



County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
<http://ceo.lacounty.gov>

WILLIAM T FUJIOKA
Chief Executive Officer

Board of Supervisors
GLORIA MOLINA
First District

MARK RIDLEY-THOMAS
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

June 19, 2012

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**RECOMMENDATION TO EXTEND CONTRACT FOR
MEDICAL MALPRACTICE, HOSPITAL LIABILITY CLAIMS ADMINISTRATION
AND LEGAL DEFENSE MANAGEMENT SERVICES
THROUGH DECEMBER 31, 2015
(ALL DISTRICTS – 3 VOTES)**

SUBJECT

Joint recommendation by the Chief Executive Office (CEO) and Office of County Counsel for the Board's authorization to amend the present contract with Sedgwick Claims Management Services (Sedgwick), effective as of July 1, 2012, to extend its term for two (2) additional years, through December 31, 2015, in consideration of cost reductions and savings totaling twenty percent (20%), and mutually agreeable revisions to the Statement of Work intended to improve operational effectiveness.

IT IS RECOMMENDED THAT THE BOARD:

1. Authorize the CEO to execute an amendment to extend Contract No. 75928 with Sedgwick, substantially similar to Attachment I, including the revised Statement of Work, for an additional two (2) years with reductions in compensation beginning July 1, 2012, and continuing through December 31, 2015. If the recommendation is approved by the Board, the total contract compensation for the entire period, July 1, 2012 through December 31, 2015, would be \$7,831,947, and the savings realized, compared to the current rate of compensation, would be \$1,957,986.
2. Direct the CEO, in conjunction with County Counsel, to develop, distribute, and complete a new solicitation for medical malpractice and hospital claims management services prior to the contract's December 31, 2015 expiration.

"To Enrich Lives Through Effective And Caring Service"

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PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The purpose of the recommended action is to request the Board's authorization to extend the current contract for two additional years, through December 31, 2015, based on (1) a reduction of twenty percent (20%) in the compensation per annum to the contractor, and (2) a mutually agreeable revision to the Statement of Work to improve efficiency, eliminate unnecessary or obsolete terms, and revise practices which have been superseded by County Counsel Litigation Protocols. By the end of this extended contract period, a formal solicitation for the services will be completed.

Under the current contract, Sedgwick receives \$2,797,124 per year through December 31, 2012, and has one additional option year at the same rate. Upon the Board's approval of the recommended contract extension, the County will realize a cost savings of twenty percent (20%), effective July 1, 2012 through December 31, 2015. Since these reductions are prospective, the savings for the July 1, 2012 to December 31, 2012 period apply only to the six-month remainder of this contract year.

Both the CEO and County Counsel have reviewed the contractor's past performance and remain very satisfied with their services. CEO and County Counsel have also reviewed the current Statement of Work and have concluded that it has provisions which can, and should, be revised to achieve greater efficiencies and reflect current practices under the Litigation Protocols of the County Counsel's office. One of the significant revisions addresses contractor staffing levels. CEO and County Counsel determined that the previously County-mandated contractor staffing levels were not an efficient way of structuring such a service-based contract. The revised Statement of Work eliminates mandated staffing.

The CEO and County Counsel have worked with the contractor to revise the Statement of Work and believe that, as revised, it will improve efficiency and better correspond to current practices (See Attachment II). Finally, in the negotiations with the contractor to achieve the twenty percent (20%) reduction, the minor litigation task of monitoring the post settlement "Free Medical Care" cases has been transferred to County Counsel.

Based on the significant savings achieved through these negotiations, the continuing high quality of services provided by the contractor, the efficiencies realized by the streamlining of the Statement of Work, and the fact that third-party administrator medical malpractice services are relatively scarce, the recommended actions are believed to be in the best interest of the County.

Implementation of Strategic Plan Goals

The recommended actions requested herein are consistent with the County's Strategic Plan Goal 1, Operational Effectiveness; and Goal 2, Fiscal Responsibility, and allows for continuous high-level service to the County.

FISCAL IMPACT/FINANCING

The overall fiscal reduction in exchange for two (2) additional years will be as follows and is based upon the current contract amount of **\$2,797,124** per annum:

Fiscal Reduction Percentage and Period	Amount
20% reduction for remaining 6 months, July 1 to December 31, 2012	\$279,712
19% reduction for January 1 to December 31, 2013	\$531,453
20% reduction for January 1 to December 31, 2014	\$559,425
21% reduction for January 1 to December 31, 2015	\$587,396
Total Savings	\$1,957,986

The total contract price if approved by the Board will be **\$7,831,947**. As part of the negotiations process and in exchange for the overall twenty percent (20%) reduction, the contractor requested that a cap on the number of open matters be agreed to. Under such a cap, the parties would agree that any matters assigned to the contractor exceeding the cap would require the consent of the contractor, with fair and equitable compensation for such. County negotiators determined that, at present, the contractor has approximately 225 open claims and lawsuits. The parties have agreed upon a cap of 300 open cases. Should the County wish to assign any cases to the contractor above the 300 open-case cap, it will be necessary to return to the Board for authorization. However, it is highly unlikely that the number of open cases would ever exceed 300.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On November 14, 2006, after a formal solicitation process, the Board approved contract No. 75928 with Sedgwick, for medical malpractice, hospital liability claims administration and legal defense management services, effective January 1, 2007. The term of the contract has been extended per Amendment No. 5, executed in November 2011, through the expiration date of December 31, 2012, with a one-year option until December 31, 2013.

The contract also provides for negotiations between the County and contractor, which commenced in 2012 for the purpose of reducing the amount of the contract and re-examining the Scope of Work. The County's negotiation team was composed of CEO and County Counsel representatives, and both sides negotiated in good faith and reached the recommendations being submitted for the Board's approval.

CONTRACTING PROCESS

After a formal solicitation, the Board approved the current contract in November 2006, effective January 1, 2007. The contract has been amended on several occasions and the latest amendment was executed in November 2011, which allows for the current extension through December 31, 2013. Should the recommended extension be authorized, the County will develop, distribute, and complete a new solicitation prior to December 2015.

IMPACT ON CURRENT SERVICES

The extension of the contract will ensure immediate cost reductions and continued high-level service to the County in the administration of its program related to medical malpractice, hospital liability, and legal defense. As part of the negotiations to achieve the twenty percent (20%) reduction in compensation for the contractor, the parties have agreed that County Counsel will assume responsibility for post-settlement monitoring of "Free Medical Care" cases.

CONCLUSION

Upon approval by the Board, please return two signed originals of the contract and one adopted copy of the letter to CEO Risk Management Branch, attention Laurie Milhiser, County Risk Manager.

Respectfully submitted,



WILLIAM T FUJIOKA
Chief Executive Officer



JOHN F. KRATTLI
County Counsel

WTF:JFK:ES
LM:RC:RM:tv

Attachments

c: Executive Officer, Board of Supervisors
Auditor-Controller
Chief Information Officer

**MEDICAL MALPRACTICE, HOSPITAL LIABILITY
CLAIMS ADMINISTRATION AND LEGAL DEFENSE
MANAGEMENT SERVICES CONTRACT**

CONTRACT NO. 75928

AMENDMENT NO. 6

WHEREAS, on November 14, 2006, the County of Los Angeles, (hereinafter "County"), entered into Contract No. 75928 (the "Contract") with Sedgwick Claims Management, Inc., (hereinafter "Contractor") for Medical Malpractice, Hospital Liability Claims Administration and Legal Defense Management Services, (hereafter collectively the "Parties"); and

WHEREAS, the Parties have reviewed the Contract, the Statement of Work, and the compensation to Contractor, and have agreed upon reductions to the services set forth in the Statement of Work and to the compensation to be paid Contractor;

WHEREAS, these reductions in scope of services and compensation shall be made in consideration for an extension of the term of Contract period for an additional two years, through and including December 31, 2015; and

WHEREAS, the Parties agreed that this Amendment and the revisions set forth herein and in the Attachments hereto are in their mutual interest and benefit;

NOW THEREFORE, in consideration of the mutual benefits derived therefrom, it is agreed between the Parties that the Contract be amended as follows:

- 1. This Amendment No. 6 shall commence and be effective on July 1, 2012.**
- 2. Paragraph 4.0 (TERM OF CONTRACT), shall be deleted in its entirety and replaced with the following:**

4.0 TERM OF CONTRACT

- 4.1 The term of the Contract shall commence on January 1, 2007, and shall expire on December 31, 2015, unless sooner terminated, in whole or in part, as provided in this Contract.
- 4.2 The Contractor shall notify the Chief Executive Office (CEO) when the Contract is within six (6) months from expiration of the term as

provided for hereinabove. Upon occurrence of this event, the Contractor shall send written notification to the CEO at the address herein provided in Exhibit D (County's Administration).

4.3 In the event of expiration of the term of this Contract or termination prior to the expiration of the term of this Contract, the Contractor shall fully cooperate with County to provide for the transition to whatever service replacement method the County determines to be in its best interest.

3. **Effective July 1, 2012, Exhibit B.2 (PRICING SCHEDULE), is replaced in its entirety by Exhibit B.3, attached hereto and incorporated herein by reference. Effective July 1, 2012, all references to Exhibit B.2 in the Contract shall be deemed references to Exhibit B.3.**
4. **Effective July 1, 2012, Exhibit A (STATEMENT OF WORK), is replaced in its entirety by Exhibit A.1, attached hereto and incorporated herein by reference. Effective July 1, 2012, all references to Exhibit A in the Contract shall be deemed references to Exhibit A.1.**
5. **Effective July 1, 2012, the Parties agreed that the compensation to Contractor for services provided to County, as further set forth in Exhibit A.1 and Exhibit B.3, shall be fixed for each year of the extended term, based on a maximum annual workload level of 300 open cases.**
 - 5.1 The Parties agree that County shall not assign cases in excess of this maximum open case cap without the express, written consent and agreement of the Parties, which consent and agreement shall be memorialized through an amendment to this Contract. In the absence of such consent and agreement, Contractor shall not be obligated to undertake additional cases in excess of this open case cap.
 - 5.2 The Parties agree to monitor continually the assignment of open cases. If, in the mutual judgment of the Parties, the assignment of open cases approaches the maximum open case cap, such that County may have to assign additional cases in excess of the maximum open case cap, the Parties will meet, in good faith, to discuss the reasonable and equitable financial consideration to be paid by County to Contractor for those cases that exceed the maximum open case cap. Any adjustment to the fixed, annual

payment paid by County to Contractor that results from the assignment of excess cases shall be memorialized through an amendment to this Contract.

5.3 In lieu of County assigning additional cases to Contractor in excess of the maximum open case cap, the County shall have the option, in its discretion, to assign new cases of any priority to County's in-house staff. County also shall have the option to re-assign existing cases of any priority from Contractor to County's in-house staff in order to maintain compliance with the maximum open case cap.

5.4 In the event of any conflict or inconsistency between this Amendment Paragraph 5 and Exhibit A.1 and Exhibit B.3 of this Agreement, this Paragraph 5 shall govern and prevail.

6. Except for the changes set forth hereinabove, the Contract shall not be changed in any respect by this Amendment No. 6. All changes set forth in this Amendment shall only be effective on July 1, 2012 and shall have no retroactive effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 6 to be executed on their behalf by their duly authorized officers.

COUNTY OF LOS ANGELES

SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.

By: _____

By: _____

Name: Laurie Milhiser

Name: _____

Title: Assistant Chief Executive Officer

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:
JOHN F. KRATTLI
Acting County Counsel

By: _____
Richard K. Mason
Assistant County Counsel

**EXHIBIT B.3
PRICING SCHEDULE
EFFECTIVE JULY 1, 2012
THROUGH AND INCLUDING DECEMBER 31, 2015**

1. The Parties agree that this revised PRICING SCHEDULE replaces the prior Pricing Schedules, effective July 1, 2012. The Parties have mutually agreed to the compensation set forth below to Contractor for the period July 1, 2012 through December 31, 2015, in consideration for the extension of the Contract through December 31, 2015 and the agreed-upon revisions to the Statement of Work. Contractor has agreed to an effective compensation reduction of 20% from its current compensation (\$2,797,124.00 per annum) in consideration of the contract extension and the revisions to the Statement of Work.

**2. FIXED RATE FOR THE PERIOD JULY 1, 2012
THROUGH DECEMBER 31, 2012:**

\$1,118,849.60 [Reduction of \$279,712.40]

**3. FIXED RATE FOR THE PERIOD JANUARY 1, 2013
THROUGH DECEMBER 31, 2013:**

\$2,265,670.44 [Reduction of \$531,453.56]

**4. FIXED RATE FOR THE PERIOD JANUARY 1, 2014
THROUGH DECEMBER 31, 2014:**

\$\$2,237,699.20 [Reduction of \$559,424.80]

**5. FIXED RATE FOR THE PERIOD JANUARY 1, 2015
THROUGH DECEMBER 31, 2015:**

\$2,209,727.96 [Reduction of \$587,396.04]

STATEMENT OF WORK**1.0 OVERVIEW**

The following overview summarizes the involvement of the Third Party Administrator (TPA) in the incident, claim and lawsuit management process. The overview is followed by a more detailed description of the key services to be provided by the Contractor. This overview is only a brief summary and does not include all County requirements. For Definitions of Terms see, Attachment A.

Contractor will use the County's Risk Management Information System (RMIS), and provide necessary equipment upgrades, system security and daily system data maintenance.

This Statement of Work is amended, and reflects the County adoption of the Liability Severity Index program (2007) and the County – Sedgwick contract modification (2012).

The County – Sedgwick contract modification was in response to a diminution of County medical malpractice and hospital liability originated incidents, claims and lawsuits, and by the County's request to reduce program costs. This revised Statement of Work anticipates:

- Claims pending count, *001 only, all files, not to exceed 300.

Incident or file counts in excess of those values may cause the Contractor to request a fee increase.

The following matters will be transferred from the Contractor to County Counsel:

- Administration of Free Medical Care (FMC) cases after settlement. The FMC files will be sent to County Counsel. Contractor agrees to assist County Counsel from time to time should issues arise with these files.

