

**MA-017-20010511  
FOR  
LEGAL DEFENSE OF WORKERS' COMPENSATION CLAIMS**

THIS Contract, MA-017-20010511 for Legal Defense of Workers' Compensation Claims, (hereinafter referred to as "Contract") is made and entered into as of the date fully executed by and between the County of Orange, a political subdivision of the State of California, (hereinafter referred to as "County") and *Law Office of Jodie P Filkins, APC*, (hereinafter referred to as "Contractor") with County and Contractor sometimes individually referred to as ("Party"), or collectively referred to as ("Parties").

**RECITALS**

WHEREAS, County solicited Legal Defense of Workers' Compensation Claims as set forth herein, and Contractor has represented that it is qualified to provide Legal Defense of Workers' Compensation Claims to the County as further set forth herein; and,

WHEREAS, County and Contractor are entering into this Contract for Legal Defense of Workers' Compensation Claims Contract; and,

WHEREAS, Contractor agrees to provide Legal Defense of Workers' Compensation Claims the County as further set forth in the Scope of Work, attached hereto as Attachment A and incorporated herein; and,

WHEREAS, County agrees to pay Contractor the fees as further set forth in Contractor's Pricing, attached hereto as Attachment D, Workers' Compensation Defense Panel Rate Schedule and incorporated herein; and,

NOW THEREFORE, the Parties mutually agree as follows:

**ARTICLES**

**GENERAL TERMS AND CONDITIONS:**

- A. Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.
- B. Entire Contract:** This Contract, including Attachments which are attached hereto and incorporated herein by this reference, contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee.
- C. Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made

- in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.
- D. Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.
- E. Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.
- F. Acceptance/Payment:** Unless otherwise agreed to in writing by County: 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.
- G. Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnities as identified in paragraph "Z" below, and as more fully described in paragraph "Z," harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "Z" below, it shall indemnify, defend and hold County and County Indemnities harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.
- I. Assignment or Sub-Contracting:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

- J. Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.
- K. Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
- L. Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by any Party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.
- M. Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.
- N. Performance:** Contractor shall warrant all work under this Contract, taking necessary steps and precautions to perform the work to County's satisfaction. Contractor shall be responsible for the professional quality, technical assurance, timely completion and coordination of all documentation and other goods/services furnished by the Contractor under this Contract. Contractor shall perform all work diligently, carefully, and in a good and workmanlike manner; shall furnish all necessary labor, supervision, machinery, equipment, materials, and supplies, shall at its sole expense obtain and maintain all permits and licenses required by public authorities, including those of County required in its governmental capacity, in connection with performance of the work. If permitted to subcontract, Contractor shall be fully responsible for all work performed by subcontractors.
- O. Insurance Provision:** Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

#### Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the *Best's Key Rating Guide/Property-Casualty/United States or ambest.com*). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<b>Coverage</b>	<b>Minimum Limits</b>
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 combined single limit per occurrence
Workers' Compensation	Statutory
Professional Liability Insurance	\$1,000,000 per claims-made \$1,000,000 aggregate
Network Security & Privacy Liability	\$1,000,000 per claims-made

#### Required Coverage Forms

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

#### Required Endorsements

The Network Security and Privacy Liability policy shall contain the following endorsements,

which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement naming the *County of Orange, its elected and appointed officials, officers, agents and employees* as Additional Insureds for its vicarious liability.
- 2) A primary and non-contributing endorsement evidencing that Attorneys' insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees or provide blanket coverage, which will state AS REQUIRED BY WRITTEN CONTRACT.

All insurance policies required by this Agreement shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Attorneys shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Agreement, upon which the County may suspend or terminate this Agreement.

If Attorneys' Professional Liability and Network Security & Privacy Liability are "Claims-Made" policies, Attorneys shall agree to maintain coverage for two (2) years following the completion of the Agreement.

Insurance certificates should be forwarded to the agency/department address listed in the Contract.

If Attorneys fail to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified firm.

County expressly retains the right to require Attorneys to increase or decrease insurance of any of the above insurance types throughout the term of this Agreement. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Attorneys in writing of changes in the insurance requirements. If Attorneys do not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Agreement may be in breach without further notice to Attorneys, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Attorneys' liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement, nor act in any way to reduce the policy coverage and limits available from the insurer.

- P. Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.
- Q. Change of Ownership/Name, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under terms of sale or other transfer to assume Contractor's duties and obligations contained in this Contract and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

- R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "Z" below, Contractor agrees that it shall defend, indemnify and hold County and County INDEMNITEES harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. **Freight:** Intentionally Omitted.
- V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract,

each party shall bear their own attorney's fees, costs and expenses.

- X. Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.
- Y. Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- Z. Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnities") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnities, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- AA. Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this Contract shall be forwarded to the County's project manager.

- BB. Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
- CC. Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

#### **ADDITIONAL TERMS AND CONDITIONS:**

1. **Scope of Contract:** This Contract, including attachment(s), specifies the contractual terms and conditions by which the Contractor will provide Legal Defense of Workers' Compensation Claims under a fixed fee Contract.
2. **Term:** This Contract shall be effective upon execution of all signatures, and shall continue for five (5) years, unless otherwise terminated as provided herein. This Contract is not renewable.
3. **Precedence:** The Contract documents consist of this Contract and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the attachments.
4. **Professional Conflict of Interest:** Without limitation as to, or alteration of, obligations otherwise imposed on Attorneys with respect to County under the Rules of Professional Conduct or under law, and in addition to such obligations, Attorneys agree to comply with the following portion of the Conflicts of Interest Policy adopted by the County's Board of Supervisors on September 24, 1985:

*"It is the policy of the Orange County Board of Supervisors, on behalf of County and all other governmental entities of which it is the governing board, to prohibit the employment by any law firm adverse to County while simultaneously being employed by County, unless the Board is advised of, and gives specific consent to, such adverse employment."*

*"Any law firm which has been retained by County which desires employment which is or may be adverse to County shall transmit a statement of such desire to the County Counsel prior to undertaking such employment. The statement shall include a description of the employment and the reasons, if any, why County should consent. The County Counsel will forward the request to the Board of Supervisors with recommendation for action."*



If the Board of Supervisors declines to consent to the employment, the law firm shall decline any such employment. The Board's authority to give consent of County is not delegated to any officer or employee of County.

The County recognizes that this policy may exceed the limitations set forth in the California Rules of Professional Conduct of the State Bar of California. Where applicable, law firms employed by the County shall comply with such rules in securing necessary consent from their other clients.

