability: \$1,000,000 each occurrence/\$2,000,000 aggregated;
- Workers' Compensation (required by the State of California and necessary only if Physician has employees): \$1,000,000 each accident/\$1,000,000 each employee for disease.

Such insurance shall be kept in effect during the term of this Agreement and shall not be cancelable without 30 calendar days written notice to COUNTY of any proposed cancellation. The procuring of such insurance and the delivery of policies or certificates evidencing the same shall not be construed as a limitation of Physician's obligation to indemnify COUNTY, its officers, officials, employees and volunteers. Coverage shall be provided by admitted insurers with an A.M. Best's Key Rating of at least A-VII. If Physician provides claims made professional liability insurance, Physician shall also agree in writing either: 1) to purchase tail insurance in the amount required by this Agreement to cover claims made within three years of the completion of Physician's services under this Agreement; or 2) to maintain professional liability insurance coverage with the same carrier in the amount required by this Agreement for at least three years after completion of Physician's services under this Agreement. The Physician shall also be required to provide evidence to COUNTY of the purchase of the required tail insurance or continuation of the professional liability policy.

6.2 Indemnification

The Physician shall defend, indemnify, and hold harmless COUNTY, its officers, officials, employees, agents, and volunteers from and against any and all actions, suits, proceedings, claims, demands, damages, losses, costs, and expenses, or liability of any kind or nature, including but not limited to legal costs and attorneys' fees, injury to or death of person or persons, property damage, including property owned by COUNTY, and errors and omissions committed by Physician, its officers,

employees or agents, arising out of or related to Physicians performance under this Agreement.

7. RECORDS AND REPORTS

7.1 Reports

Physician shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall request or require.

7.2 Records

Physician shall keep such books and records as shall be necessary to properly perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. The Contract Officer shall have full and free access to such books and records at all reasonable times, including the right to inspect, copy, audit, and make records and transcripts from such records. COUNTY shall own and have the rights to control all reports, records, including medical records, and supporting documents generated pursuant to this Agreement. To the extent permitted by law, COUNTY shall be entitled to access all documents, reports, medical records, and supporting documents reasonably necessary to fulfill its duties hereunder.

8. ENFORCEMENT OF AGREEMENT

8.1 California Law and Venue

This Agreement shall be construed and interpreted in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Orange, State of California, or any other appropriate court in such County, and Physician covenants and agrees to submit to the personal jurisdiction of such court in the event of such action.

8.2 Waiver

No delay or omission in the exercise of any right or remedy of a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. No consent or approval of COUNTY shall be deemed to waive or render

unnecessary COUNTY's consent to or approval of any subsequent act of the Physician. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.3 Rights and Remedies are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

8.4 Legal Action

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct, or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain injunctive relief, a declaratory judgment, or any other remedy consistent with the purposes of this Agreement.

8.5 Termination Prior to Expiration of Term

COUNTY reserves the right to terminate this Agreement at any time, with or without cause, upon 30 calendar days written notice to Physician, except that where termination is due to the fault of the Physician and constitutes an immediate danger to health, safety, or general welfare, the period of notice shall be such shorter time as may be appropriate. Upon receipt of the notice of termination, Physician shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Physician shall be entitled to compensation for all services rendered prior to receipt of the notice of termination and for any services authorized by the Contract Officer thereafter.

Physician may terminate this Agreement, with or without cause, upon 30 calendar days written notice to COUNTY. Physician agrees that its withdrawal from this Agreement is conditioned upon completion of all work in progress.

8.6 Attorneys' Fees

If either party commences an action against the other party arising out of or in connection with this Agreement or its subject matter, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs of suit from the losing party.

9. COUNTY OFFICERS AND EMPLOYEES; NON-DISCRIMINATION

9.1 Non-Liability of COUNTY Officers and Employees

No officer or employee of COUNTY shall be personally liable to the Physician, or any successor-in-interest, in the event of any default or breach by COUNTY or for any amount which may become due to the Physician or its successor, or for breach of any obligation of the terms of this Agreement.

9.2 Covenant Against Discrimination

During the performance of this Agreement, Physician, its employees, and its agents, shall not engage in, facilitate, or allow unlawful discrimination or harassment in the performance of or in connection with this Agreement regarding any person or group of persons on account of race, color, creed, religion, sex, age, gender, gender identity, gender expression, sexual orientation, military and veteran status, physical or mental disability, medical condition, genetic information, marital status, national origin, ancestry, or any other protected category under California and federal law.

10. MISCELLANEOUS PROVISIONS

10.1 Conflict of Interest

Physicians who act as a COUNTY employee's Independent Medical Evaluator under this Agreement shall not act as the same employee's treating physician for the injury in dispute, unless otherwise mutually agreed by COUNTY and employee.

10.2 Confidentiality

Information obtained by Physician in the performance of this Agreement shall be treated as strictly confidential and shall not be used by Physician for any purpose other than the performance of this Agreement without the written consent of COUNTY.

10.3 Notice

Any notice, demand, request, consent, approval, or other communication either party desires or is required to give to the other party or any other person in connection with this Agreement, shall be in writing, except those through the course of the parties' routine exchange of information and cooperation during the terms of the work and services. Any writing shall be served personally or sent by United States certified or registered mail, postage pre-paid, return receipt requested, or by a recognized overnight delivery service. Either party may change its address by notifying the other party of the change of address in writing according to the requirements of this section. Notice shall be deemed communicated upon actual in-person delivery if delivery is by direct hand, or 48 hours from the time of mailing if mailed as provided in this Section.