2.0 KEY TPA SERVICES

The required TPA services support important County risk management activities. Activities undertaken by County staff and services provided by the TPA are necessarily inter-related, and at times may appear or actually overlap in scope, but the functions of both parties share the common purpose of supporting the County's effort to identify and manage its liability exposure.

For this reason, the key TPA services listed below are organized under a number of general categories including:

- Incident, Claim, Lawsuit Administration
- Scope of Investigation
- Communication with County Counsel
- Litigation Management
- Settlement Process and TPA Authority
- Mandatory Reporting
- Information Management

- Education and Risk Management Programs
- Administrative and Financial Services

Specific TPA services may fall into more than one category (e.g., collection of incident report data is an integral part of both the Incident, Claim, Lawsuit Administration and Information Management functions).

3.0 INCIDENT, CLAIM, LAWSUIT ADMINISTRATION

Upon receipt of any oral or written incident report, claim, or a lawsuit, Contractor shall take all appropriate action to protect the County's interest. Contractor will provide administration services for all new incidents, claims, and lawsuits, and for any open claims and lawsuits transferred to Contractor. Contractor will provide these services in accordance with County Claims Administration Policies, as stated herein and as provided by the County's Contract Administrator (CCA) and County Counsel. In addition, Contractor will incorporate these administration services into Contractor's Incident, Claim and Lawsuit Procedure Manual.

The ultimate resolution of the underlying incident, claim, or lawsuit in most cases anticipates that the Department completes a Corrective Action Plan. Although the Corrective Action Plan is to be completed and performed by the Departments, the Contractor's services provided through incident, claim, and lawsuit administration should support the Department's effort, and provide assistance through Contractor's skill, experience, and dedication to the discovery and presentation of accurate facts and theories of liability.

Contractor's responsibility for these administration services may be divided broadly into three categories: 1) Administration of Incident/Event Notifications; 2) Administration of Claim Filings; and 3) Administration of Lawsuits.

3.1 Administration of Incident/Event Notification:

Individual County personnel, departments, or facilities may report the happening of an incident or event, which in the considered opinion of Contractor, is of sufficient importance to warrant an early investigation because of possible or potential future liability to the County.

The Department of Health Services (DHS) utilizes a department-wide system, "Patient Safety Net" (PSN), for online incident reporting by DHS staff. Within seventy-two (72) hours of Contractor's receipt of such a notification, whether oral or written, Contractor will screen and review each incident/event for purposes of determining if an *Allegation file* should be opened.

If, in the opinion of Contractor, the nature of the incident/event or the severity of injury is such that it is reasonable to assume a claim and/or lawsuit might be filed against the County, or the incident/event raises issues of risk management, or liability which Contractor believes of sufficient importance to the County, Contractor will open an Allegation File for purposes of administering, managing, and auditing all matters pertinent and relevant to that incident/event. Within twenty-four (24) hours of opening of the Allegation File, Contractor will

commence a prompt and thorough investigation within the parameters outlined below in Paragraph 4.0, “Scope of Investigations on Open Allegation Files”.

- 3.1.1 Contractor will prepare *Case Management Reports* (CMR) after opening of an Allegation File as more fully described in Subparagraph 8.1.1.
- 3.1.2 If Contractor determines that the event does not warrant the opening of an Allegation File, Contractor will maintain the incidents and a list of the incidents as set forth in Subparagraph 3.5.

3.2 Administration of Claim Filings:

The filing of a claim, with few exceptions, is a condition precedent to the filing of a lawsuit against the County. Unless otherwise stated, all references to a “claim” shall mean the legal document otherwise known as a governmental tort claim.

Contractor will, within twenty-four (24) hours of receipt of a claim, open an Allegation File, if one has not been previously opened, for purposes of administering, managing, and auditing all matters pertinent and relevant to the incident/event forming the basis of the claim. In addition, if an investigation has not been previously initiated, Contractor will conduct an investigation, within the parameters outlined below in Paragraph 4.0. “Scope of Investigations on Open Allegation Files”, or, if an investigation has previously been initiated, review the previously initiated investigation to determine if further investigation is warranted.

3.2.1 Response to Claims – In addition to Contractor’s investigation of the facts upon which the claim is based, Contractor shall, on County’s behalf, take the following action where appropriate:

3.2.1.1 For each claim not submitted in accordance with the legal statutory filing requirements of Government Code §§910 and 910.2, Contractor shall, on County’s behalf, notify the claimant or third-party, in accordance with the requirements of §910.8, of the specific insufficiency. Contractor shall deny, in accordance with the provisions of §§913 and 915.4 all claims in which claimant or third party has failed to remedy the noted insufficiencies.

3.2.1.2 Deny, in accordance with the provision of §911.3, as untimely, all claims that have not been filed within the time required by statute.

3.2.1.3 Deny, in accordance with the provision of §911.4, as untimely, all claims that have not been filed within the time required by statute. Contractor may, at its discretion, limit the investigation to that necessary to confirm the affirmative defense.

3.2.1.4 Deny, in accordance with the provisions of §§913 and 915.4, all claims on or before the date a denial is required or permitted by law, if in the exercise of reasonable prudent judgment and after a review of all pertinent information, there is no basis of liability against the County or its employees.

3.2.1.5 Reject in accordance with the provisions of §§911.8, 911.8, and 915.4, all Applications for Leave to Present Late Claims. Where, in the opinion of Contractor, an Application meets the requirement for acceptance under Government Code §§911.4 and 911.6, Contractor shall advise and obtain County Counsel's written approval to accept a late claim.

3.2.1.6 Forward Petitions for Relief from the requirements of Government Code §§911.4 and 911.6 to a member of the Legal Defense Panel, as directed by County. Contractor will assist defense counsel in opposing the petitions filed.

3.2.1.7 In order to reduce legal defense costs, where, in the exercise of reasonably prudent judgment, and after a review of all pertinent information, Contractor concludes that a sufficient basis of liability exists against the County or its employees, Contractor will negotiate a settlement of the claim, within the parameters outlined below in Paragraph 7.0, "A Settlement Process and TPA Authority".

3.2.2 Notifications Pursuant to Code of Civil Procedure Section 364:

Where a plaintiff is required to give 90-days notice of intention to commence legal action based on professional negligence of a health care provider, and such 90-days notice is the first notice to Contractor of the occurrence of the incident/event, Contractor will, within twenty-four (24) hours of receipt of such notice, open an Allegation File for purposes of administering, managing, and auditing all matters pertinent and relevant to the incident/event forming the basis of the 90-days notice. In addition, Contractor will conduct an immediate investigation, within the parameters outlined below in Paragraph 4.0 "Scope of Investigations on Open Allegation Files".

Contractor will review the contents of the 90-days notice to determine the extent to which the 90-days notice constitutes a claim, and if so, determining the appropriate action within the parameters outlined in this Subparagraph 3.2.

3.3 Administration of Lawsuits

Contractor will, within twenty-four (24) hours of receipt of a lawsuit, open an Allegation File, if one has not been previously opened, for purposes of administering, managing, and auditing all matters pertinent and relevant to the incident/event forming the basis of the lawsuit. In addition, if an investigation has not been previously initiated, Contractor will conduct an immediate investigation, within the parameters outlined below in Paragraph 4.0, "Scope of Investigations on Open Allegation Files", or if an investigation has previously been initiated, review the previously initiated investigation to determine if further investigation is warranted. Contractor will also be required to manage and monitor the litigation (See Paragraph 6.0, "Litigation Management").

3.4 Reserves

Contractor will establish, update, and maintain adequate Allegation File reserves (indemnity and expenses), and will set initial reserves with ten (10) working days after the date the Allegation File is set-up by Contractor. County believes that the reserves should be based upon an accurate assessment of the facts, as known and determined by Contractor.

3.4.1 Contractor will review and update reserves on open Allegation Files as warranted, based on allegation developments.

3.4.2 Contractor's Allegation File reserve policy will comply with the provisions of Attachment D – County of Los Angeles Case Reserve Policy, and the Liability Severity Index. County Counsel approves reserves on litigated files.

3.4.3 Contractor may, at any time, be required to provide to the CCA or County Counsel the basis and supporting data upon which the Contractor has determined the amount of the reserve.

3.5 Entering Claim, Lawsuit Administration Information Reports Into RMIS – County will implement a Countywide Risk Management Information System (RMIS). DHS will implement a department-wide system, "Patient Safety Net" (PSN), for online incident reporting by DHS staff.

3.5.1 Not all County staff will have access to RMIS. Therefore, Contractor must be able to receive incident reports also by phone, fax and mail, and to purge incident reports to comply with legal retention requirements.

3.5.2 Contractor will maintain a list of County's incident reports that Contractor receives not already entered into RMIS by County staff.

3.5.3 Contractor will be required to input all pertinent claim/lawsuit data into RMIS

3.5.4 Contractor will be required to insure that the information in RMIS on incidents/claims/lawsuits is consistently current and accurate.

3.6 Contractor will notify County when Allegation Files are closed. Such notices will be by a monthly report listing including the disposition of the incident, claim, and lawsuit, including date of dismissal (if any), amount of settlement (if applicable), and the current status of any companion Allegation Files.

3.7 Reimbursement

Contractor will take all necessary actions, including timely notification, to assist the County in recovering reimbursement for County liability through third-party subrogation, reinsurance, apportionment, and/or contributions on cases involving shared liability.

- 3.7.1** Contractor will monitor all incidents, claims, and lawsuits for potential subrogation recoveries; prepare correspondence to effect collection or, at the request of the County, refer subrogation claims information to County Counsel for subrogation recovery assignment. Contractor will provide necessary information and assistance to legal counsel assigned the subrogation claim.
- 3.8** **Incident, Claims, Lawsuit Procedures Manual** - Within three (3) months following contract award, Contractor shall submit and maintain an operations manual of procedures to the County for evaluation. The operations manual should include, but not be limited to, the following information:
- 3.8.1** Contractor's philosophy, policies and procedures to be followed in handling incidents, claims, and lawsuits;
- 3.8.2** Procedures for receiving and reporting incidents, claims, and lawsuits between Contractor and County;
- 3.8.3** Procedures and standards that Contractor will use to review and approve legal defense fees, and allocated expenses, including auditing of billings;
- 3.8.4** Procedures for documenting, monitoring, and auditing financial transactions;
- 3.8.5** Procedures regulating the completion and submission of required reports to the County;
- 3.8.6** Procedures for submitting recommendations requesting settlement authority from the CCA and County Counsel;
- 3.8.7** The Contractor's procedure manual should cover all areas of responsibility. The Contractor should also include for each responsibility and/or task, a description of the subject, and the procedure(s) to be followed, which should incorporate, at a minimum, the activities, communication, and reporting obligations related to the topic.
- 3.8.8** Contractor's Procedure Manual will be provided to the CCA, and County Counsel, and be utilized by Contractor's claims staff handling County claims.
- 3.8.9** Contractor will periodically review procedures and practices with the CCA or his/her designee to insure that the services provided are in compliance with the County's requirements and sound claims administration practices. Contractor will implement improvements as needed to increase productivity and enhance the quality and the performance of claims administration services.
- 3.9** Contractor will communicate timely and effectively with the County and, if applicable, Legal Defense Panel Member(s), concerning all actions planned or taken.

4.0 SCOPE OF INVESTIGATIONS ON OPEN ALLEGATION FILES

The purpose of Contractor's investigation on an open Allegation File will be to determine the facts, ascertain the medical and legal theories upon which liability might be imposed, collect and preserve evidence, discover the existence of possible co-defendants, identify risk management issues, and develop a defense strategy. Investigations are only one of many tools to be utilized by Contractor to continually search for an accurate understanding of all the circumstances surrounding an event, to enable the Contractor to assess and communicate to others the level of exposure to the County. Investigation will be tailored to the facts of the matter and the exposure to the County, subject to the discretion of the Contractor.

- 4.1 Contractor's investigation will be prompt, thorough, and consistent with the severity of the injury, value potential of the loss, and the available defenses. The CCA, County Counsel, and Department Liaison should be advised of the result of the investigation and the Contractor's recommendation for the action to be taken.
- 4.2 Contractor will request and review department/facility's internal investigation reports and other relevant documents including, but not limited to facility medical records, and policies and procedures. In the event Contractor is unsuccessful in securing facility medical records or other necessary documents within fifteen (15) days of initial request through the facility's usual process, Contractor will notify the Department's Liaison and send a copy of the notification to the CCA and County Counsel.
- 4.3 Where applicable, Contractor will request and obtain a review by Contractor's medical/legal consultant to analyze the medical procedures utilized, the medical services provided, and the medical outcome to identify and assess all possible legal theories of liability.
- 4.4 Contractor will conduct other investigation activities including, but not limited to, obtaining witness statements, conducting an on-scene inspection, securing equipment, taking films and photographs, identifying relevant department/facility policies and procedures, and, where applicable, securing police reports as deemed relevant to the matter based on facts and exposure.
- 4.5 **Hold Harmless Agreements** - Contractor's investigation will include the identification and evaluation of potential hold harmless, defense and indemnification agreements, including policies of insurance, executed by and between the County and third parties, or to the benefit of the County. Contractor will contact the appropriate Department and Department Facility staff and obtain and review relevant agreements, as well as other related information, including, but not limited to, medical records, payroll records, and employment records.
- 4.6 Contractor will assess the appropriateness and reasonableness of the claimed damages, including an evaluation of the physical injuries, medical treatment, both past and future, and claims for lost earnings.
- 4.7 Contractor will determine the existence of all Medi-Cal and other medical liens paid, or pending, on behalf of the injured party, and will determine the existence and amount of all medical bills. County will query Medicare re liens.

- 4.8 Contractor will investigate, where necessary and appropriate, questionable claims to assist in the adjustment and litigation of cases and in the proper referral of suspected fraudulent cases to law enforcement authorities.
- 4.9 **Preservation of Evidence and Reporting:** Contractor will develop, within its discretion, policies and procedures for memorializing and reporting all facts, evidence, findings, conclusions, and theories developed by Contractor as part of Contractor's investigations on any Allegation File.
- 4.10 Contractor's investigation should be completed within six (6) months of the opening of the Allegation File, and the County Department Liaison and the Department Facility Liaison where the incident/event occurred, as well as County Counsel, will be advised of Contractor's finding, recommendations, and the actions to be taken.