5. **General Conflicts of Interest:** The Attorneys shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Attorneys; the Attorneys' employees, agents, and relatives; sub-tier Attorneys and third parties associated with accomplishing services hereunder. The Attorneys' efforts shall include, but not be limited to establishing precautions to prevent their employees or agents from making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County. The County Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Attorneys shall not, during the period of this Agreement, employ any County employee for any purpose.
6. **Confidentiality and Communication with County:** Attorneys shall maintain the confidentiality of all information, which they may acquire arising out of or connected with activities under this Agreement in accordance with all applicable Federal, State and County laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. Attorneys shall inform all of their principals, employees and agents providing services hereunder of the confidentiality provisions of this Agreement.

Attorneys recognize that their relationship with County and its agents and employees, officers and/or representatives is subject to the attorney-client privilege and that any information acquired during the term of this Agreement from or through County is confidential and privileged. Attorneys warrant that they shall not disclose or use in any manner whatsoever any of the information from County's officers, employees, and agents in connection with said relationships or proceedings. Attorneys understand that CEO/Risk Management is the legally empowered legal representative of County and its officers and employees and Attorneys shall not communicate with, advise or represent County officers or employees without specific direction from CEO/Risk Management. This provision shall not apply to communications between Attorneys and Board of Supervisors members. These confidentiality obligations shall survive this Agreement's termination or expiration.

7. **Attorneys Personnel:** Attorneys warrant that all Attorneys' personnel engaged in the performance of work under this Agreement shall possess sufficient experience and/or education and the required licenses set forth herein in good standing to perform the services requested by the County. County expressly retains the right to have any of the Attorneys' personnel removed from performing services under this Agreement to the County. Attorneys shall effectuate the removal of the specified Attorneys personnel from providing any services to the County under this Agreement within one business day of notification by CEO/Risk Management. CEO/Risk Management shall submit the request in writing to the Attorneys. The County is not required to

provide any reason, rationale or additional factual information if it elects to request any specific Attorneys personnel be removed from performing services under this Agreement.

Attorneys' Supervising Attorney shall have full authority to act for Attorneys on all daily operational matters under this Agreement and shall serve as or designate lead counsel ("Lead Counsel") for all activities performed under the scope of services described below. Designation of Lead Counsel shall be subject to CEO/Risk Management's approval. Any change in Attorneys' Supervising Attorney shall be first authorized in writing by CEO/Risk Management.

8. **Improper Influence:** Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County of Orange enables him/her to influence any award of this contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of this Contract or shall have any relationship to the Contractor or officer or employee of the contractor.
9. **Improper Consideration:** Contactor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee, or agent of the County of Orange in an attempt to secure favorable treatment regarding this contract.

The County of Orange, by written notice, may immediately terminate any Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee, or agent of the County of Orange with respect to the proposal and award process once a Contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee, or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County of Orange Administrative Office. In the event of a termination under this provision, The County of Orange is entitled to pursue any available legal remedies.

10. **County's Project Manager:** The County Project Manager, as specified in Article "25" Notices, will act as liaison between the County and the Contractor during the term of this Contract. The County's Project Manager shall coordinate the activities of the County staff assigned to work with the Contractor.

The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager and Contractor personnel. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within 14 calendar days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager and Contractor personnel. Said approval shall not be unreasonably withheld.

11. **Contractor's Project Manager:** Contractor Project Manager, as specified in Article "25" Notices, will direct the Contractor's efforts in fulfilling Contractor's obligations under this Contract. This Project Manager shall be subject to approval by the County and shall not be changed without the written consent of the County's Project Manager, which consent shall not be unreasonably withheld.

The Contractor's Project Manager shall be assigned to this Contract for the duration of the Contract and shall diligently pursue all work and services to meet the project time lines. The County's Project Manager shall have the right to require the removal and replacement of the Contractor's Project Manager from providing services to the County under this Contract. The County's Project Manager shall notify the Contractor in writing of such action. The Contractor shall accomplish the removal within three (3) business days after written notice by the County's Project Manager. The County's Project Manager shall review and approve the appointment of the replacement for the Contractor's Project Manager. The County is not required to provide any additional information, reason or rationale in the event it requires the removal of Contractor's Project Manager from providing further services under the Contract.

12. **Conditions Affecting Work:** The Contractor shall be responsible for taking all steps reasonably necessary to ascertain the nature and location of the work to be performed under this Contract and to know the general conditions, which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve Contractor from responsibility for successfully performing the work without additional cost to the County. The County assumes no responsibility for any understanding or representations concerning the nature, location(s) or general conditions made by any of its officers or agents prior to the execution of this Contract, unless such understanding or representations by the County are expressly stated in the Contract.
13. **Contractor's Records:** The Contractor shall keep true and accurate accounts, records, books and data which shall correctly reflect the business transacted by the contractor in accordance with generally accepted accounting principles. These records shall be stored in Orange County for a period of three years after final payment is received from the County. Storage of records in another county will require written approval from the County of Orange DPA.
14. **Child Support Enforcement Requirements:** Contractor certifies it is in full compliance with all applicable federal and state reporting requirements regarding its employees and with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments and will continue to be in compliance throughout the term of the Contract with the County of Orange. Failure to comply shall constitute a material breach of the Contract and failure to cure such breach within 60 calendar days of notice from the County shall constitute grounds for termination of the Contract.
15. **Ownership of Documents:** The County has permanent ownership of all directly connected and derivative materials produced under this Contract by the Contractor. All documents, reports and other incidental or derivative work or materials furnished hereunder shall become and remains the sole property of the County and may be used by the County as it may require without additional cost to the County. None of the documents, reports and other incidental or derivative work or furnished materials shall be used by the Contractor without the express written consent of the County.
16. **Data – Title To:** All materials, documents, data or information obtained from the County data files or any County medium furnished to the Contractor in the performance of this Contract will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the Contractor after completion or termination of this Contract without the express written consent of the County. All materials, documents, data or information, including copies, must be returned to the County at the end of this Contract.
17. **Publication:** No copies of sketches, schedules, written documents, computer based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by Contractor and/or anyone acting under the

supervision of Contractor to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.

18. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as Project Manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
19. **News/Information Release:** The Contractor agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. Contractors must first obtain review and approval of said news media contact from the County through the County DPA. Any requests for interviews or information received by the media should be referred directly to the County. Contractors are not authorized to serve as a media spokesperson for County projects without first obtaining permission from the County.
20. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract, shall constitute a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
  - a. Afford the Contractor written notice of the breach and ten calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
  - b. Discontinue payment to the Contractor for and during the period in which the Contractor is in breach and offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
  - c. Terminate the Contract immediately without penalty.
21. **Contract Disputes:** The Parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor's Project Manager and the County's Project Manager by way of the following process, such matter shall be brought to the attention of the County DPA by way of the following process:
  - a. The Contractor shall submit to the County DPA a written demand for a final decision regarding the disposition of any dispute between the Parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.

- b. The Contractor's written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.

Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor's failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Purchasing Agent or his designee. If the County fails to render a decision within ninety (90) days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for Cause or Terminate for Convenience as stated in Section K herein.