County of Orange
Director, CEO Risk Management
600 W. Santa Ana Blvd., Suite 104
Santa Ana, CA 92701

[INSERT PHYSICIAN NAME]
[INSERT ADDRESS]

10.4 Integrated Agreement

This Agreement, including all attachments and exhibits, sets forth and constitutes the entire understanding of the parties with respect to the subject matter of this Agreement.

10.5 Amendment

This Agreement, including all attachments and exhibits, shall not be amended, nor any provisions waived, except in writing signed by the parties which expressly refers to this Agreement.

10.6 Severability

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences,

clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder.

10.7 Corporate Authority

The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement.

10.8 Counterparts

This Agreement may be executed in counterparts.

IN WITNESS WHEREOF, the parties have executed this Agreement in the County of Orange, California, as of the dates stated below.

COUNTY OF ORANGE

Date: _____

By: _____
Director, CEO Risk Management

[PHYSICIAN NAME]

Date: _____

By: _____

**APPROVED AS TO FORM
OFFICE OF THE COUNTY COUNSEL
ORANGE COUNTY, CALIFORNIA**

Date: _____

By: _____
Deputy County Counsel

Exhibit 1

STATEMENT OF WORK ("SOW")

- 1) AOE – COE EXAMS (exams for the determination of industrial causation; Arising Out of Employment – Course of Employment).
- 2) Assessment of employee's present ability to return to work, whether full duty or modified.
- 3) Advise on condition of maximum medical improvement status.
- 4) Determine nature and extent of permanent disability, including factors of apportionment and need for future medical care.
- 5) Resolve utilization review disputes.

PHYSICIAN shall perform the evaluation in full accordance with the standards defined by the Division of Workers' Compensation of the State of California and the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition. This requires a report of the injury, prior status, clinical chronology, current status, and past medical history. The physical examination will document all pertinent positive, negative, and non-physiological findings. For extremity injuries, measurements must be documented bilaterally. Additionally, PHYSICIAN agrees to: (i) provide that medical exams will be set to occur within 30 calendar days of the date of appointment request, and (ii) prepare a written report of findings and provide a copy of such report to the parties within 30 calendar days of the date of exam or evaluation, unless an extension of time is agreed to by the parties. If testing is required to complete the report, the testing shall be completed within 14 calendar days of the date of the exam and the report shall be issued within 30 calendar days of the completion of testing.

Exhibit 2

FEES FOR PHYSICIAN SERVICES

A. Medical-Legal Fee Schedule

AOE-COE EVALUATIONS:

- Simple evaluations to determine industrial causation: reimbursement will be at ML 101/102 (\$250/hour) with a two hour minimum and a modifier of 1.35. ($\$250 \times 2 = 500 \times 1.35 = \675).

The conditions anticipated in the “simple evaluation” category include hearing loss, skin cancer, hernia, conjunctivitis, dermatitis and other straightforward diagnoses.

- Complex evaluations that involve record review, tests and expert opinion will be reimbursed at ML 101/102 (\$250/hour) with a three-hour minimum and a modifier of 1.35. ($\$250 \times 3 = 750 \times 1.35 = \$1,012.50$).

The conditions anticipated in the “complex evaluations” category include cumulative trauma claims, new vs. old injuries, cardiovascular and respiratory conditions including pneumonia, internal evaluations, blood borne pathogen exposures, orthopedic evaluations with prior claims or non-industrial conditions and spinal surgery.

TEMPORARY DISABILITY ISSUES:

- Issues about the claimant’s ability to perform modified duty which do not require an evaluation: reimbursement will be at ML 101/102 (\$250/hour) with a two-hour minimum and a modifier of 1.35. ($\$250 \times 2 = 500 \times 1.35 = \675).
- If an evaluation is needed to resolve the issue, reimbursement will be at ML 101/102 (\$250/hour) with a three-hour minimum and a modifier of 1.35. ($\$250 \times 3 = 750 \times 1.35 = \$1,012.50$)

PERMANENT & STATIONARY/MAXIMUM MEDICAL IMPROVEMENT:

- Evaluations will be reimbursed at ML 101/102 (\$250/hour) with a three-hour minimum and a modifier of 1.35. ($\$250 \times 3 = 750 \times 1.35 = \$1,012.50$)

- Should the parties agree the evaluation will reach the ML 104 level as outlined in California Code of Regulations § 9795, the reimbursement will be at the rate of \$350 per hour.

PSYCHIATRY:

- Psychiatric evaluations or re-evaluations will be reimbursed at \$350 per hour with a one-hour minimum.

DEPOSITION FEE:

- The reimbursement rate for depositions will be \$350 per hour with a one-hour minimum.

BILLING INCREMENTS:

Reimbursement will be paid to the physician for each quarter hour or portion thereof, rounded to the nearest quarter hour.

B. Billing

1. Billing shall be submitted upon completion of services, and no later than 30 calendar days after completion of services, and shall be accompanied by a copy of the medical-legal report.
2. The parties agree that COUNTY is not obligated to pay compensation to the Physician except for agreed upon medical services.
3. Physician billing shall conform to the requirements listed in Section 9795 of Title 8 of the California Code of Regulations ("Section 9795"). Charges for services rendered will be reviewed in accordance with Section 9795 to determine appropriate level of service.
4. Billings for physician services are to be submitted to COUNTY's workers' compensation Third Party Administrator ("TPA"). Upon submission of any such billing to the TPA, if the TPA is satisfied that Physician has completed the task in accordance with this Agreement, TPA shall issue payment within 30 calendar days of receipt of the bill by TPA. If COUNTY or TPA does not approve a bill, COUNTY or TPA shall notify Physician in writing of the reasons for non-approval.