5.0 **COMMUNICATION WITH COUNTY COUNSEL** – Unless otherwise specified, in communications with County Counsel:

- 5.1 **Litigation Management Update** - Contractor will provide a "Litigation Management Update" (LMU) to County Counsel, in those instances where required by this Contract, and at the request of County Counsel.

The LMU is the preferred method of written communication with County Counsel in all instances where written communication with County Counsel is not otherwise specified. The LMU shall contain, but not be limited to, the following data fields: patient's name; claimant's name; the department and/or facility involved; the type of claim; the date of injury; the court case number; claim filing information; court appearance dates; the court and name of judge; indemnity, fees, costs, and recommendation for settlement, if any; and a narrative setting forth a brief and accurate summary of facts, a brief explanation of the Contractor's recommendations, requests for assistance or advice, etc.

- 5.2 The LMU may be in an e-mail format.
- 5.3 The LMU data grid may be by data drawn from RMIS, including a Profile.

6.0 **LITIGATION MANAGEMENT**

Designated Legal Defense Panel Members, under the general supervision of County Counsel, provide legal services for all County liability claims and lawsuits within the Medical Malpractice and Hospital Liability Claims Administration, and Legal Defense Management Services program. County Counsel is responsible for administering these agreements.

Contractor is to manage and monitor all litigation, and report on the performance of the County's defense attorneys in all open Allegation Files. Contractor shall have day to day responsibility for supervising Legal Defense Panel Member(s) in accordance with County Counsel guidelines. As directed by County Counsel, and within the County's contract requirements, Contractor's litigation management responsibilities include the following:

- 6.1** Contractor will work with County Counsel to assign lawsuits in a timely manner to a Legal Defense Panel Member in accordance with the Liability Severity Index and based on the Contractor's assessment of the facts of the individual case and the particular expertise and availability of defense counsel. These assignments will be distributed to the Defense Panel as equally as possible. Contractor will notify County Counsel of the recommended assignment within five (5) business days. County Counsel retains the right to assign or reassign the case to any Defense Panel Member or any other law firm of County's choice, at any time.
- 6.1.1** Upon County Counsel's request, Contractor will assist County Counsel in evaluating the qualifications and performance of attorneys and firms currently on the Panel.
- 6.2** Contractor will make every effort to identify the proper parties to the lawsuit, whether or not the parties have been named and/or served. In consultation with Defense Panel Member(s) and County Counsel, where necessary, Contractor will determine the extent to which County is required to provide a defense and to indemnify any named party pursuant to a hold harmless agreement. Contractor will be under a continuing obligation to review or initiate an investigation to determine the existence of any hold harmless agreements applicable to any party.
- 6.2.1** Where County obligation to indemnify or defend a party or parties is questionable or uncertain, Contractor will obtain County Counsel's advice to determine if:
- A. A Reservation of Rights letter is warranted; or
 - B. An acknowledgment to indemnify and defend the other party is warranted; or
 - C. A denial of indemnification and legal defense is warranted.
- 6.3** Contractor will determine the extent to which County is owed a defense and indemnification by a third party and/or other party defendant, and, if so, Contractor will make demand and tender the defense of the lawsuit to that third party and/or other party defendant.
- 6.4** Contractor, in consultation with Defense Panel Member(s), will determine if a cross-complaint should be filed against possible third party defendants, whether or not yet named in the lawsuit, and make a recommendation to County Counsel.
- 6.4.1** No cross-complaint shall be filed without prior written authorization from County Counsel.
- 6.5** Contractor will, upon assignment of a lawsuit to Defense Panel Member(s), provide all Allegation File information, documents, and other assistance to Defense Panel Member necessary for the defense of litigated Allegation Files. This includes where applicable, Contractor's medical/legal consultant's reports and evaluations.

- 6.6** After service of a Summons and Complaint and assignment of an Allegation File to Defense Panel Member, Contractor will insure that copies of any and all future reports/evaluations prepared by Contractor's medical/legal consultants are forwarded to the CCA, County Counsel and Department Liaisons.
- 6.7** Contractor shall forward all medical reports and correspondence from claimant or claimant's attorney to County's defense.
- 6.8** Contractor shall respond to defense attorney's correspondence within two (2) weeks, or sooner if the correspondence is urgent in nature, e.g. necessitated by an upcoming court appearance date.

6.9 **Roundtable Meetings**

Roundtables are conducted in accordance with the Liability Severity Index.

Each Roundtable Meeting is to include County Counsel, Department Liaison, assigned Defense Panel Member(s), involved Contractor staff, and, where applicable, Contractor's medical/legal consultant(s). The County will provide those designated County personnel and staff, as determined by County and/or recommended by Contractor, who might contribute to this information exchange process.

Contractor's staff attending these Roundtable meetings will be asked to present a medical/legal analysis of the event, and will participate as part of the team to find the best resolution of the Allegation File for the County.

6.9.1 Prior to Roundtable Meetings Contractor will:

- A. Request that Defense Counsel prepare a Trial Counsel Report (TCR) and Persons Named or Alleged report be prepared setting forth the facts and the legal and medical theories of liability, and submitted to County Counsel, CEO Risk Management, and the involved Department Risk Liaison, and Contractor at least ten (10) days prior to Roundtable.
 - B. Prepare a Litigation Management Update (LMU) (see Subparagraph 5.1) setting forth the current status of the case.
 - C: For DHS only, Contractor will be required to send written notices ("Invitee Letters") of the Roundtable meeting to licensees who are "named or alleged" in the claim or lawsuit. Contractor will be required to use last known address information for those attendees who are no longer employees. Such notices shall be sent out no later than 5 weeks before the date of the scheduled Roundtable meeting, if practical.
- 6.10** On each Allegation File, Contractor will be responsible to prepare, obtain, review, and provide to County, each Report described in Paragraph 8.0, "Mandatory Reporting", as well as those other reports described elsewhere.

- 6.11** Contractor will attend, participate in, and monitor all trials and other court appearances generally attended by adjusters (MSCs). The extent of trial monitoring will be case-by-case and will be discussed by Contractor with County Counsel.
- 6.12** **Court Appearance by County Counsel:** In those instances where County Counsel is ordered to appear in Court, Contractor will be required to do the following:
- 6.12.1** Contractor will notify County Counsel of the date of the appearance within seventy-two (72) hours of Contractor being aware of the court order, and Contractor will brief County Counsel on the facts and circumstances of the matter for the purpose of identifying and anticipating the problems and issues to be addressed at the scheduled court appearance;
- 6.12.2** Contractor's Claims Manager or Contract Manager shall be present in court on the date ordered, unless otherwise excused by County Counsel;
- 6.12.3** Contractor will confer with Defense Panel Member regarding the court ordered appearance, and insure that the lawyer that is assigned to try the case will also be present, unless otherwise excused by County Counsel.
- 6.13** **Legal Fees and Allocated Expenses:** Under the general supervision and instruction of County Counsel, Contractor has the specific responsibility for monitoring, auditing, and approving Legal Defense Fees and Allocated Expenses.
- 6.13.1** Members of the Defense Panel will submit bills in the manner set forth in their contract with the County, in accordance with County Counsel Billing Guidelines, and consistent with the processes of "E-Billing." The bills will be submitted via TyMetrix.
- 6.14** Contractor will provide a LMU to County Counsel for each Allegation File:
- 6.14.1** Scheduled for mediation/arbitration upon of Contractor's knowledge that an Allegation File is scheduled to be mediated/arbitrated.
- 6.14.2** A settlement or proposed settlement has been reached or negotiated (see Subparagraph 7.2.2).
- 6.15** **Settlement Negotiations:** Unless otherwise instructed by County Counsel, Contractor will supervise, conduct, monitor and/or participate in settlement negotiations, or participate in settlement negotiations with the Defense Panel Member(s).
- 6.15.1** Contractor will promptly advise County Counsel of all oral or written demands to settle in excess of \$100,000. This will be by e-mail and within one business day where practical.

6.15.2. Within five (5) days of receipt, Contractor will report to County Counsel of all oral or written demands to settle in excess of \$100,000. Notice to County Counsel will be as described in Attachment J.

6.16 **Writs and Appeals:** Any appeal or petition for other review requires the approval of County Counsel. Contractor will submit, in writing, all requests to appeal or petition for other review on any litigated matter. Contractor will clearly state reason(s) supporting the recommended action. County Counsel will advise Contractor whether the Writ should be filed, and by which member of the Legal Defense Panel.

7.0 **SETTLEMENT PROCESS AND TPA AUTHORITY**

The County may not be bound to a settlement except as provided by the County's Board of Supervisors pursuant to certain statutory restrictions. County Counsel shall have final authority, prior to submission of a settlement to the County's Claims Board and Board of Supervisors, on all settlement matters, including the amount of settlement, all terms and conditions within the settlement, and regardless of department or facility concurrence, the basis for and/or the expression of the factor of settlement. Contractor will insure that when appropriate, plaintiff(s) are provided with a fair offer of settlement prior to trial.

7.1 Settlements Within Contractor's Authority: - Contractor will be delegated and have the authority to settle any claim or lawsuit in an amount not to exceed \$20,000 per incident. The County reserves the right to increase or decrease the settlement authority limits in the negotiated contract at any time.

Contractor will advise the County on a monthly basis, or as requested, of all settlements made by Contractor under this authority.

Contractor will also provide to the CCA, County Counsel, Department Liaison, and Department Facility Liaison, in support of each settlement made by Contractor under this authority, the following applicable information:

7.1.1 A statement of the facts and the legal and medical theories of liability, including each reason/factor upon which the settlement was based;

7.1.2 A statement that the facts and the legal and medical theories of liability upon which the settlement is based are accurate and appropriate;

7.1.3 A statement that Contractor discussed the settlement with the Department Liaison and/or involved Department Facility Liaison, and obtained the Department Liaison's and/or involved Department Facility Liaison's concurrence in the reason/factors for settlement;

A. Contractor may, where in the judgment of the Contractor's Contract Manager it is in the best interest of the County, settle any matter up to \$3,000.00 utilizing "Economic" as a Factor for Settlement without otherwise seeking concurrence.

- 7.1.4 Where applicable, Legal Defense Panel Member's evaluation (Trial Counsel Report (TCR) of the facts and the legal and medical theories of liability, including each reason/factor upon which settlement was based;
- 7.1.5 Contractor's medical/legal consultant's evaluations of the medical theories of liability, including the consultant's review of each reason/factor upon which settlement is recommended. This requirement does not apply to "Economic" settlements.
- 7.2 **Recommended Settlements Exceeding Contractor's Authority** - Contractor will have authority to negotiate and thereafter recommend, but may not bind the County to, a proposed settlement in excess of Contractor's maximum authority of \$20,000 per incident. Contractor's authority to negotiate and recommend a proposed settlement in excess of Contractor's maximum authority of \$20,000 per incident will be subject to the following:
- 7.2.1 Prior to entering into any settlement discussions in excess of Contractor's maximum authority of \$20,000 per incident, Contractor will notify the CCA, County Counsel, Department Liaison, Risk Management Inspector General and the Department Facility Liaison of Contractor's intent to negotiate a proposed settlement, and the factor upon which the liability of the County is based.
- 7.2.2 Within twenty-four (24) hours after negotiating a proposed settlement, or as soon as practical, Contractor will send a "Notification of Settlement" to the CCA, County Counsel, Department Liaison, and Department Facility Liaison by fax, or by E-mail.
- 7.2.3 The "Notification of Settlement" will contain the terms and conditions of the proposed settlement, a statement of the reasons/factors upon which the proposed settlement is based, a statement that the facts and the legal and medical theories of liability upon which the settlement is based are accurate and appropriate, a statement that Contractor has discussed the facts and medical theories of liability with the Department Liaison and Department Facility Liaison, and a statement that Contractor has obtained the Department Liaison's, and/or Department Facility Liaison's concurrence in the reasons/factors for settlement.
- 7.2.4 When there are multiple County departments involved in the same settlement, Contractor will evaluate the case and provide, to County Counsel, the CCA, and involved County Department Liaisons, recommendations as to each department's respective share of liability. When necessary to resolve a conflict between departments, the Chief Executive Officer, or designee, will make a final determination as to apportionment of liability.
- 7.2.5 Contractor will forward a formal "**Settlement Authority Letter**" to the CCA, County Counsel, Department Liaison, and the involved Department Facility Liaison within fifteen (15) business days of the date the terms of the proposed settlement were accepted by plaintiff/claimant.

- 7.2.6** In addition to the “Settlement Authority Letter”, Contractor will also provide, in support of Contractor’s request for a proposed settlement, the following applicable documents:
- A. Defense Panel Member’s Trial Counsel Report (TCR) of the facts and the legal and medical theories of liability, including each reason/factor upon which settlement is recommended;
 - B. Defense Panel Member’s current Persons Named or Alleged report, if the settlement is of a medical professional liability matter;
 - C. Contractor’s medical/legal consultant’s evaluations of the medical theories of liability, including the consultant’s concurrence in each reason/factor upon which settlement is recommended, where applicable;
 - D. A statement that the facts and the legal and medical theories of liability upon which the settlement is based are accurate and appropriate;
 - E. Other documents County may request as necessary to evaluate Contractor’s recommendation for settlement.
- 7.2.7** All proposed settlements above Contractor’s maximum authority, up to and including \$100,000, will be subject to approval by County Counsel and the CCA. When the proposed settlement is for an amount over \$100,000, the settlement will be subject to approval by County Counsel, and approval by the County’s Claims Board, and Board of Supervisors.
- 7.2.8** The County may approve or deny the proposed settlement, approve the proposed settlement in a sum or manner other than requested, or instruct that the matter proceed to trial.
- 7.2.9** The County may direct Contractor, or the Legal Defense Panel Member to whom the Allegation File is assigned, to accomplish additional tasks and re-submit a revised settlement proposal.