22. **Orderly Termination:** Upon termination or other expiration of this Contract, each Party shall promptly return to the other Party all papers, materials, and other properties of the other held by each for purposes of execution of the Contract. In addition, each Party will assist the other Party in orderly termination of this Contract and the transfer of all assets, tangible and intangible, as may be necessary for the orderly, non-disruptive business continuation of each Party.
23. **Termination for County's Convenience:** Services performed under this Contract may be terminated in whole or in part at any time County or its Board of Supervisors deems termination of this Agreement to be in its best interests. CEO/Risk Management shall terminate services by delivering to Attorneys a written Termination Notice specifying the extent to which services are terminated and the effective termination date. After receiving a Termination Notice and unless otherwise directed by CEO/Risk Management, Attorneys shall:
- a. Take all necessary steps to stop services on the date and to the extent specified in the Termination Notice.
  - b. Complete services not terminated by the Termination Notice.
  - c. Complete and submit a written Closing Report within 30 days after the termination date, including a brief description of any outstanding legal issues or matters which are pending with Attorneys (including a discussion of applicable law) a list and description of all scheduled meetings, court appearances or matters which Attorneys were to attend and an assessment of the accomplishments of Attorneys' engagement.
  - d. Submit final billing for terminated services no later than sixty (60) calendar days from the effective termination date. If Attorneys fail to submit a final billing within the time allowed, CEO/Risk Management may determine, on the basis of information available to it, the amount, if any, due to Attorneys. After CEO/Risk Management makes a determination, it shall pay Attorneys that amount. The determination made by CEO/Risk Management shall be final.
  - e. Provide CEO/Risk Management with copies (electronic and hard copies) of all files and attorney work product for any matters in which Attorneys were retained by CEO/Risk Management. This includes any computerized index, computer programs and document retrieval systems created or used for the matters. When instructed by CEO/Risk

Management, Attorneys shall file with the court the appropriate substitution of counsel.

24. **Contractor's Expense:** The Contractor will be responsible for all costs related to photo copying, telephone communications, fax communications, and parking while on County sites during the performance of work and services under this Contract. The County will not provide free parking for any service in the County Civic Center.
25. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four calendar days after being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

Contractor: Law Office of Jodie P. Filkins, APC  
 Attn: Jodie Filkins, Project Manager  
 625 The City Drive S., Ste. 305  
 Orange, CA 92868  
 Phone: 714-748-4404  
 Email: jfilkins@filkinslaw.com

County: County of Orange  
 Office of Risk Management  
 Attn: Beverly Umholtz, Project Manager  
 601 N. Ross St, 5<sup>th</sup> Floor  
 Santa Ana, CA 92701  
 Phone: 714-285-5511  
 Email: beverly.umholtz@ocgov.com

cc: County of Orange  
 County Executive Office/County Procurement Office  
 Attn: Jenny Daniels, County DPA  
 1300 S. Grand Ave., Bldg. A, 2<sup>nd</sup> Floor  
 Santa Ana, CA 92705-4434  
 Phone: 714-567-5153  
 Email: jenny.daniels@ocgov.com

**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE**

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates shown opposite their respective signatures below.

Law Office of Jodie P. Filkins, APC

\*Pursuant to California Corporations Code Section 313, If the Contracting party is a corporation, (2) two signatures are required; one (1) signature by the Chairman of the Board, the President or any Vice President; and one (1) signature by the Secretary, any Assistant Secretary, the Chief Financial Officer of any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution demonstrating the legal authority of the signatory to bind the corporation.

<u>Jodie P. Filkins</u>	<u>CEO</u>
Print Name	Title
<u>Jodie P. Filkins</u>	<u>09/25/2019</u>
Signature	Date

_____	_____
Print Name	Title
_____	_____
Signature	Date

\*\*\*\*\*  
COUNTY OF ORANGE A political subdivision of the State of California

_____	<u>Deputy Purchasing Agent</u>
Print Name	Title
_____	_____
Signature	Date

**APPROVED AS TO FORM:**  
Office of the County Counsel  
County of Orange, California

<u>Carolyn S. Frost for</u>	<u>Deputy County Counsel</u>
Print Name	Title
<u>Carolyn S. Frost for Brittany McLean</u>	<u>11/07/19</u>
Signature	Date

**ATTACHMENT A  
SCOPE OF WORK**

**A. CONTRACTOR RESPONSIBILITIES**

1. Contractor shall defend all claims or actions, including pre-judgment and post judgment proceedings at the trial and appellate court level referred by the County arising from the alleged workers' compensation or employer's liability.
2. Contractor shall have a duty to immediately report any case referred by the County which Contractor, in its sole discretion, determines to have a conflict of interest. Contractor may decline to represent the County of Orange in any such case. The County also reserves the right to declare a conflict of interest where it deems warranted and to reassign the case to another defense counsel.
3. Contractor shall not undertake the representation of a client in the pursuit of a claim against the County.
4. Contractor shall designate a full Partner, who shall be available during regular business hours to meet with the County on cases or issues as deemed necessary by the TPA or County. Partner shall have current case handling experience, maintain a caseload and be currently trained on recent workers' compensation case law and statutory requirements to handle all issues that may arise on a claim.
5. Case management and litigation budget;
  - a. Upon initial referral of the case, the assigned attorney shall review the case file within (14) days of referral and email a case evaluation (described below) to TPA claims examiner, team lead and County's Workers' Compensation Program Manager in addition to the OSC West (TPA email automated system).
  - b. Contractor will also provide a litigation case budget. The case budget will include all items initially required to defend the County up and through case conclusion. As the case progresses and at regular intervals, the budget will be updated based on current facts of the claim. Contractor will not receive any financial information from the claims file including reserve information. The County and the TPA will rely wholly or in part on the Contractor's recommendation when considering case evaluation.
  - c. The Case Evaluation must include the following elements:
    - Statement of facts
    - Statement of issues, including any unusual or potentially precedent setting issues
    - Investigations needed and additional background
    - Injuries
    - Applicant's allegations or contentions
    - Affirmative defenses if any
    - Discovery requirements, witness and parties' identification and identification of any records that need to be produced
    - Legal issues and research
    - Expected and or potential liability
    - Case cost potential
    - Subrogation, if any



- Exposure
- Proposed strategies and litigation management
- Settlement valuation
- Name and contact information for attorney handling case

Contractor agrees to provide a written estimate of the litigation budget for anticipated representation costs to cover handling of case from referral to conclusion. In the semi-annual reports defense counsel is also to provide an updated litigation budget.