7.3 **Liens and Incumbrances:** Contractor will be responsible for verifying and reporting to the County the existence of all liens and incumbrances against a settlement or proposed settlement of a litigated matter, and asserting all appropriate defenses to any such liens and incumbrances, and will be responsible for protecting the County’s interests by insuring that all such liens and incumbrances are satisfied, or will be satisfied, either by plaintiff/claimant, outside third parties, compromise and release by the lien holder, or by the stated terms and conditions of the settlement or proposed settlement.

7.4 **Future Medical Care:** Whenever the terms and conditions of a proposed settlement involving DHS include the provision of free future medical care to claimant/plaintiff, such free future medical care will be limited to care and treatment necessary to and arising from the specific injuries upon which the claim/lawsuit is based. In addition, such free future medical care will be limited to

care and treatment at a County of Los Angeles-owned-and-operated medical facility. Such agreements are rare, and are generally limited to acute care.

7.5 Structured Settlements: Contractor will insure that all structured settlements offered as part of a negotiated settlement are offered in relation to a fixed dollar amount. Under the general supervision of the CCA, Contractor will:

7.5.1 Arrange and purchase annuity policies for payment of structured settlements in accordance with County established guidelines (see Attachment F – Periodic Payment Program Guidelines). The annuity premium will be considered a settlement cost.

7.5.2 Aggressively monitor, handle payments, and report semi-annually on the remaining 59 County self-funded annuities written in the early 1980s, per County established guidelines (see Attachment F – Periodic Payment Program Guidelines). Contractor may retain investigators from time to time to ascertain that the beneficiaries of these self-funded or Executive Life annuities remain alive. Such costs will be allocated to the respective files.

7.6 Nothing in this Settlement Process and TPA Authority Paragraph will preclude Contractor from negotiating and securing a proposed settlement with plaintiff/plaintiff's counsel or claimant prior to the matter being assigned to a Legal Defense Panel Member, provided that Contractor follows the procedures outlined above and/or as approved by County Counsel.

8.0 MANDATORY REPORTING – Contractor will be responsible for preparing, obtaining, reviewing, and providing the following mandatory reports:

8.1 Contractor's Mandatory Reports: Contractor will be responsible for preparing and submitting to designated county personnel, the following mandatory reports:

8.1.1 Case Management Report (CMR): A "Case Management Report" (CMR) will be prepared by Contractor on every open Allegation File, whether opened in response to an incident or a claim. LMU's will count as CMR's.

CMR's will not be sent on litigated matters. Contractor will monitor reports from Defense Counsel on litigated matters.

The CMR will serve as a summary of all significant case activity and developments, and will include, but not be limited to, the following information: name of injured party or claimant; date of incident; a brief and accurate summary of the facts; nature of injury; amount of damages claimed; current status of the investigation; case number, where applicable; and amount of settlement demand, where applicable.

The data grid of the CMR or LMU may be drawn from RMIS, or be a Profile.

Contractor will submit a brief initial CMR to the CCA, County Counsel, and Department Liaison approximately thirty (30) days after opening of an

Allegation File. An updated CMR covering interim developments will be provided every ninety (90) days thereafter on all open Incident and Claim Allegation Files. A comprehensive CMR will be submitted at completion of investigation or 6 months, whichever is earlier.

8.1.2 Ad Hoc Reports – Contractor will be required to provide such other reports on an ad hoc basis. Ad hoc reports are those reports generated at the request of the CCA, County Counsel, or Department Liaison on a one-time informal and improvised basis. These reports generally arise in response to inquiries from the Board of Supervisors or events of such significance that information is needed on an expedited basis.

8.1.3: B&P 801 - Contractor will prepare and submit reports as required by State Business and Professions Code 801.1 et. Seq., including but not limited to the State of California Healing Arts Board, Board of Registered Nursing, and Hearing Aid Dispensers Examining Committee, as well as other reports as required by law. The County will provide the factual information.

8.2 Monitoring of Legal Defense Panel Reports – For each Allegation File assigned to Legal Defense Panel Members, Contractor will obtain and evaluate the following reports that are prepared by the Legal Defense Panel members, in a format as required by County Counsel.

8.2.1 Case Evaluation and Plan (CEP), and Budget – As set forth in the Liability Severity Index, and following the processes of “E-Billing,” for each Allegation File that has been assigned to a legal Defense Panel Member, the Legal Defense Panel Member is required to submit to County Counsel a “Case Evaluation and Plan” (CEP) and budget. The CEP is a confidential and independent evaluation of the Allegation File and serves as a basis for controlling litigation costs and documenting the County’s legal position, strategy, and status. It is based on the Legal Defense Panel Member’s evaluation of the pleadings, discovery, reports, other documents; examination of physical evidence (if any); and review of any other matters as deemed appropriate and necessary.

8.2.2 Case Status Reports and Status Update Reports – Case Status Reports and Updates will be prepared by Defense Counsel and submitted in accordance with the Liability Severity Index.

8.2.3 Demands for Settlement in Excess of \$100,000: Within five (5) days of receipt, Defense Counsel will notify the CCA, County Counsel and Contractor of all oral or written demands to settle a lawsuit in an amount exceeding \$100,000 in an approved format. Defense counsel will respond to and answer each of the questions contained in the approved format, and will provide County Counsel with Panel Member’s recommendations.

8.2.4 Trial Reports – Prior to trial, Contractor will obtain from the Legal Defense Panel Member, and thereafter, provide to the CCA, County

Counsel, Department Liaison, and the involved Department Facility Liaison the following reports:

- A. **A Trial Notification Report** will be faxed to County Counsel five (5) business days prior to trial. At a minimum, the Trial Notification Report will consist of: one or two paragraphs setting forth a concise and accurate statement of the facts; a statement of the principal theories of liability; and any other information as may be required by County Counsel.
- B. **A Daily Trial Status Report** will be faxed daily to County Counsel once the trial begins. The Daily Trial Status Report will be a summary of each day's developments in the proceeding, and will include additional information as may be required by County Counsel.
- C. As soon as Contractor is informed that a judgment, verdict, or other award has been rendered, Contractor will immediately give County Counsel verbal notice. Thereafter, a **Trial Verdict Report** will be faxed to County Counsel one (1) business day after the judgment, verdict, or other award has been rendered. The Trial Verdict Report will be limited to two (2) pages and will include all information that may be required by County Counsel.

9.0 FINANCIAL AND RELATED ADMINISTRATIVE SERVICES MANAGEMENT

Contractor shall provide a full range of financial and related administrative services. This includes but is not limited to the following:

9.1 Expense Payments on non-litigation files: – Contractor shall be responsible for reviewing and approving all expense invoices for all files not assigned to Defense Counsel. These expense payments are generally, but not always, related to the copying of medical records, other records or translation services. Once approved, these payments will be entered into RMIS for processing and payment by the County's E-Caps payment processing system. Contractor will send a Payment Voucher report and a copy of all invoices being paid to CEO. CEO will have final approval authority for such payments.

9.2 Indemnity Payments: - Contractor shall be responsible for initiating all Indemnity Payments. Indemnity payments will be entered into RMIS for processing and payment by the County's E-Caps payment processing system. Contractor will send a Payment Voucher report and all required supporting documentation for each payment to CEO. CEO will have final approval authority for such payments.

- A. Indemnity payment supporting documentation will include a signed release and concurrence. Some payments will require additional supporting documentation such as: Approved Minors' Comp, Copy of annuity broker letter for annuity premium requests, copy of Medi-Cal net lien notice, copy of Medicare net lien notice, etc.

9.3 Payment of invoices on cases assigned to Defense Counsel: - Defense counsel is responsible for entering their invoices for time and expense into TyMetrix, the County's e-billing system. For all invoices completing the multi-level approval process in TyMetrix, the County will create an Interface file for these payments and download the file to RMIS. The Contractor shall:

- A. Check RMIS daily for an Interface file.
- B. Process Interface file through the approval levels in RMIS.
- C. Process Payment Voucher report from RMIS for these payments and the Invoice Summary from TyMetrix for each invoice included in the Interface file.
- D. The Payment Voucher report and Invoice Summaries will be sent to CEO. CEO will have final approval authority for such payments. For payments not approved by CEO, Contractor will research CEO concerns and report back to CEO. Payment may then be finalized by CEO or payment may be rejected back to Contractor for further research or for rejecting back to Defense Counsel for revision and/or correction.

9.4 County Budget - Contractor shall provide necessary support in development of the County's liability claims administration budget.

9.5 Fraud - Contractor shall immediately report to the CCA any alleged, suspected or known incident involving any fraud. Contractor shall be liable for any loss to the County resulting from the Contractor's failing to report such an incident within 48 hours upon discovery of such incident.

9.6 County Audits of TPA Financials and Performance – Contractor's staff shall cooperate fully with all County audits. Financial, performance and related audits may be performed by the CCA or its designee, and by the CEO or designee, and may be conducted by outside auditing services at County's sole direction. Such audits shall be scheduled at a frequency determined by County. The County reserves the right to update the scope of work and audit measurements as necessary to meet requirements of legal changes affecting claims handling.

10.0 INFORMATION MANAGEMENT

Contractor shall maintain program information necessary to meet the requirements of this contract. The majority of the needed information will be available through the use of County's Risk Management Information System (RMIS). Contractor shall use RMIS for the risk management and claims administration information management services required under this contract. See *Attachment I – The Risk Management Information System*, which describes the system requirements.

10.1 Equipment – Contractor has installed a full T1 link between the Contractor and the County for the RMIS connection, Contractor shall maintain and/or upgrade the required PC configurations, software and hardware, to keep up with industry standards and to maintain compatibility with RMIS. The upgrade of hardware and/or software will be as determined by the County or the Contractor.

- 10.2 System Security** – RMIS equipment will be housed at Contractor’s facility. Contractor will provide access to County for necessary installation and repair of RMIS equipment. The Contractor shall also meet any additional security measures as required by the County. The Contractor’s security measures must be approved by the County.
- 10.3 System Data Maintenance** – Contractor shall, on a daily basis, accurately input, update, and maintain all data fields on RMIS for all cases administered by Contractor. Contractor shall provide a Local Area Network (LAN) that will be required to be connected to County’s Wide Area Network (WAN) via a dedicated frame relay line. All costs associated with the transition to and implementation of RMIS shall be the responsibility of Contractor. Contractor shall be responsible for system security as required by County.
- 10.4 RMIS Training** – County shall furnish necessary RMIS system instructional material and security information, and shall provide initial RMIS system training to Contractor’s staff. Follow-up training will be provided by County to Contractor’s key information system staff. These key information system staff will provide training as needed to insure Contractor’s staff is proficient in the use and security of the RMIS system and the Contractor’s LAN. Contractor’s trained staff shall be available during County business hours to:
- 10.4.1** Attend County provided RMIS meetings and update training sessions’
- 10.4.2** Process ad hoc report requests from the CCA, County Counsel, or Department Liaison;
- 10.4.3** Run regular reports and distribute them timely to County departments/staff as directed by the CCA.
- 10.5 RMIS Maintenance, Repair, and Replacement** – County shall provide maintenance, repair and/or replacement of RMIS equipment. Contractor shall be responsible fro damage to RMIS system equipment, other than that caused by normal wear and tear, as determined by the County. Contractor shall maintain insurance for the full replacement value of RMIS equipment as specified in *Appendix A, Subparagraph 8.23, General Insurance Requirements.*”

11.0 EDUCATION AND RISK MANAGEMENT PROGRAMS

- 11.1 Education and Risk County Staff** – Contractor shall participate in County Risk Control Committees when requested by the CCA, and may submit risk management information to the CCA and Department Liaison to enable implementation of practical and effective programs to reduce County’s future liability costs.
- 11.2 Continuing Education for TPA Staff** - Contractor will be expected to provide ongoing claims administration training to Contractor’s staff to insure its staff are knowledgeable concerning relevant developments in liability risk management and industry claims administration practices.

In-service education capabilities should be specifically outlined by contractors with special attention to incident evaluation, new employee orientation, establishment and adjustment of reserves, claims investigation, and other significant program issues.

12.0 RESPONSIBILITIES – CONTRACTOR

Contractor's services shall be provided by professional staff having work experience and expertise that includes, but is not limited to, the following areas: California public entity law; California Governmental Tort Liability; the California Medical Injury Compensation and Reform Act (MICRA) and its impact on medical malpractice litigation; statutory rules and regulations concerning medical teaching institutions; California Evidence Code Section 1157; and the negotiation and resolution of Medi-Cal and Medicare liens; and structured settlements.

12.1 Contractor's Contract Manager

12.1.1 Contractor shall provide a full-time Contract Manager or designated alternate. The Contract Manager shall have full authority to act for this Contractor on all matters relating to the daily operation of the Contract.

12.1.2 Contract Manager will have a minimum of five (5) years medical malpractice/hospital liability claims work experience, five (5) years public entity medical malpractice/hospital liability claims experience, five (5) years of documented management experience.

12.2 Claims Manager

12.2.1 Contractor shall provide a full-time Claims Manager. The Claims Manager shall be exclusively dedicated to the daily administration and supervision of contractor's activities under this contract. The Claims Manager and the Contract Manager may be the same person.

12.2.2 The Claims Manager shall have will have a minimum of five (5) years Medical malpractice/hospital liability claims work experience, with a minimum of five (5) years public entity medical malpractice/hospital liability claims work experience.

12.3 Contractor's Claims Staff

Contractor shall provide claims staff dedicated solely to administer and manage incidents, claims, and lawsuits filed against the County. To avoid any potential conflict of interest, these staff shall not administer or manage any incidents, claims, or lawsuits on behalf of any client other than the County. Failure to comply with this requirement shall constitute a material breach of contract upon which County may immediately terminate or suspend this agreement.

Contractor's staff shall include supervising claims specialist(s), claims specialist, and medical/legal consultant(s) who meet the minimum requirement listed below. Contractor's staff assignments are to be based on the best practices recommendations of Supervising Claims Specialist and Claims Specialist, which

may include specialized or innovative caseloads such as a “fast track” unit for smaller cases.

12.3.1 Supervising Claims Specialist(s)

- A. The Supervising Claims Specialist(s) shall have a minimum of five (5) years medical malpractice/hospital liability claims experience.
- B. The Supervising Claims Specialist(s) shall have the additional responsibility to review and approve all Allegation File reserves and settlements within Contractor’s authority, and oversee the administration and legal defense management efforts of Claims Specialist under their supervision.

12.3.2 Claims Specialist

- A. Claims Specialist shall have a minimum of five (5) years medical malpractice/hospital liability claims work experience or three (3) years public entity liability claims work experience.
- B. Claims Specialist will administer incidents and claims and manage legal defense of lawsuits. Claims Specialists will attend settlement conferences and meetings as directed by the Claims Supervisors.

12.3.3 Medical/Legal Consultants(s)

- A. Medical/Legal Consultant(s) shall have minimum of five (5) years medical malpractice/hospital liability claims consultation experience.
- B. Medical/Legal Consultant(s) will perform medical/legal reviews to assess the medical procedures utilized, the medical services provided, and the medical outcome to assist Contractor in the timely identification and assessment of potential County liability. Such Medical/Legal Consultant(s) may be an independent contractor.

12.4 Contractor’s Support Staff

Contractor shall provide sufficient qualified and experienced clerical and other support personnel to insure:

12.4.1 Pick-up and Delivery Services to DHS Facilities – Pick-up and delivery of mail between the DHS facilities (See section 13.6) and the Contractor as needed. Contractor may use delivery services or U.S. mail as deemed appropriate.

12.4.2 Proper matching and distribution of mail to appropriate claims personnel within twenty-four (24) hours of receipt;

12.4.3 Completion of processing and mailing of correspondence, forms, and legal notices within forty-eight (48) hours of assignment or receipt;

Support staff shall not be assigned duties of the Contract Manager, Claims Manager, Supervising Claims Specialist, or Claims Specialist, as identified herein and in the Contractor's Incident/Claims/Lawsuit Procedure Manual.

12.5 Contractor Employee Acceptability

County shall have the right to approve Contractor's recommendations for professional staff positions. The Contractor shall remove, at the CCA's request, any employee or subcontractor providing services to the County under this Contract. The Contractor shall not subcontract with any personnel for performance of services hereunder unless the provisions in Sub-paragraph 8.39 of the Contract are met.

12.6 Contractor Office and Hours of Operation

12.6.1 Contractor shall maintain an office with a telephone in the company's name where Contractor conducts business. The office shall be staffed at a minimum during the hours of 8:00 a.m. to 5:00 p.m. (Pacific Time), Monday through Friday, excluding County holidays by at least one employee who can respond to inquiries and complaints which may be received about the Contractor's performance of the Contract. In any case, Contractor shall maintain days and hours of operation and staffing sufficient to complete all services in a time manner.

12.6.2 Emergency Notifications

Contractor shall have one (1) claims staff who is accessible twenty-four (24) hours a day, to the CCA and/or other County staff, for emergency claims consultation and immediate reporting of severe injury incidents. The Contract Manager or the Claims Manager shall be immediately available to the designated claims staff for consultation.

13.0 RESPONSIBILITIES – COUNTY

13.1 County's Contract Administrator (CCA)

The CCA shall be the Chief of Liability Claims in the chief Administrative Office, or his duly authorized designee. Except as otherwise stated herein, the CCA shall:

13.1.2 Have full authority to monitor the Contractor's performance in the daily operation of this contract.

13.1.3 Provide direction to the Contractor in areas relating to policy, information, and procedural requirements.

13.1.4 In the event of a dispute between the CCA and Contractor regarding substantive questions of policy and procedures; the CCA's interpretation shall prevail including without limitation, interpretation of Federal, State and local laws, civil procedures, legal process, court rules and administrative regulations.

13.1.5 The County will inform the Contractor of the name, address, and telephone number of the CCA, in writing, at the time this contract is awarded, and at any time, thereafter, a change of CCA is made.

13.1.6 Not be authorized to make any changes in the standard Terms and Conditions of the contract or to obligate the County in any way whatsoever.

13.1.7 Meet at least quarterly with the Contractor's Program Manager(s) to review contract performance issues and other items of concern to the County's program. At the option of CCA, meetings may be scheduled monthly.

13.1.8 Except as otherwise provided herein, all work performed by Contractor under this contract shall be subject to approval by the CCA.

13.2 County Counsel Liaison – County Counsel retains final authority on all legal matters. In addition, the County Counsel Liaison shall have responsibility for the overall management of legal defense services, which shall include, but not be limited to, the addition or deletion of Legal Defense Panel members, the assignment of litigation to the defense panel, review and approval of litigation strategy, Legal Defense Panel firms' billings, and advice on legal issues as may be requested, by Contractor.

The CCA will seek input from County Counsel Liaison on Contractor's performance.

13.3 Quality Assurance Evaluator (QAE) – The County will designate one (a) or more persons who will act as a Quality Assurance Evaluator(s) for the County on all services, requirements, and deliverables pertinent to the contract and monitor the Contractor's performance using procedures that may be necessary to ascertain that the Contractor is in compliance with this Contract. The County will inform the Contractor of the name, address, and telephone number of the QAE, in writing, at the time this Contract is awarded, and at any time, thereafter, a change of QAE is made.

The QAE and the CCA may be the same person. The QAE is not authorized to make any changes in the terms and conditions of this Contract or to obligate the County in any way whatsoever.

13.4 Department Liaisons – One or more persons will be designated by each County department to work with the CCA, Quality Assurance Evaluator and Contractor. There are approximately thirty (30) Departmental Liaisons who will be responsible for:

13.4.1 Insuring required department documents are provided to Contractor.

13.4.2 Discussing allegations, incidents, and lawsuits with Contractor as needed, including attending Roundtable Meetings;

13.4.3 Providing concurrence of the factors of settlement for settlements for their department; and

13.4.4 Providing input to the CCA on Contractor's performance.

13.5 Department Facility Liaisons – DHS has twelve (12) separate and distinct health care facilities. They are as follows:

1. LAC+USC Medical Center, 1200 N. State St., L.A. CA 90033
2. Harbor/UCLA Medical Center, 1000 W. Carson St., Torrance, CA 90509
3. Olive View/UCLA Medical Center, 14445 Olive View Dr., Sylmar, CA 91342
4. Kind/Drew Medical Center, 12021 S. Wilmington, L.A., CA 90059
5. High Desert Health System, 44900 N. 69th St., Lancaster, CA 93538
6. Rancho Los Amigos National Rehabilitation Center, 7601 E. Imperial High, Downey, CA 90242
7. Hubert H. Humphrey Comprehensive Health Center, 5850 S. Main St., L.A., CA 90003
8. H. Claude Hudson Comprehensive Health Center, 2829 S. Grand Ave., L.A., CA 90007
9. Edward R. Royall Comprehensive Health Center, 254 S. Fetterly Ave., L.A., CA 90022
10. Long Beach Comprehensive Health Center, 1333 Chestnut Ave., Long Beach, CA 90813
11. El Monte Comprehensive Health Center, 10953 Ramona Blvd, El Monte, CA 91731
12. Mid Valley Comprehensive Health Center, 7515 Van Nuys, CA 91405

One or more persons will be designated as a Department Facility Liaison by each of the above facilities to work with CCA, QAE, and Contractor. The Department Facility Liaison will be responsible for:

13.5.1 Insuring required department documents are provided to Contractor;

13.5.2 Discussing allegations, incidents, and lawsuits with Contractor as needed, including attending Round Table Meetings;

13.5.3 Providing concurrence of the factors of settlement for settlements for their facility; and

13.5.4 Providing input to the CCA on Contractor's performance.

13.5.5 The DHS Department Liaison will have final authority for all matters pertaining to DHS' facilities. Any problems or conflicts arising between the Contractor and the Department Facility should be referred to the DHS Department Liaison.

14.0 COUNTY FURNISHED ITEMS

14.1 The CCA shall arrange for the release of all Allegation Files and other documents for pick-up by Contractor prior to December 31, 2006.

14.2 The CCA will provide without cost to Contractor, orientation to the County liability claims administration program for key Contractor personnel prior to the start date of the contract. Contractor shall not be reimbursed for any expenses during orientation.

In addition, the CCA will provide without cost to Contractor, initial technical assistance to Contractor after the contract is awarded to insure a smooth transition.

15.0 CONTRACTOR FURNISHED ITEMS

Contractor shall provide all staff, facilities, materials, and equipment necessary to provide services required under this contract, except as stated in Paragraph 14.0, "County Furnished Items."

15.1 Contractor shall provide training materials, supplies, and support equipment necessary to perform all services required by this Statement of Work and adhere to all requirements imposed on the Contractor by the contract, except as provided by County under Paragraph 14.0, "County Furnished Items." The Contractor shall also provide other office-related items such as personal computers, printers and monitors, fax machines, photocopy machines, video tape, players (VHS) and monitors, and other program-related items, as required by the County, due to program changes.

15.2 Contractor shall provide adequate workspace including RMIS access and e-mail, telephone service, and free parking for one County monitor, as necessary for required program auditing or monitoring.

15.3 **Claims Administration Procedure Manual** – Within 90 days of contract award, Contractor will provide a draft "Claim Administration Procedure Manual," describing policies and procedures for the administration of County cases, detailing approval limits, responsibilities, reporting requirements, review of legal services billing etc. Such manual shall be provided to and utilized by Contractor claims staff handling County claims and to the CCA.

15.4 Business Continuity Plan

Within six (6) months of contract award, Contractor will provide a written Business Continuity Plan describing a structured and integrated process that ensures uninterrupted provision of critical services related to this Contract following an event which could interrupt these business operations. The plan shall include, but not be limited to, the following:

1. A description of critical services and business processes.
2. Contractor policies and procedures to assure continued business operations following an event.
3. Address, computer, telephone, facsimile, key contract and all other critical information concerning alternative business and/or locations(s) following an event.

Contractor shall provide the CCA with annual plan updates on the annual anniversary of the Contract.

This plan is subject to the County's review. The CCA shall not be required to identify, nor notify Contractor of, deficiencies in the Contractor's Business Continuity Plan. The County shall neither assume responsibility nor liability for the Contractor's Business Continuity Plan.

16.0 CONTRACTOR REPORTS

Reports programmed into County's RMIS will be generated and provided by e-mail to RMIS system users by County's RMIS service provider. Contractor shall provide other periodic reports required by the CCA and the Chief Administrative Officer or his designee to enable analysis and monitoring of incidents, claims, frequency, severity, funding/department, cause, fiscal status, law firm activity, location, claim activity trends, lawsuits settlements, allocated costs, reserve aging, litigation defense activity, legal fees and costs and disposition of suits. Reports that Contractor will provide are shown in *Attachment J- Contractor Reports*.

17.0 ADMINISTRATIVE SERVICES

17.1 Physical Security – Contractor shall be responsible for safeguarding all County property provided for the Contractor's use. At the close of each workday, cases, files, supplies, equipment and computer access shall be secured.

17.2 Employee Records – Contractor shall keep current and accurate records of all its employees providing services under this contract. Such records shall include a "Contractor Employee Acknowledgment and Confidentiality Agreement" (see *Exhibit F1, of the Contract*), date of employment, current address, phone number, current salary and required licensing background pertinent to the provision of this contract.

- 17.3 **Record Retention** – All allegations and Allegation Files will be retained for a minimum of five (5) years beyond the date they are closed. No Allegation Files may be destroyed without the CCA’s approval and the Contractor will be responsible for storage of all retained files during the term of this contract at Contractor’s cost.
- 17.4 **Other County Contractors and Vendors** – The County has relationships with a number of private agencies in business to provide services related to the management of claims, such as structured settlement brokers and legal defense firms. Contractor shall use only those companies approved for use by the County and shall utilize a rotational system for making these assignments, unless otherwise instructed by the CCA or County Counsel.
- 17.5 **E-Mail** – Contractor shall maintain the capacity to send and receive email for, at a minimum, each administrator, supervisor and claims staff member. Contractor shall comply with the CCA specified e-mail protocol dealing with content and confidentiality when using e-mail for County information.
- 17.6 **Delivery to CCA, County Counsel, and DHS Liaison** – Pick-up and delivery of mail between the CCA, County Counsel, DHS Liaison and Contractor as needed. Contractor may use delivery services or U.S. mail as deemed appropriate.

18.0 **CONTRACTOR’S QUALITY CONTROL**

The contractor shall establish and maintain a Quality Control Plan to assure that the requirements of the contract are met. The plan shall be provided to and approved by the CCA before services under this Agreement are implemented. The Plan shall be effective on the implementation date and will be updated and re-submitted for CCA’s approval as changes occur. The plan shall include, but not be limited to, the following:

- 18.1 The method for ensuring the services, deliverables, and requirements defined in the contract are being provided at or above the level of quality agreed upon by the County and Contractor.
- 18.2 The method for identifying and preventing deficiencies in the quality of service before the level of performance becomes unacceptable.
- 18.3 The methods for assuring and verifying that the minimum requirements for claims personnel are met as stated in Paragraph 12.3, “Contractor’s Claims Staff.”
- 18.4 A record of all inspections conducted by Contractor, the corrective action taken, the time a problem is first identified, a clear description of the problem, and the time elapsed between identification and completed corrective action, shall be provided to the CCA upon request.

18.5 The method for continuing to provide services to the County in the event of a strike or other labor action of Contractor's employees.

19.0 COUNTY'S QUALITY ASSURANCE

The CAO or designee will evaluate Contractor's performance under this Contract, to insure contract compliance and achievement of performance standards. Such evaluation will include assessing Contractor's compliance with all contract terms.

As part of the County's quality assurance for this contract, the County currently uses an outside claim auditing service to review the Contractor's services. A copy of the audit evaluation for selected Allegation Files is included in *Attachment B*. Currently these audits occur bi-annually and involve detailed review of approximately 50 Allegation Files. This, however, is subject to change at the County's discretion.

19.1 County Quality Assurance Monitoring Plan

The monitoring of the Contractor's compliance to the requirements outlined in the Contract may be performed through the use of either or both the County staff and an independent, outside auditor.

At the sole discretion of the County, a variety of methods may be used to evaluate the Contractor's performance, including but not limited to:

19.1.1 Monthly inspection of files, databases, logs, reports and other information.

19.1.2 A comprehensive and complete audit conducted annually beginning the first year of the Contract.

19.1.3 Inspecting the appropriate employment documentation to verify that Claims Specialists meet the minimum qualifications and experience.