6. Contractor agrees that all work product including motions, writs, legal research and opinion letters may be copied and provided to County Counsel or any other attorney employed or retained by the County and or TPA.
7. Invoices for services rendered by other professionals, medical examinations, expert opinions, trial preparation must have the approval of CEO/Risk Management prior to being incurred.
8. Contractor agrees to utilize the services of the County contracted vendors such as court reporting agencies for all court reporting work on County cases, photocopy firms for document reproductions and investigative firms. To assist the vendor in the legal defense of workers' compensation claims, the County shall provide lists of contracted vendors. Only those contracted vendors shall be used.
9. Invoices for deposition transcripts, deposition fees, document reproduction services and investigations will be approved for payment only if the County contracted vendors are used.
10. Contractor agrees and understands that compensation is paid based on an hourly billing rate and County will not pay for items that are charged on a value basis. Invoices should have easily defined terms/categories and legal services billed in .10 increments. Any work that is not accompanied by a bill and sufficient supporting documentation will not be reimbursed until the work is adequately documented in the file. The County reserves the right to audit should a pattern of billing errors be discovered. The County reserves the right to not reimburse Contractor for work lacking supporting documentation.
11. Contractor will provide all correspondence relating to each claim as referenced in the Workers' Compensation Claims Management Litigation Protocols.
12. Contractor must obtain authorization on all settlements before submitting to the Court or Applicant's counsel. Settlements that are over \$75,000.00 must be approved by the County Board of Supervisors as referenced in the litigation protocols.
13. Contractor shall fully understand Medicare Set Asides (MSAs), structured settlements, and professional administration of future medical care management and annuities when resolving cases by compromise and releases. The TPA will not provide at an additional expense any Cost Projection Summaries without the approval of CEO/Risk Management.
14. Contractor agrees that only the County may initiate a closing project. If the County chooses to initiate a closing project, the TPA and County shall select criteria/files for settlement and the appropriate party to represent the County's interests. The TPA will evaluate based on the issues whether the claim under consideration should be sent to the

- TPA resolution desk or the prior attorney of record (only if the firm is on current County defense panel) to be resolved for continuity and to avoid additional costs to the County.
15. Contractor agrees to educate CEO/Risk Management and TPA staff in active claims resolution procedures. Additionally, Contractor agrees to conduct educational seminars for CEO/Risk Management and TPA staff as needed either in the TPA offices or the County Offices as requested.
  16. Contractor shall notify CEO/Risk Management of any potential case with exposure over \$100,000 as soon as it becomes evident that the case has merit or may result in potential costs of \$100,000.
  17. Contractor agrees that the County shall approve cases that go to trial. It is a requirement that the Contractor have a pre-trial conference call with the TPA claims examiner/team lead and County's Workers' Compensation Program Manager. This conference shall be done 30 days prior to the trial date so trial preparation can be completed.
  18. Contractor agrees that all liens are handled with a lien resolution firm and shall be referred to the TPA for assignment. In some cases, the TPA claims examiner will authorize the attorney to handle liens based on exposure, issues and costs, if needed.
  19. Contractor agrees to submit final case analysis and disposition to the County Program Manager/TPA upon case resolution within 5 days.
  20. Should either party choose to terminate the contract, Contractor shall continue to provide legal services as to any case referred to them prior to the notice of cancellation and shall be compensated for those services on the same terms and conditions set forth herein until the conclusion of such case. However, the County retains the option of withdrawing pending cases from further handling by Contractor and shall compensate the Contractor for legal services provided up to the date of termination of the contract. Contractor will promptly return cases that are withdrawn and/or transferred, including all case files and companion claims, work product and work in progress generated. Contractor understands that the files belong to the County and shall return the original files without redaction.
  21. Contractor shall not take any action that could foreseeably result in Court imposed sanctions without the authority of CEO/Risk Management.
  22. Performance Standards; In the performance of any legal services, Contractor shall adhere to the rules regulating admission to the practice of law in California, Title 4, Division 1 of the Rules of the State Bar of California.
  23. Penalties;
    - a) Penalties caused by Contractor shall be paid by Contractor
    - b) Penalties assessed will be reviewed by CEO/Risk Management
    - c) If County is found to be at fault or the delay is caused by a County representative, the Contractor will not be expected to pay.
    - d) If the penalty was clearly caused by the Contractor, the Contractor will be billed for it and expected to pay the penalty.

- e) Any disputes regarding penalties will be discussed and resolved with the CEO/Risk Management Director and/or County's Workers' Compensation Program Manager.
24. Monitoring of Service/Quality of Legal Services
- a) Contractor shall provide periodic written status reports as the case details dictate and orally brief County personnel as requested on case status and strategy.
- b) Contractor shall provide written notification and or status within (14) days of appearance at WCAB. If a stipulation is made at the WCAB that requires action from either the County or TPA, the Contractor will notify the Workers' Compensation Program Manager/ and the TPA Unit Manager within (2) days.
- c) County will monitor Contractor compliance with all contractual terms and conditions contained in the contract including, but not limited to, the Workers' Compensation Claims Management Litigation Protocols. Contractor's non-compliance is grounds for dismissal from the panel.
25. Digital media - The County may require the Contractor to submit all correspondence, reporting and media to be transmitted electronically to the County representative to ensure attachment to file, as well as hardcopy by mail.
26. Confidentiality - All correspondence, communication and other applicable documents provided to the County shall be conspicuously marked "Confidential-Attorney/Client Communication Privilege."
27. Contractor agrees that only partners or senior associates will try County cases unless special approval is received from the CEO Risk Management's representative. Any changes in case staffing must be approved by the CEO Risk Management's representative. Fees to bring newly assigned Attorney(s), hearing representative(s), paralegal(s), or law clerk(s) up to speed on a case will not be billed to, or paid by the County.
28. Monitoring of Service/Quality;
- a) Contractor must provide periodic written status reports no later than every 60 days from the date of the last report, or sooner as the case details dictate, and orally brief County officials, as required, on case strategy.
- b) County shall receive written notification within twenty-four (24) hours of appearance.
- c) County may monitor Contractor's compliance with all of the Contractual Terms and Conditions contained in this contract.

**B. REQUIRED EXPERIENCE LEVELS OF LAW FIRM STAFF**

- 1) The County requires the following experience levels for each category identified in the approved fee schedule:
- Partner: Must be a partner in the firm

- W/C Specialist: Must have 10 years of experience practicing law and a certification in workers' compensation designation.
- Associate: Law school graduate licensed to practice law in California and minimum of 5 years' experience.

**ATTACHMENT B  
 WORKERS' COMPENSATION CLAIMS  
 MANAGEMENT LITIGATION PROTOCOLS**

The County of Orange ("County") and its Third-Party Administrator ("TPA") are mutually committed to resolving workers' compensation claims proactively at the earliest possible time, thereby reducing litigation costs. Toward that end, we require that as a provider of legal defense services, all panel members participate in this endeavor by adhering to the County's approved Litigation Protocols as outlined herein.