19.1.4 Complaints received by County Risk Management Branch.

19.1.5 Monitoring the timeliness of responses from the Contractor against the time a request for work or service is made by the County.

19.1.6 Staff/user complaints.

19.1.7 Sampling of claims, records, reports, and logs.

19.1.8 Direct observation of work.

19.1.9 Other methods deemed by the County to be appropriate for the evaluation of the Contract.

The County shall monitor the Contractor's performance under this Contract. The County's procedure may include but not necessary be limited to those specified in *Attachment L – Performance Requirements Summary*. All monitoring observations shall be recorded. Significant deviation from performance standards may result in Contract termination.

19.2 Notice of Contract Discrepancy – Verbal or written notification of a Contract discrepancy will be made to the Contract Manager or designee as soon as possible whenever a Contract discrepancy is identified. The Contract Manager shall resolve the problem within a time period agreed upon by the COUNTY and CONTRACTOR.

19.2.1 The CCA will determine whether a formal "Contract Discrepancy Report" (see *Attachment C*) shall be issued.

19.2.2 If a Contract Discrepancy Report is issued, it will either be hand delivered or sent by certified mail to Contract Manger, who will sing for receipt.

19.2.3 Upon receipt of this document. Contractor is required to respond, via phone call and in writing to the CCA within five (5) workdays, acknowledging the reported discrepancies or presenting contrary evidence. A plan for correction of all deficiencies identified in the Contract Discrepancy Report shall be submitted within ten (10) business days.

19.3 Fraud Investigation – The CCA or its agent will evaluate the internal controls established by the Contractor to protect against fraudulent, activity, incorrect or improper claims processing, inappropriate settlement and/or disbursement, and any other illegal activity related to the services provided under this agreement.

19.4 Reported Deficiencies

19.4.1 When deficiencies in performance standards are noted by the County, a Program Deficiency Report shall be issued to the Contractor. The Contractor shall respond in writing to the CCA within five working days. Contractor's response shall include:

A. Acknowledging the reported discrepancies or presenting any contrary evidence, and

B. Present a program for their immediate correction.

19.4.2 The CCA shall evaluate the Contractor's explanation and determine what further action, if any, should be taken. Failure on the part of the Contractor to perform at any acceptable level shall constitute grounds for reducing

amount of payments to Contractor or termination of contract.

19.5 Performance Evaluation Meetings – The Contractor and the CCA shall meet during the term of the contract at regularly scheduled intervals as determined by the County. The purpose of such meetings shall be to review Contractor's performance and the County's monitoring function, and to discuss methods and plans to maintain or improve effectiveness of services provided to the County under the contract.

20.0 PAYMENT AND ADJUSTMENTS TO PAYMENTS

20.1 Payment

20.1.1 Base Monthly

The County shall pay the Contractor on a fee basis as set for in the Payment Schedule. See revision at 20.3. Payment for assumption and administration of all take-over claims is included in this fee. The County will not make and Contractor is not entitled to any additional payment for the assumption or administration of any take-over claim.

20.1.2 Monthly Invoice and Adjustment to Monthly Invoices

The Contractor shall invoice the County monthly in arrears for fees due for the billing period. The invoices shall clearly reflect and provide reasonable detail, as determined by the County, of the service provided. The County will adjust the invoice as follows and pay the invoice within 60 days of receipt.

- A. The County may reduce the monthly invoice for assessments of adjustments to payments for which the County has notified the Contractor pursuant to Subparagraphs 20.2.2 and 20.2.3
- B. The County shall increase or reduce the monthly invoice pursuant to the provisions of Subparagraphs 21.1, 21.2 and 21.3.
- C. The County may increase or reduce the monthly invoice pursuant to Subparagraphs 21.4, 21.5, 21.6, 21.7, 21.8, 21.9, 21.10 and 21.11 provided the County has notified the Contractor of its intention to increase or reduce pursuant to these Subparagraphs at any time prior to receipt of the monthly invoice.

20.1.3 The total fees paid will be reduced for overpayments, fines, penalties and other costs incurred due to the Contractor's failure to comply with any term or condition of this Contract as further set forth in Subparagraph 20.2, "Adjustments to Payments to Contractor".

20.1.4 The total fees paid will be reduced or increased pursuant to Subparagraph 21.1 through 21.11.

20.1.5 The County's payment is subject to adjustment following audit as set forth in Subparagraph 22.0.

20.2 Adjustments to Payments to Contractor

The Contractor shall reimburse the County for any overpayment, fine, penalty or other cost incurred due to the Contractor's failure to comply with State of California statutes, codes, regulations, or any term or condition of the Contract.

20.2.1 Such failure includes, but is not limited to, the following:

- A. Late payment or nonpayment of any benefit to any applicant or medical provider resulting in penalty or attorney fees.
- B. Overpayment of any benefit owed to any applicant, any lien claimant, or other party in a case due to Contractor's failure to comply with the performance standard set forth in the Statement of Work.
- C. Excessive payment of any benefit to any applicant, lien claimant, or other party in a case due to Contractor's failure to comply with the performance standard set forth in this Statement of Work.
- D. Fines and/or administrative penalties assessed against the County due to the Contractor's failure to comply with the performance standard set forth in the Statement of Work.

20.2.2 Notice of Assessment of Adjustments to Payments

The County shall give notice to the Contractor of any assessment of adjustments to payments pursuant to Subparagraph 20.2. The Contractor shall have 60 calendar days to respond in writing to the notice. If the Contractor does not respond to the notice within 60 days, the Contractor shall lose its right to dispute the assessment. The response shall include, but not be limited to, the following:

- A. Evidence that a penalty was not incurred or an overpayment or excessive cost was not made.
- B. Evidence that the Contractor's act(s) and/or omission(s) did not cause the penalty, overpayment, or excess cost.
- C. Evidence that Contractor obtained prior written approval from an authorized County official.

20.2.3 Second Level Dispute Resolution Process

If, after receipt of Contractor's response to County's notice of assessment of adjustment to payments, the County and Contractor are in disagreement, a second-level dispute resolution process will be conducted. The CCA of his/her appointed designee and an appropriate Contractor designee shall review the evidence and resolve the dispute. The second level dispute resolution process shall be completed within 60 calendar days.

At the end of the second-level dispute resolution process, County shall be entitled to reduce Contractor's monthly invoices for assessments of adjustments to payments.

20.3 Revised Annual Fee Basis

Effective July 1, 2012, the following fee schedule will apply:

20.3.1: July 1, 2012 through Dec. 31, 2012: 20 percent reduction.

20.3.2: Jan. 1, 2013 through Dec. 31, 2013: 19 percent reduction.

20.3.3: Jan. 1, 2014 through Dec. 31, 2014: 20 percent reduction.

20.3.4: Jan. 1, 2015 through Dec. 31, 2015: 21 percent reduction.

These prices are reductions from the 2012 base schedule price of \$2,797,124.00.

21.0 PERFORMANCE INCENTIVES

21.1 At sole discretion of the County, mutually beneficial performance and financial incentives shall be applied as follows:

<u>Performance Index (%)</u>	<u>Incentive Payment (%)</u>
Less than 75%	Base Fee minus 4.5%
75% - 79%	Base Fee minus 1.5%
80% - 89%	Revenue neutral
90% - 94%	Base Fee plus 1.5%
95% - or over	Base Fee plus 3.0%

21.2 The performance index shall be determined by random-sample audits commencing no later than the end of the second contract year and conducted at least annually thereafter by County Quality Assurance Evaluators for compliance with standards set forth in Attachment L – Performance Requirements Summary. The CCA may update the areas to be audited and the factors to be considered in determining the performance index.

21.3 Any increase or decrease under Subparagraph 21.1 shall be calculated using the Base Fee at the time audited work was performed by the Contractor. Payment can be made by lump sum within 60 days after County submits the final audit results, or by equal monthly installments over a one-year period commencing with the same 60 day-period.

21.4 Fee Reduction for Failure to Develop and Implement Procedure Manual and Business Continuity Plan

If the Claims Administration Procedure Manual and the Business Continuity Plan, as per Paragraph 15.0, and the Quality Control Plan, as per Paragraph 18.0, are not developed and actively implemented and integrated into the County claims unit within the specified number of days from contract inception date, payments shall be reduced to Base Fee less 5% until these requirements are met.

22.0 ADJUSTMENT TO PAYMENTS FOLLOWING AUDIT

If, at any time during the term of this Contract or five years after the expiration or termination of this Contract, authorized representatives of the County conduct an audit of Contractor regarding the services provided to County hereunder and if as a result of such audit it is determined that County’s dollar liability for such services is less than

payments made by County to Contractor, then Contractor agrees the difference, at the CCA's option, shall be either: 1) repaid forthwith by Contractor to County by cash payment, or 2) credited against any future payments hereunder to Contractor.

If as a result of such audit it is determined that County's dollar liability for services provided hereunder is more than payments made by County to Contractor, then the difference shall be paid to Contractor by County provided that in no event shall County's maximum obligation exceed the amount appropriated by the Board of Supervisors.

23. CONTRACTOR'S HOULY RATE SERVICES

The following Contractor provided services are to be provided at the request of the CCA or designee. Such services will be paid for at an Hourly Rate as allowed in Section 5.0 (Contract Sum), of the contract.

23.1 Ad Hoc Reports: When County requests Contractor to provide reports that cannot be generated from County's RMIS, and are not required under Paragraph 16.0, "Contractor Reports", reports will be provided and paid as an Hourly Rate Service.

24.0 PROJECT START-UP SUPPORT TEAM

To assist the new TPA on the County's procedures, policies, and requirements, a start-up team will be created. The start-up support team will be comprised of members from the CAO, County Counsel, and various Departments to work closely with the TPA for several months. The team will work on-site with the TPA in an effort to ensure their success in managing this program.

**MEDICAL MALPRACTICE, HOSPITAL LIABILITY
CLAIMS ADMINISTRATION AND LEGAL DEFENSE
MANAGEMENT SERVICES CONTRACT**

CONTRACT NO. 75928

AMENDMENT NO. 6

WHEREAS, on November 14, 2006, the County of Los Angeles, (hereinafter "County"), entered into Contract No. 75928 (the "Contract") with Sedgwick Claims Management, Inc., (hereinafter "Contractor") for Medical Malpractice, Hospital Liability Claims Administration and Legal Defense Management Services, (hereafter collectively the "Parties"); and

WHEREAS, the Parties have reviewed the Contract, the Statement of Work, and the compensation to Contractor, and have agreed upon reductions to the services set forth in the Statement of Work and to the compensation to be paid Contractor;

WHEREAS, these reductions in scope of services and compensation shall be made in consideration for an extension of the term of Contract period for an additional two years, through and including December 31, 2015; and

WHEREAS, the Parties agreed that this Amendment and the revisions set forth herein and in the Attachments hereto are in their mutual interest and benefit;

NOW THEREFORE, in consideration of the mutual benefits derived therefrom, it is agreed between the Parties that the Contract be amended as follows:

- 1. This Amendment No. 6 shall commence and be effective on July 1, 2012.**
- 2. Paragraph 4.0 (TERM OF CONTRACT), shall be deleted in its entirety and replaced with the following:**

4.0 TERM OF CONTRACT

- 4.1 The term of the Contract shall commence on January 1, 2007, and shall expire on December 31, 2015, unless sooner terminated, in whole or in part, as provided in this Contract.
- 4.2 The Contractor shall notify the Chief Executive Office (CEO) when the Contract is within six (6) months from expiration of the term as

provided for hereinabove. Upon occurrence of this event, the Contractor shall send written notification to the CEO at the address herein provided in Exhibit D (County's Administration).

4.3 In the event of expiration of the term of this Contract or termination prior to the expiration of the term of this Contract, the Contractor shall fully cooperate with County to provide for the transition to whatever service replacement method the County determines to be in its best interest.

3. **Effective July 1, 2012, Exhibit B.2 (PRICING SCHEDULE), is replaced in its entirety by Exhibit B.3, attached hereto and incorporated herein by reference. Effective July 1, 2012, all references to Exhibit B.2 in the Contract shall be deemed references to Exhibit B.3.**
4. **Effective July 1, 2012, Exhibit A (STATEMENT OF WORK), is replaced in its entirety by Exhibit A.1, attached hereto and incorporated herein by reference. Effective July 1, 2012, all references to Exhibit A in the Contract shall be deemed references to Exhibit A.1.**
5. **Effective July 1, 2012, the Parties agreed that the compensation to Contractor for services provided to County, as further set forth in Exhibit A.1 and Exhibit B.3, shall be fixed for each year of the extended term, based on a maximum annual workload level of 300 open cases.**
 - 5.1 The Parties agree that County shall not assign cases in excess of this maximum open case cap without the express, written consent and agreement of the Parties, which consent and agreement shall be memorialized through an amendment to this Contract. In the absence of such consent and agreement, Contractor shall not be obligated to undertake additional cases in excess of this open case cap.
 - 5.2 The Parties agree to monitor continually the assignment of open cases. If, in the mutual judgment of the Parties, the assignment of open cases approaches the maximum open case cap, such that County may have to assign additional cases in excess of the maximum open case cap, the Parties will meet, in good faith, to discuss the reasonable and equitable financial consideration to be paid by County to Contractor for those cases that exceed the maximum open case cap. Any adjustment to the fixed, annual

payment paid by County to Contractor that results from the assignment of excess cases shall be memorialized through an amendment to this Contract.

5.3 In lieu of County assigning additional cases to Contractor in excess of the maximum open case cap, the County shall have the option, in its discretion, to assign new cases of any priority to County's in-house staff. County also shall have the option to re-assign existing cases of any priority from Contractor to County's in-house staff in order to maintain compliance with the maximum open case cap.

5.4 In the event of any conflict or inconsistency between this Amendment Paragraph 5 and Exhibit A.1 and Exhibit B.3 of this Agreement, this Paragraph 5 shall govern and prevail.