**A. GENERAL REQUIREMENTS**

1. At all times protect the interests of the County.
2. Provide clear, concise, timely and necessary communication as specified herein.
3. Provide realistic strategies, plans of action, and meaningful recommendations for claim resolution in the most cost-effective manner possible.
4. Do not engage in any activities that are or may be construed to constitute a conflict of interest pursuant to the California Rules of Professional Conduct or the provisions of the Legal Services Agreement. Potential situations that are not clear but may rise to a conflict of interest matter must be brought to the attention of the TPA Program Manager and the Workers' Compensation Program Manager for the County immediately for discussion.
5. Any attorney providing defense work for the County is to have a minimum of five (5) years practicing California Workers' Compensation defense law and must be approved through the County's Request for Proposal (RFP) process to work on County files. However, County reserves the right to amend the list of approved personnel at a later date to add attorneys who meet these qualifications.
6. Only County approved defense attorneys shall work on County files. If there is need for a change of attorney because the original attorney has a conflict or for some other reason, the firm/attorney must request authorization from the Claims Examiner/Unit Manager to have a pre-approved backup attorney handle the file. Back-up attorneys must meet the same minimum qualification requirements to be able to handle the file (e.g., five (5) years practicing California Workers' Compensation defense law).
7. Provide written semi-annual litigation management reports to Risk Management and TPA which will be due 180 days from the initial referral dates and every 180 days thereafter until final conclusion.

**B. INITIAL FILE REFERRAL**

1. TPA will refer claims for defense by rotating from a list of County approved attorneys on the legal panel. Exceptions to this methodology include, but are not limited to, companion files that are already being handled by a law firm, or if a specialized defense is needed. County reserves the right to bypass a firm/attorney for poor performance, untimely reporting and/or falling behind on existing caseload.

2. Acknowledgement of receipt of a referred claim to the law firm shall be sent via email to the TPA within two (2) business days of receipt of assignment.
3. Opening letter/Case Evaluation report with case analysis and recommendations shall be sent to the TPA (with a copy to the County Workers' Compensation Program Manager) within fourteen (14) calendar days of receipt of assignment. The Case Evaluation report shall include, but is not limited to:
  - Statement of facts
  - Statement of issues, including any unusual or potentially precedent setting issues
  - Investigations needed and additional background
  - Injuries
  - Applicant's allegations or contentions
  - Affirmative defenses if any
  - Discovery requirements, witness and parties' identification and identification of any records that need to be produced
  - Legal issues and research
  - Expected and or potential liability
  - Case cost potential
  - Subrogation, if any
  - Exposure
  - Proposed strategies and litigation management
  - Settlement valuation
  - Action Plan
  - Name and contact information for attorney handling case

The Case Evaluation report shall also include a written estimate of the litigation budget for anticipated representation costs to cover handling of the case to conclusion. *In the semi-annual reports defense counsel shall provide an updated litigation budget.*

4. Defense counsel shall have a follow-up phone call with the Claims Examiner within thirty (30) days of the initial assignment to review and agree upon a plan of action.

#### C. ONGOING REPORTING REQUIREMENTS

1. The County considers that automatic monthly status reports in the absence of new information or activity are duplicative, redundant and unnecessarily increase litigation costs. As such, the assigned attorney shall use discretion as to submission of subsequent status reports to the TPA (with a copy to the County's Workers' Compensation Program Manager) and only when the activities of file events warrant. Letters directed to Applicant's attorney do not require a separate letter to the TPA/County reiterating the content of the attorney correspondence. County/TPA will not pay for duplicative or unnecessary information.
2. Depositions of the Applicant, if warranted, must be scheduled within five (5) business days of the opening letter.
3. Upon direction from the Claims Examiner to utilize an Agreed Medical Examiner (AME), a list of AME's from the County's panel must be forwarded to the Applicant's attorney within five (5) business days. If the claimant falls under the County's Alternative Dispute Resolution Program, the Claims Examiner will provide the name of the Independent Medical Examiner (IME).

4. Upon direction from the Claims Examiner to utilize a Panel Qualified Medical Evaluator (PQME), the panel must be requested within five (5) business days. In order to avoid delays for claims that require multi-specialty Med Legal evaluations, the assigned attorney should be setting all appointments for each specialty at the same time, rather than waiting for receipt of one Med Legal and then proceeding to schedule the other(s).
5. It is expected that the assigned attorney will schedule a conference call with the Claims Examiner, Unit Manager and County's Workers' Compensation Program Manager when collaboration is needed to develop or clarify the plan of action. It is also expected that the assigned attorney(s) will make themselves available for conference calls upon request by either the TPA or the County.
6. Legal Correspondence shall be provided to the County and TPA within the following timeframes:
  - Deposition Summaries: fourteen (14) calendar days from the date of the scheduled deposition.
  - Hearing Reports: fourteen (14) calendar days from the date of hearing (Mandatory Settlement Conference (MSC), Expedited, Status Conference, Trial, etc.)
  - Pre-trial/ WCAB hearing discussion shall take place with the Claims Examiner five (5) business days before the calendared date to make sure defense counsel has everything needed prior to the hearing.
  - If benefits are due as a result of a hearing, defense counsel must notify the examiner within two (2) business days to avoid penalty exposure.
7. Requests for further discovery (e.g., photocopy of records, client documents, investigation/surveillance, deposition, medical-legal evaluations, appeals) shall be directed to the TPA Claims Examiner by email with a copy to OSC West (TPA automated email system)
8. Defense attorney should obtain authority on any proposed stipulations and or agreements that impact claim handling with the Workers' Compensation Program Manager and TPA/ Claim Examiner and or TPA Unit manager.
9. Requests for settlement authorizations shall be emailed to the Claims Examiner with a copy to the Unit Manager and the TPA Program Manager as well as the County's Workers' Compensation Program Manager. Request for Settlement Authorization shall be noted in the subject line of the email.
10. Once authorization is received, the assigned attorney must conclude settlement negotiations within twenty (20) business days or notify Claims Examiner and County's Workers' Compensation Program Manager in writing why a settlement was not reached and an estimated date to reach a settlement with a plan of action as to how he/she will accomplish this.
11. If there is no response from the Claims Examiner to any written or verbal request for information and/or required authorization within a (15) fifteen- day period, the assigned attorney shall escalate to the Claims Examiner's manager.