6. Except for the changes set forth hereinabove, the Contract shall not be changed in any respect by this Amendment No. 6. All changes set forth in this Amendment shall only be effective on July 1, 2012 and shall have no retroactive effect.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 6 to be executed on their behalf by their duly authorized officers.

COUNTY OF LOS ANGELES

SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.

By: _____

By: _____

Name: Laurie Milhiser

Name: _____

Title: Assistant Chief Executive Officer

Title: _____

Date: _____

Date: _____

APPROVED AS TO FORM:
JOHN F. KRATTLI
Acting County Counsel

By: _____
Richard K. Mason
Assistant County Counsel

**EXHIBIT B.3
PRICING SCHEDULE
EFFECTIVE JULY 1, 2012
THROUGH AND INCLUDING DECEMBER 31, 2015**

1. The Parties agree that this revised PRICING SCHEDULE replaces the prior Pricing Schedules, effective July 1, 2012. The Parties have mutually agreed to the compensation set forth below to Contractor for the period July 1, 2012 through December 31, 2015, in consideration for the extension of the Contract through December 31, 2015 and the agreed-upon revisions to the Statement of Work. Contractor has agreed to an effective compensation reduction of 20% from its current compensation (\$2,797,124.00 per annum) in consideration of the contract extension and the revisions to the Statement of Work.

2. **FIXED RATE FOR THE PERIOD JULY 1, 2012
THROUGH DECEMBER 31, 2012:**

\$1,118,849.60 [Reduction of \$279,712.40]

3. **FIXED RATE FOR THE PERIOD JANUARY 1, 2013
THROUGH DECEMBER 31, 2013:**

\$2,265,670.44 [Reduction of \$531,453.56]

4. **FIXED RATE FOR THE PERIOD JANUARY 1, 2014
THROUGH DECEMBER 31, 2014:**

\$\$2,237,699.20 [Reduction of \$559,424.80]

5. **FIXED RATE FOR THE PERIOD JANUARY 1, 2015
THROUGH DECEMBER 31, 2015:**

\$2,209,727.96 [Reduction of \$587,396.04]

STATEMENT OF WORK

1.0 OVERVIEW

The following overview summarizes the involvement of the Third Party Administrator (TPA) in the incident, claim and lawsuit management process. The overview is followed by a more detailed description of the key services to be provided by the Contractor. This overview is only a brief summary and does not include all County requirements. For Definitions of Terms see, Attachment A.

Contractor will use the County's Risk Management Information System (RMIS), and provide necessary equipment upgrades, system security and daily system data maintenance.

This Statement of Work is amended, and reflects the County adoption of the Liability Severity Index program (2007) and the County – Sedgwick contract modification (2012).

The County – Sedgwick contract modification was in response to a diminution of County medical malpractice and hospital liability originated incidents, claims and lawsuits, and by the County's request to reduce program costs. This revised Statement of Work anticipates:

- Claims pending count, *001 only, all files, not to exceed 300.

Incident or file counts in excess of those values may cause the Contractor to request a fee increase.

The following matters will be transferred from the Contractor to County Counsel:

- Administration of Free Medical Care (FMC) cases after settlement. The FMC files will be sent to County Counsel. Contractor agrees to assist County Counsel from time to time should issues arise with these files.

2.0 KEY TPA SERVICES

The required TPA services support important County risk management activities. Activities undertaken by County staff and services provided by the TPA are necessarily inter-related, and at times may appear or actually overlap in scope, but the functions of both parties share the common purpose of supporting the County's effort to identify and manage its liability exposure.

For this reason, the key TPA services listed below are organized under a number of general categories including:

- Incident, Claim, Lawsuit Administration
- Scope of Investigation
- Communication with County Counsel
- Litigation Management
- Settlement Process and TPA Authority
- Mandatory Reporting
- Information Management

- Education and Risk Management Programs
- Administrative and Financial Services

Specific TPA services may fall into more than one category (e.g., collection of incident report data is an integral part of both the Incident, Claim, Lawsuit Administration and Information Management functions).

3.0 INCIDENT, CLAIM, LAWSUIT ADMINISTRATION

Upon receipt of any oral or written incident report, claim, or a lawsuit, Contractor shall take all appropriate action to protect the County's interest. Contractor will provide administration services for all new incidents, claims, and lawsuits, and for any open claims and lawsuits transferred to Contractor. Contractor will provide these services in accordance with County Claims Administration Policies, as stated herein and as provided by the County's Contract Administrator (CCA) and County Counsel. In addition, Contractor will incorporate these administration services into Contractor's Incident, Claim and Lawsuit Procedure Manual.

The ultimate resolution of the underlying incident, claim, or lawsuit in most cases anticipates that the Department completes a Corrective Action Plan. Although the Corrective Action Plan is to be completed and performed by the Departments, the Contractor's services provided through incident, claim, and lawsuit administration should support the Department's effort, and provide assistance through Contractor's skill, experience, and dedication to the discovery and presentation of accurate facts and theories of liability.

Contractor's responsibility for these administration services may be divided broadly into three categories: 1) Administration of Incident/Event Notifications; 2) Administration of Claim Filings; and 3) Administration of Lawsuits.

3.1 Administration of Incident/Event Notification:

Individual County personnel, departments, or facilities may report the happening of an incident or event, which in the considered opinion of Contractor, is of sufficient importance to warrant an early investigation because of possible or potential future liability to the County.

The Department of Health Services (DHS) utilizes a department-wide system, "Patient Safety Net" (PSN), for online incident reporting by DHS staff. Within seventy-two (72) hours of Contractor's receipt of such a notification, whether oral or written, Contractor will screen and review each incident/event for purposes of determining if an *Allegation file* should be opened.

If, in the opinion of Contractor, the nature of the incident/event or the severity of injury is such that it is reasonable to assume a claim and/or lawsuit might be filed against the County, or the incident/event raises issues of risk management, or liability which Contractor believes of sufficient importance to the County, Contractor will open an Allegation File for purposes of administering, managing, and auditing all matters pertinent and relevant to that incident/event. Within twenty-four (24) hours of opening of the Allegation File, Contractor will

commence a prompt and thorough investigation within the parameters outlined below in Paragraph 4.0, “Scope of Investigations on Open Allegation Files”.

- 3.1.1 Contractor will prepare *Case Management Reports* (CMR) after opening of an Allegation File as more fully described in Subparagraph 8.1.1.
- 3.1.2 If Contractor determines that the event does not warrant the opening of an Allegation File, Contractor will maintain the incidents and a list of the incidents as set forth in Subparagraph 3.5.

3.2 Administration of Claim Filings:

The filing of a claim, with few exceptions, is a condition precedent to the filing of a lawsuit against the County. Unless otherwise stated, all references to a “claim” shall mean the legal document otherwise known as a governmental tort claim.

Contractor will, within twenty-four (24) hours of receipt of a claim, open an Allegation File, if one has not been previously opened, for purposes of administering, managing, and auditing all matters pertinent and relevant to the incident/event forming the basis of the claim. In addition, if an investigation has not been previously initiated, Contractor will conduct an investigation, within the parameters outlined below in Paragraph 4.0. “Scope of Investigations on Open Allegation Files”, or, if an investigation has previously been initiated, review the previously initiated investigation to determine if further investigation is warranted.

3.2.1 Response to Claims – In addition to Contractor’s investigation of the facts upon which the claim is based, Contractor shall, on County’s behalf, take the following action where appropriate:

3.2.1.1 For each claim not submitted in accordance with the legal statutory filing requirements of Government Code §§910 and 910.2, Contractor shall, on County’s behalf, notify the claimant or third-party, in accordance with the requirements of §910.8, of the specific insufficiency. Contractor shall deny, in accordance with the provisions of §§913 and 915.4 all claims in which claimant or third party has failed to remedy the noted insufficiencies.

3.2.1.2 Deny, in accordance with the provision of §911.3, as untimely, all claims that have not been filed within the time required by statute.

3.2.1.3 Deny, in accordance with the provision of §911.4, as untimely, all claims that have not been filed within the time required by statute. Contractor may, at its discretion, limit the investigation to that necessary to confirm the affirmative defense.

3.2.1.4 Deny, in accordance with the provisions of §§913 and 915.4, all claims on or before the date a denial is required or permitted by law, if in the exercise of reasonable prudent judgment and after a review of all pertinent information, there is no basis of liability against the County or its employees.

3.2.1.5 Reject in accordance with the provisions of §§911.8, 911.8, and 915.4, all Applications for Leave to Present Late Claims. Where, in the opinion of Contractor, an Application meets the requirement for acceptance under Government Code §§911.4 and 911.6, Contractor shall advise and obtain County Counsel's written approval to accept a late claim.

3.2.1.6 Forward Petitions for Relief from the requirements of Government Code §§911.4 and 911.6 to a member of the Legal Defense Panel, as directed by County. Contractor will assist defense counsel in opposing the petitions filed.

3.2.1.7 In order to reduce legal defense costs, where, in the exercise of reasonably prudent judgment, and after a review of all pertinent information, Contractor concludes that a sufficient basis of liability exists against the County or its employees, Contractor will negotiate a settlement of the claim, within the parameters outlined below in Paragraph 7.0, "A Settlement Process and TPA Authority".

3.2.2 Notifications Pursuant to Code of Civil Procedure Section 364:

Where a plaintiff is required to give 90-days notice of intention to commence legal action based on professional negligence of a health care provider, and such 90-days notice is the first notice to Contractor of the occurrence of the incident/event, Contractor will, within twenty-four (24) hours of receipt of such notice, open an Allegation File for purposes of administering, managing, and auditing all matters pertinent and relevant to the incident/event forming the basis of the 90-days notice. In addition, Contractor will conduct an immediate investigation, within the parameters outlined below in Paragraph 4.0 "Scope of Investigations on Open Allegation Files".

Contractor will review the contents of the 90-days notice to determine the extent to which the 90-days notice constitutes a claim, and if so, determining the appropriate action within the parameters outlined in this Subparagraph 3.2.

3.3 Administration of Lawsuits

Contractor will, within twenty-four (24) hours of receipt of a lawsuit, open an Allegation File, if one has not been previously opened, for purposes of administering, managing, and auditing all matters pertinent and relevant to the incident/event forming the basis of the lawsuit. In addition, if an investigation has not been previously initiated, Contractor will conduct an immediate investigation, within the parameters outlined below in Paragraph 4.0, "Scope of Investigations on Open Allegation Files", or if an investigation has previously been initiated, review the previously initiated investigation to determine if further investigation is warranted. Contractor will also be required to manage and monitor the litigation (See Paragraph 6.0, "Litigation Management").

3.4 Reserves

Contractor will establish, update, and maintain adequate Allegation File reserves (indemnity and expenses), and will set initial reserves with ten (10) working days after the date the Allegation File is set-up by Contractor. County believes that the reserves should be based upon an accurate assessment of the facts, as known and determined by Contractor.

3.4.1 Contractor will review and update reserves on open Allegation Files as warranted, based on allegation developments.

3.4.2 Contractor's Allegation File reserve policy will comply with the provisions of Attachment D – County of Los Angeles Case Reserve Policy, and the Liability Severity Index. County Counsel approves reserves on litigated files.

3.4.3 Contractor may, at any time, be required to provide to the CCA or County Counsel the basis and supporting data upon which the Contractor has determined the amount of the reserve.

3.5 Entering Claim, Lawsuit Administration Information Reports Into RMIS – County will implement a Countywide Risk Management Information System (RMIS). DHS will implement a department-wide system, "Patient Safety Net" (PSN), for online incident reporting by DHS staff.

3.5.1 Not all County staff will have access to RMIS. Therefore, Contractor must be able to receive incident reports also by phone, fax and mail, and to purge incident reports to comply with legal retention requirements.

3.5.2 Contractor will maintain a list of County's incident reports that Contractor receives not already entered into RMIS by County staff.

3.5.3 Contractor will be required to input all pertinent claim/lawsuit data into RMIS

3.5.4 Contractor will be required to insure that the information in RMIS on incidents/claims/lawsuits is consistently current and accurate.

3.6 Contractor will notify County when Allegation Files are closed. Such notices will be by a monthly report listing including the disposition of the incident, claim, and lawsuit, including date of dismissal (if any), amount of settlement (if applicable), and the current status of any companion Allegation Files.

3.7 Reimbursement

Contractor will take all necessary actions, including timely notification, to assist the County in recovering reimbursement for County liability through third-party subrogation, reinsurance, apportionment, and/or contributions on cases involving shared liability.

- 3.7.1** Contractor will monitor all incidents, claims, and lawsuits for potential subrogation recoveries; prepare correspondence to effect collection or, at the request of the County, refer subrogation claims information to County Counsel for subrogation recovery assignment. Contractor will provide necessary information and assistance to legal counsel assigned the subrogation claim.
- 3.8** **Incident, Claims, Lawsuit Procedures Manual** - Within three (3) months following contract award, Contractor shall submit and maintain an operations manual of procedures to the County for evaluation. The operations manual should include, but not be limited to, the following information:
- 3.8.1** Contractor's philosophy, policies and procedures to be followed in handling incidents, claims, and lawsuits;
- 3.8.2** Procedures for receiving and reporting incidents, claims, and lawsuits between Contractor and County;
- 3.8.3** Procedures and standards that Contractor will use to review and approve legal defense fees, and allocated expenses, including auditing of billings;
- 3.8.4** Procedures for documenting, monitoring, and auditing financial transactions;
- 3.8.5** Procedures regulating the completion and submission of required reports to the County;
- 3.8.6** Procedures for submitting recommendations requesting settlement authority from the CCA and County Counsel;
- 3.8.7** The Contractor's procedure manual should cover all areas of responsibility. The Contractor should also include for each responsibility and/or task, a description of the subject, and the procedure(s) to be followed, which should incorporate, at a minimum, the activities, communication, and reporting obligations related to the topic.
- 3.8.8** Contractor's Procedure Manual will be provided to the CCA, and County Counsel, and be utilized by Contractor's claims staff handling County claims.
- 3.8.9** Contractor will periodically review procedures and practices with the CCA or his/her designee to insure that the services provided are in compliance with the County's requirements and sound claims administration practices. Contractor will implement improvements as needed to increase productivity and enhance the quality and the performance of claims administration services.
- 3.9** Contractor will communicate timely and effectively with the County and, if applicable, Legal Defense Panel Member(s), concerning all actions planned or taken.