12. Time-sensitive documents shall be emailed to the Claims Examiner with a copy to the Unit Manager and the County's Workers' Compensation Program Manager within two (2) business days of receipt, accompanied by the assigned attorney's recommendations for further action required (e.g. payment of awards, disability benefits, etc.) "Urgent – Immediate Action Required" shall be noted in the subject line of the email with a copy to OSC West.
13. Within ten 10 business days of receipt of maximal medical improvement (MMI)/permanent and stationary (P&S) report, the assigned attorney must request settlement authority with a full analysis of the claim or notify Claims Examiner and the County's Workers' Compensation Program Manager why the claim is not in posture for settlement.
14. After claim resolution, authorization from the TPA is required for any further attorney involvement.
15. Post-claim resolution or when approached by a lien claimant with a settlement demand, the assigned attorney shall seek direction from the Claims Examiner as to whether the lien(s) will be resolved by the attorney or by the TPA. If handled by the TPA, the Claims Examiner may request the assigned attorney, or an approved external vendor attend any lien hearings at the Workers' Compensation Appeals Board (WCAB).
16. A Litigation Management Report shall be completed by the assigned attorney on each open file that they maintain in their caseload using the Litigation Management template provided by the TPA and approved by the County. A separate spreadsheet shall be updated which includes all applicants that are separated from the County along with a plan of action to obtain a settlement, preferably a Compromise and Release. The Litigation Management report is due on files 180-days from the initial assignment date and due every 180 days thereafter. *All updates shall include a litigation budget update.* If a specific firm and/or their attorney does not report timely, the requirement can be changed to 90 days to ensure there is adequate reporting. This would be at the discretion of the TPA and the County's Workers' Compensation Program Manager.
17. Provide written semi-annual litigation management reports to Risk Management and TPA which will be due 180 days from the initial referral dates and every 180 days thereafter until final conclusion.

**D. SETTLEMENTS INCLUDING COMPROMISE AND RELEASE (C&R) OF CLAIMS**

1. The County's expectation is that all defense attorneys and adjusters will use creative solutions to encourage claimants and applicants' attorneys that a C&R is in their best interest. Panel attorneys must fully understand Medicare Set Asides (MSAs), structured settlements, and professional administration of medical management and annuities.
  - Medicare Releases shall be included in all C&R settlements, as applicable.
  - Structured settlement quotes from Chronovo must be presented to Applicant's counsel for all C&R settlements over \$100,000.

When defense counsel receives a settlement demand from Applicant's counsel, the attorney shall provide the Claims Examiner with his/her own analysis and settlement



value recommendations based on the merits of the claim. Defense counsel will supply written confirmation of settlement demand from Applicant's attorney. It is expected that all panel counsel will have the skillset to analyze case values. The County will not provide reserve information or verbal Medicare Set Asides to assist with this analysis.

**Note: The County will not provide case reserves to defense counsel at any time.**

2. The County will offer a C&R on workers' compensation claims in which the claimant is no longer employed by the County (separated or retired) or it's believed an employee will voluntarily resign. Commonly, this is a claimant who:
  - Has personnel issues such as attendance, performance and/or disciplinary; and
  - Is on leave without pay; and
  - Has other personal motivation that may be amenable to settlement such as need for funds, is moving out of the state or country, has non-industrial medical or personal issues creating barriers to settle their work comp claims, or are unable to complete required treatment due to other priorities.

The Claims Examiner will advise the defense attorney if the Applicant falls into this category. The defense attorney should promptly schedule a conference call with the Claims Examiner, Unit Manager and County's Workers' Compensation Program Manager to collaborate on a plan of action.

3. All C&R settlements exceeding \$75,000 per claim must be approved by the County Board of Supervisors (BOS) during closed session at a regularly scheduled Board meeting.
  - Due to the "Brown Act" and other notification requirements, these settlements must be submitted for placement on the closed session agenda four (4) weeks prior to the meeting.
  - Settlements will not be presented to the BOS for authority unless there is agreement between the parties on all issues.
4. Settlement Authority: Request for settlement authority shall be made no less than thirty (30) days prior to the date of a hearing and/or deposition. The County will not tolerate requests for settlement authorization made on the eve of trial and/or settlement conference. Settlement demands shall be communicated to the Claims Examiner within two (2) business days of receipt and shall be accompanied by the assigned attorney's recommendations for settlement.
5. Settlement Documents: Drafts of settlement documents (e.g., Stipulations with Request for Award, Compromise and Release, etc.) shall be sent to the Claims Examiner for review/approval prior to submission to interested parties for execution.

**E. MISCELLANEOUS PROTOCOLS**

1. All legal correspondence is to be emailed to the Claims Examiner and OSWest@yorkrsg.com (TPA automated email system). However, only correspondence that includes, initial analysis, deposition summaries, medical report

findings, hearings, notices of appointments of QME, AME and depositions, settlement demand and or requests should be emailed to the Claims Examiner, County's Workers' Compensation Program Manager and OSC West.

2. The assigned attorney shall provide to the Claims Examiner the appointment letter with direction of paying mileage by referencing the mileage due to the Applicant in the appointment letter.
3. All legal files are the property of the County and are not to be destroyed. The law firm must contact the TPA Program Manager to arrange delivery of legal files to the TPA if the law firm no longer desires to store the file.
4. Should the actions and/or inactions of assigned defense counsel create the need for the County to issue additional payments to injured workers and/or other parties on a particular claim file, said defense counsel shall issue a reimbursement for the full amount of the overpayment in the form of a check payable to the County of Orange and referencing the specific claim file and claimant name from which the overpayment was issued.
5. The performance of a law firm and its assigned attorneys will be evaluated every ninety (90) days. Firms that fully comply with these Litigation Protocols and achieve the best outcomes will remain on rotation and will be assigned additional files. Firms not in compliance with these Litigation Protocols and with poor outcomes, unprofessional conduct, unethical behavior and/or improper billing may be removed from rotation, not assigned additional files and are subject to being dismissed from the panel at the discretion of the County.
6. Any firm that does not resolve their cases expeditiously on a consistent basis such that claims remain unresolved for protracted timeframes may be removed from the panel after a claim review and a discussion with the County's Director of Risk Management and/or the County's Workers' Compensation Program Manager to determine why delays are occurring. The County and the TPA believe that timely resolution of claims by all panel firms and the TPA's resolution specialist is in the best interest of the County. All files handled by panel firms and/or the TPA shall be properly evaluated for case resolution that provides the most favorable outcome to the County.

**ATTACHMENT C**  
**BUSINESS ASSOCIATE CONTRACT**

**A. GENERAL PROVISIONS AND RECITALS**

1. The Parties agree that the terms used, but not otherwise defined below in Paragraph B, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they may exist now or be hereafter amended.
2. The Parties agree that a business associate relationship under HIPAA, the HITECH Act, and the HIPAA regulations between the Contractor and County arises to the extent that Contractor performs, or delegates to subcontractors to perform, functions or activities on behalf of County pursuant to, and as set forth in, the Contract MA-017-20010511 that are described in the definition of "Business Associate" in 45 CFR § 160.103.
3. The County wishes to disclose to Contractor certain information pursuant to the terms of the Contract MA-017-20010511, some of which may constitute Protected Health Information ("PHI"), as defined below in Subparagraph B.10, to be used or disclosed in the course of providing services and activities pursuant to, and as set forth, in the Contract MA-017-20010511.
4. The Parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-017-20010511 in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they may exist now or be hereafter amended.
5. The Parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that are not otherwise pre-empted by other Federal law(s) and impose more stringent requirements with respect to privacy of PHI.
6. The Parties understand that the HIPAA Privacy and Security rules, as defined below in Subparagraphs B.9 and B.14, apply to the Contractor in the same manner as they apply to a covered entity (County). Contractor agrees therefore to be in compliance at all times with the terms of this Business Associate Contract and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they may exist now or be hereafter amended, with respect to PHI and electronic PHI created, received, maintained, transmitted, used, or disclosed pursuant to the Contract MA-017-20010511.

**B. DEFINITIONS**

1. "**Administrative Safeguards**" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the conduct of Contractor's workforce in relation to the protection of that information.
2. "**Breach**" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.
  - a. Breach excludes:
    - i. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of Contractor or County, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
    - ii. Any inadvertent disclosure by a person who is authorized to access PHI at Contractor

- to another person authorized to access PHI at the Contractor, or organized health care arrangement in which County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule.
- iii. A disclosure of PHI where Contractor or County has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
  - b. Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless Contractor demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:
    - i. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
    - ii. The unauthorized person who used the PHI or to whom the disclosure was made;
    - iii. Whether the PHI was actually acquired or viewed; and
    - iv. The extent to which the risk to the PHI has been mitigated.
3. "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.
  4. "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.
  5. "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.
  6. "Health Care Operations" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.501.
  7. "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
  8. "Physical Safeguards" are physical measures, policies, and procedures to protect CONTRACTOR's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
  9. "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
  10. "Protected Health Information" or "PHI" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.
  11. "Required by Law" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR § 164.103.
  12. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
  13. "Security Incident" means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by Contractor.
  14. "The HIPAA Security Rule" shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.
  15. "Subcontractor" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.
  16. "Technical safeguards" means the technology and the policy and procedures for its use that

protect electronic PHI and control access to it.

17. "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services in the guidance issued on the HHS Web site.
18. "Use" shall have the meaning given to such term under the HIPAA regulations in 45 CFR § 160.103.

**C. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE:**

1. Contractor agrees not to use or further disclose PHI County discloses to Contractor other than as permitted or required by this Business Associate Contract or as required by law.
2. Contractor agrees to use appropriate safeguards, as provided for in this Business Associate Contract and the Contract MA-017-20010511, to prevent use or disclosure of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County other than as provided for by this Business Associate Contract.
3. Contractor agrees to comply with the HIPAA Security Rule at Subpart C of 45 CFR Part 164 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County.
4. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a Use or Disclosure of PHI by Contractor in violation of the requirements of this Business Associate Contract.
5. Contractor agrees to report to County immediately any Use or Disclosure of PHI not provided for by this Business Associate Contract of which Contractor becomes aware. Contractor must report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.
6. Contractor agrees to ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Contractor agree to the same restrictions and conditions that apply through this Business Associate Contract to Contractor with respect to such information.
7. Contractor agrees to provide access, within fifteen (15) calendar days of receipt of a written request by County, to PHI in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under 45 CFR § 164.524.
8. Contractor agrees to make any amendment(s) to PHI in a Designated Record Set that County directs or agrees to pursuant to 45 CFR § 164.526 at the request of County or an Individual, within thirty (30) calendar days of receipt of said request by County. Contractor agrees to notify County in writing no later than ten (10) calendar days after said amendment is completed.
9. Contractor agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Contractor on behalf of, County available to County and the Secretary in a time and manner as determined by County or as designated by the Secretary for purposes of the Secretary determining County's compliance with the HIPAA Privacy Rule.
10. Contractor agrees to document any Disclosures of PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County, and to make information related to such Disclosures available as would be required for County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.
11. Contractor agrees to provide County or an Individual, as directed by County, in a time and manner to be determined by County, that information collected in accordance with the Contract MA-017-20010511, in order to permit County to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR § 164.528.
12. Contractor agrees that to the extent Contractor carries out County's obligation under the HIPAA

Privacy and/or Security rules Contractor will comply with the requirements of 45 CFR Part 164 that apply to County in the performance of such obligation.

13. Contractor shall work with County upon notification by Contractor to County of a Breach to properly determine if any Breach exclusions exist as defined in Subparagraph B.2.a above.

**D. SECURITY RULE**

1. Contractor shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316 with respect to electronic PHI County discloses to Contractor or Contractor creates, receives, maintains, or transmits on behalf of County. Contractor shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.
2. Contractor shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of Contractor agree through a contract with Contractor to the same restrictions and requirements contained in this Paragraph D of this Business Associate Contract.
3. Contractor shall report to County immediately any Security Incident of which it becomes aware. Contractor shall report Breaches of Unsecured PHI in accordance with Paragraph E below and as required by 45 CFR § 164.410.

**E. BREACH DISCOVERY AND NOTIFICATION**

1. Following the discovery of a Breach of Unsecured PHI, Contractor shall notify County of such Breach, however both Parties agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR § 164.412.
  - a. A Breach shall be treated as discovered by Contractor as of the first day on which such Breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor.
  - b. Contractor shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have known, to any person who is an employee, officer, or other agent of Contractor, as determined by federal common law of agency.
2. Contractor shall provide the notification of the Breach immediately to the County at:

Agency/Department	Or Agency/Department
Address	Address
City, State	City, State
Phone Number	Phone Number
Email Address	Email Address

- a. Contractor's notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.
3. Contractor's notification shall include, to the extent possible:
  - a. The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Breach;
  - b. Any other information that County is required to include in the notification to Individual under 45 CFR §164.404 (c) at the time Contractor is required to notify County or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR § 164.410 (b) has elapsed, including:
    - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

- 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
  - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
  - 4) A brief description of what Contractor is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
  - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
4. County may require Contractor to provide notice to the Individual as required in 45 CFR § 164.404, if it is reasonable to do so under the circumstances, at the sole discretion of the County.
  5. In the event that Contractor is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, Contractor shall have the burden of demonstrating that Contractor made all notifications to County consistent with this Paragraph E and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.
  6. Contractor shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR § 164.402 to demonstrate that a Breach did not occur.
  7. Contractor shall provide to County all specific and pertinent information about the Breach, including the information listed in Section E.3.b.(1)-(5) above, if not yet provided, to permit County to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after Contractor's initial report of the Breach to County pursuant to Subparagraph E.2 above.
  8. Contractor shall continue to provide all additional pertinent information about the Breach to County as it may become available, in reporting increments of five (5) business days after the last report to County. Contractor shall also respond in good faith to any reasonable requests for further information, or follow-up information after report to County, when such request is made by County.
  9. Contractor shall bear all expense or other costs associated with the Breach and shall reimburse County for all expenses County incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs associated with addressing the Breach.

**F. PERMITTED USES AND DISCLOSURES BY CONTRACTOR**

1. Contractor may use or further disclose PHI County discloses to Contractor as necessary to perform functions, activities, or services for, or on behalf of, County as specified in the Contract MA-017-20010511 provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by COUNTY except for the specific Uses and Disclosures set forth below.
  - a. Contractor may use PHI County discloses to Contractor, if necessary, for the proper management and administration of Contractor.
  - b. Contractor may disclose PHI County discloses to Contractor for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, if:
    - i. The Disclosure is required by law; or
    - ii. Contractor obtains reasonable assurances from the person to whom the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person and the person immediately notifies Contractor of any instance of which it is aware in which the confidentiality of the information has been breached.
  - c. Contractor may use or further disclose PHI County discloses to Contractor to provide Data

Aggregation services relating to the Health Care Operations of Contractor.

2. Contractor may use PHI County discloses to Contractor, if necessary, to carry out legal responsibilities of Contractor.
3. Contractor may use and disclose PHI County discloses to Contractor consistent with the minimum necessary policies and procedures of County.
4. Contractor may use or disclose PHI County discloses to Contractor as required by law.

**G. OBLIGATIONS OF COUNTY**

1. County shall notify Contractor of any limitation(s) in County's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Contractor's Use or Disclosure of PHI.
2. County shall notify Contractor of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect Contractor's Use or Disclosure of PHI.
3. County shall notify Contractor of any restriction to the Use or Disclosure of PHI that County has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Contractor's Use or Disclosure of PHI.
4. County shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by County.

**H. BUSINESS ASSOCIATE TERMINATION**

1. Upon County's knowledge of a material breach or violation by Contractor of the requirements of this Business Associate Contract, County shall:
  - a. Provide an opportunity for Contractor to cure the material breach or end the violation within thirty (30) business days; or
  - b. Immediately terminate the Contract MA-017-20010511, if Contractor is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Contract MA-017-20010511 is feasible.
2. Upon termination of the Contract MA-017-20010511, Contractor shall either destroy or return to County all PHI Contractor received from County or Contractor created, maintained, or received on behalf of County in conformity with the HIPAA Privacy Rule.
  - a. This provision shall apply to all PHI that is in the possession of Subcontractors or agents of Contractor.
  - b. Contractor shall retain no copies of the PHI.
  - c. In the event that Contractor determines that returning or destroying the PHI is not feasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon determination by County that return or destruction of PHI is infeasible, Contractor shall extend the protections of this Business Associate Contract to such PHI and limit further Uses and Disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as Contractor maintains such PHI.
3. The obligations of this Business Associate Contract shall survive the termination of the Contract.



**ATTACHMENT D  
 WORKERS' COMPENSATION DEFENSE PANEL  
 RATE SCHEDULE & BILLING PROCEDURES**

- I. COMPENSATION:** This is a usage Contract between County and Contractor to provide Legal Defense of Workers' Compensation Claims, as needed and as set forth in Attachment A, "Scope of Work."

Contractor agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by Contractor of all its duties and obligations hereunder. There will be no up-front fees and Contractor shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. **County shall have no obligation to pay any sum in excess of the Fee specified herein below unless authorized by amendment in accordance with Articles "C" and "P" of the County Contract Terms and Conditions.**

- II. PRICING – WORKERS' COMPENSATION DEFENSE PANEL HOURLY RATES:** The hourly billing rates for legal services authorized by the County's Board of Supervisors as compensation for Workers' Compensation Defense litigation services provided to the County will be as follows:

- A. One hundred seventy-five dollars (\$175.00) per hour for a panel attorney who is a Partner and/or is certified as a Workers' Compensation Specialist.
- B. One hundred fifty-five dollars (\$155.00) per hour for Associates (i.e. a panel attorney who is not a Partner and/or is not certified as a Workers' Compensation Specialist).
- C. One hundred ten dollars (\$110.00) per hour for a Paralegal and/or Hearing Representative.

**III. BILLING INSTRUCTIONS**

**A. Billing Procedures**

Attorneys shall bill the County for legal services on a monthly basis as follows:

- On a per case basis
- In 1/10<sup>th</sup> hour increments
- Date work performed
- Include a detailed description of the work and the name and position of the person who performed the work for each entry. Staff members shall only be billed in one of the categories shown on the approved rate schedule included herein.
- Include a total summary of hours by attorney and/or staff person
- Include a final total of all hours worked by all staff
- Include a separate section for costs and advances
- Include receipts, invoices or cancelled checks for all costs advanced
- Include a total amount due

- B. Billable Items:** The County will reimburse the following items as permissible legal costs in addition to the hourly billing rate:
- Photocopy charges at up to ten cents (\$.10) per page [referral to an outside service for bulk photocopy is encouraged if total costs result in a lesser per page cost]; and
  - Mileage for hearings and or depositions at the current IRS rate; and
  - Attendance at claim file reviews and/or staffing with the Claims Administrator and/or the County.
- C. Non-Billable Events:** The County will not reimburse for mileage and parking fees advanced to the Applicant for medical evaluations. Please direct the Claims Examiner to advance mileage and parking for medical evaluations.
- D. Overhead and Other Non-Billable Costs:** The County considers the following items to be overhead/cost of doing business (included in defense counsel's hourly billing rate) and will not remit payment for the following charges:
- Computerized legal research services (e.g., Westlaw, LexisNexis, etc.);
  - Opening/closing files;
  - Preparation of bills and/or collection of invoices;
  - Word processing, clerical, or secretarial charges, including overtime whether expressed as a dollar disbursement or time charge;
  - Storage of open/closed files, rent, electricity, file folders, binders, or other office supplies or equipment;
  - Local and long-distance telephone charges, facsimile charges of any kind, postage, receipt or transmission of documents by any medium;
  - Technology costs, including hardware/software, licenses;
  - Photocopy costs in excess of ten cents (\$.10) per page;
  - Equipment, books and periodicals;
  - Any other items customarily associated with overhead expense;
  - Attorney travel, parking costs and tolls.
- E. Billing Detail:** The County requires that each billable event be documented on each claim file every thirty (30) days with the following detail, and include any applicable supporting documentation:

#### IV. INVOICING INSTRUCTIONS

All invoices shall be submitted to the County's contracted 3<sup>rd</sup> Party Administrator detailed below.

Each billing statement shall be identified by a unique invoice number and shall include the case name and the 3<sup>rd</sup> Party Administrator's Case Identification Number.

Invoices missing the required information or back up documentation shall be returned for revision.

The original billing statement shall be submitted to:

Sedgwick Claims Management Services Inc.  
 PO Box 619079  
 Roseville, CA 95661