4.0 SCOPE OF INVESTIGATIONS ON OPEN ALLEGATION FILES

The purpose of Contractor's investigation on an open Allegation File will be to determine the facts, ascertain the medical and legal theories upon which liability might be imposed, collect and preserve evidence, discover the existence of possible co-defendants, identify risk management issues, and develop a defense strategy. Investigations are only one of many tools to be utilized by Contractor to continually search for an accurate understanding of all the circumstances surrounding an event, to enable the Contractor to assess and communicate to others the level of exposure to the County. Investigation will be tailored to the facts of the matter and the exposure to the County, subject to the discretion of the Contractor.

- 4.1 Contractor's investigation will be prompt, thorough, and consistent with the severity of the injury, value potential of the loss, and the available defenses. The CCA, County Counsel, and Department Liaison should be advised of the result of the investigation and the Contractor's recommendation for the action to be taken.
- 4.2 Contractor will request and review department/facility's internal investigation reports and other relevant documents including, but not limited to facility medical records, and policies and procedures. In the event Contractor is unsuccessful in securing facility medical records or other necessary documents within fifteen (15) days of initial request through the facility's usual process, Contractor will notify the Department's Liaison and send a copy of the notification to the CCA and County Counsel.
- 4.3 Where applicable, Contractor will request and obtain a review by Contractor's medical/legal consultant to analyze the medical procedures utilized, the medical services provided, and the medical outcome to identify and assess all possible legal theories of liability.
- 4.4 Contractor will conduct other investigation activities including, but not limited to, obtaining witness statements, conducting an on-scene inspection, securing equipment, taking films and photographs, identifying relevant department/facility policies and procedures, and, where applicable, securing police reports as deemed relevant to the matter based on facts and exposure.
- 4.5 **Hold Harmless Agreements** - Contractor's investigation will include the identification and evaluation of potential hold harmless, defense and indemnification agreements, including policies of insurance, executed by and between the County and third parties, or to the benefit of the County. Contractor will contact the appropriate Department and Department Facility staff and obtain and review relevant agreements, as well as other related information, including, but not limited to, medical records, payroll records, and employment records.
- 4.6 Contractor will assess the appropriateness and reasonableness of the claimed damages, including an evaluation of the physical injuries, medical treatment, both past and future, and claims for lost earnings.
- 4.7 Contractor will determine the existence of all Medi-Cal and other medical liens paid, or pending, on behalf of the injured party, and will determine the existence and amount of all medical bills. County will query Medicare re liens.

- 4.8 Contractor will investigate, where necessary and appropriate, questionable claims to assist in the adjustment and litigation of cases and in the proper referral of suspected fraudulent cases to law enforcement authorities.
- 4.9 **Preservation of Evidence and Reporting:** Contractor will develop, within its discretion, policies and procedures for memorializing and reporting all facts, evidence, findings, conclusions, and theories developed by Contractor as part of Contractor's investigations on any Allegation File.
- 4.10 Contractor's investigation should be completed within six (6) months of the opening of the Allegation File, and the County Department Liaison and the Department Facility Liaison where the incident/event occurred, as well as County Counsel, will be advised of Contractor's finding, recommendations, and the actions to be taken.

5.0 **COMMUNICATION WITH COUNTY COUNSEL** – Unless otherwise specified, in communications with County Counsel:

- 5.1 **Litigation Management Update** - Contractor will provide a "Litigation Management Update" (LMU) to County Counsel, in those instances where required by this Contract, and at the request of County Counsel.

The LMU is the preferred method of written communication with County Counsel in all instances where written communication with County Counsel is not otherwise specified. The LMU shall contain, but not be limited to, the following data fields: patient's name; claimant's name; the department and/or facility involved; the type of claim; the date of injury; the court case number; claim filing information; court appearance dates; the court and name of judge; indemnity, fees, costs, and recommendation for settlement, if any; and a narrative setting forth a brief and accurate summary of facts, a brief explanation of the Contractor's recommendations, requests for assistance or advice, etc.

- 5.2 The LMU may be in an e-mail format.
- 5.3 The LMU data grid may be by data drawn from RMIS, including a Profile.

6.0 **LITIGATION MANAGEMENT**

Designated Legal Defense Panel Members, under the general supervision of County Counsel, provide legal services for all County liability claims and lawsuits within the Medical Malpractice and Hospital Liability Claims Administration, and Legal Defense Management Services program. County Counsel is responsible for administering these agreements.

Contractor is to manage and monitor all litigation, and report on the performance of the County's defense attorneys in all open Allegation Files. Contractor shall have day to day responsibility for supervising Legal Defense Panel Member(s) in accordance with County Counsel guidelines. As directed by County Counsel, and within the County's contract requirements, Contractor's litigation management responsibilities include the following:

- 6.1** Contractor will work with County Counsel to assign lawsuits in a timely manner to a Legal Defense Panel Member in accordance with the Liability Severity Index and based on the Contractor's assessment of the facts of the individual case and the particular expertise and availability of defense counsel. These assignments will be distributed to the Defense Panel as equally as possible. Contractor will notify County Counsel of the recommended assignment within five (5) business days. County Counsel retains the right to assign or reassign the case to any Defense Panel Member or any other law firm of County's choice, at any time.
- 6.1.1** Upon County Counsel's request, Contractor will assist County Counsel in evaluating the qualifications and performance of attorneys and firms currently on the Panel.
- 6.2** Contractor will make every effort to identify the proper parties to the lawsuit, whether or not the parties have been named and/or served. In consultation with Defense Panel Member(s) and County Counsel, where necessary, Contractor will determine the extent to which County is required to provide a defense and to indemnify any named party pursuant to a hold harmless agreement. Contractor will be under a continuing obligation to review or initiate an investigation to determine the existence of any hold harmless agreements applicable to any party.
- 6.2.1** Where County obligation to indemnify or defend a party or parties is questionable or uncertain, Contractor will obtain County Counsel's advice to determine if:
- A. A Reservation of Rights letter is warranted; or
 - B. An acknowledgment to indemnify and defend the other party is warranted; or
 - C. A denial of indemnification and legal defense is warranted.
- 6.3** Contractor will determine the extent to which County is owed a defense and indemnification by a third party and/or other party defendant, and, if so, Contractor will make demand and tender the defense of the lawsuit to that third party and/or other party defendant.
- 6.4** Contractor, in consultation with Defense Panel Member(s), will determine if a cross-complaint should be filed against possible third party defendants, whether or not yet named in the lawsuit, and make a recommendation to County Counsel.
- 6.4.1** No cross-complaint shall be filed without prior written authorization from County Counsel.
- 6.5** Contractor will, upon assignment of a lawsuit to Defense Panel Member(s), provide all Allegation File information, documents, and other assistance to Defense Panel Member necessary for the defense of litigated Allegation Files. This includes where applicable, Contractor's medical/legal consultant's reports and evaluations.

- 6.6** After service of a Summons and Complaint and assignment of an Allegation File to Defense Panel Member, Contractor will insure that copies of any and all future reports/evaluations prepared by Contractor's medical/legal consultants are forwarded to the CCA, County Counsel and Department Liaisons.
- 6.7** Contractor shall forward all medical reports and correspondence from claimant or claimant's attorney to County's defense.
- 6.8** Contractor shall respond to defense attorney's correspondence within two (2) weeks, or sooner if the correspondence is urgent in nature, e.g. necessitated by an upcoming court appearance date.

6.9 **Roundtable Meetings**

Roundtables are conducted in accordance with the Liability Severity Index.

Each Roundtable Meeting is to include County Counsel, Department Liaison, assigned Defense Panel Member(s), involved Contractor staff, and, where applicable, Contractor's medical/legal consultant(s). The County will provide those designated County personnel and staff, as determined by County and/or recommended by Contractor, who might contribute to this information exchange process.

Contractor's staff attending these Roundtable meetings will be asked to present a medical/legal analysis of the event, and will participate as part of the team to find the best resolution of the Allegation File for the County.

6.9.1 Prior to Roundtable Meetings Contractor will:

- A. Request that Defense Counsel prepare a Trial Counsel Report (TCR) and Persons Named or Alleged report be prepared setting forth the facts and the legal and medical theories of liability, and submitted to County Counsel, CEO Risk Management, and the involved Department Risk Liaison, and Contractor at least ten (10) days prior to Roundtable.
 - B. Prepare a Litigation Management Update (LMU) (see Subparagraph 5.1) setting forth the current status of the case.
 - C: For DHS only, Contractor will be required to send written notices ("Invitee Letters") of the Roundtable meeting to licensees who are "named or alleged" in the claim or lawsuit. Contractor will be required to use last known address information for those attendees who are no longer employees. Such notices shall be sent out no later than 5 weeks before the date of the scheduled Roundtable meeting, if practical.
- 6.10** On each Allegation File, Contractor will be responsible to prepare, obtain, review, and provide to County, each Report described in Paragraph 8.0, "Mandatory Reporting", as well as those other reports described elsewhere.

- 6.11** Contractor will attend, participate in, and monitor all trials and other court appearances generally attended by adjusters (MSCs). The extent of trial monitoring will be case-by-case and will be discussed by Contractor with County Counsel.
- 6.12** **Court Appearance by County Counsel:** In those instances where County Counsel is ordered to appear in Court, Contractor will be required to do the following:
- 6.12.1** Contractor will notify County Counsel of the date of the appearance within seventy-two (72) hours of Contractor being aware of the court order, and Contractor will brief County Counsel on the facts and circumstances of the matter for the purpose of identifying and anticipating the problems and issues to be addressed at the scheduled court appearance;
- 6.12.2** Contractor's Claims Manager or Contract Manager shall be present in court on the date ordered, unless otherwise excused by County Counsel;
- 6.12.3** Contractor will confer with Defense Panel Member regarding the court ordered appearance, and insure that the lawyer that is assigned to try the case will also be present, unless otherwise excused by County Counsel.
- 6.13** **Legal Fees and Allocated Expenses:** Under the general supervision and instruction of County Counsel, Contractor has the specific responsibility for monitoring, auditing, and approving Legal Defense Fees and Allocated Expenses.
- 6.13.1** Members of the Defense Panel will submit bills in the manner set forth in their contract with the County, in accordance with County Counsel Billing Guidelines, and consistent with the processes of "E-Billing." The bills will be submitted via TyMetrix.
- 6.14** Contractor will provide a LMU to County Counsel for each Allegation File:
- 6.14.1** Scheduled for mediation/arbitration upon of Contractor's knowledge that an Allegation File is scheduled to be mediated/arbitrated.
- 6.14.2** A settlement or proposed settlement has been reached or negotiated (see Subparagraph 7.2.2).
- 6.15** **Settlement Negotiations:** Unless otherwise instructed by County Counsel, Contractor will supervise, conduct, monitor and/or participate in settlement negotiations, or participate in settlement negotiations with the Defense Panel Member(s).
- 6.15.1** Contractor will promptly advise County Counsel of all oral or written demands to settle in excess of \$100,000. This will be by e-mail and within one business day where practical.

6.15.2. Within five (5) days of receipt, Contractor will report to County Counsel of all oral or written demands to settle in excess of \$100,000. Notice to County Counsel will be as described in Attachment J.

6.16 **Writs and Appeals:** Any appeal or petition for other review requires the approval of County Counsel. Contractor will submit, in writing, all requests to appeal or petition for other review on any litigated matter. Contractor will clearly state reason(s) supporting the recommended action. County Counsel will advise Contractor whether the Writ should be filed, and by which member of the Legal Defense Panel.

7.0 **SETTLEMENT PROCESS AND TPA AUTHORITY**

The County may not be bound to a settlement except as provided by the County's Board of Supervisors pursuant to certain statutory restrictions. County Counsel shall have final authority, prior to submission of a settlement to the County's Claims Board and Board of Supervisors, on all settlement matters, including the amount of settlement, all terms and conditions within the settlement, and regardless of department or facility concurrence, the basis for and/or the expression of the factor of settlement. Contractor will insure that when appropriate, plaintiff(s) are provided with a fair offer of settlement prior to trial.

7.1 Settlements Within Contractor's Authority: - Contractor will be delegated and have the authority to settle any claim or lawsuit in an amount not to exceed \$20,000 per incident. The County reserves the right to increase or decrease the settlement authority limits in the negotiated contract at any time.

Contractor will advise the County on a monthly basis, or as requested, of all settlements made by Contractor under this authority.

Contractor will also provide to the CCA, County Counsel, Department Liaison, and Department Facility Liaison, in support of each settlement made by Contractor under this authority, the following applicable information:

7.1.1 A statement of the facts and the legal and medical theories of liability, including each reason/factor upon which the settlement was based;

7.1.2 A statement that the facts and the legal and medical theories of liability upon which the settlement is based are accurate and appropriate;

7.1.3 A statement that Contractor discussed the settlement with the Department Liaison and/or involved Department Facility Liaison, and obtained the Department Liaison's and/or involved Department Facility Liaison's concurrence in the reason/factors for settlement;

A. Contractor may, where in the judgment of the Contractor's Contract Manager it is in the best interest of the County, settle any matter up to \$3,000.00 utilizing "Economic" as a Factor for Settlement without otherwise seeking concurrence.

- 7.1.4 Where applicable, Legal Defense Panel Member's evaluation (Trial Counsel Report (TCR) of the facts and the legal and medical theories of liability, including each reason/factor upon which settlement was based;
- 7.1.5 Contractor's medical/legal consultant's evaluations of the medical theories of liability, including the consultant's review of each reason/factor upon which settlement is recommended. This requirement does not apply to "Economic" settlements.
- 7.2 **Recommended Settlements Exceeding Contractor's Authority** - Contractor will have authority to negotiate and thereafter recommend, but may not bind the County to, a proposed settlement in excess of Contractor's maximum authority of \$20,000 per incident. Contractor's authority to negotiate and recommend a proposed settlement in excess of Contractor's maximum authority of \$20,000 per incident will be subject to the following:
- 7.2.1 Prior to entering into any settlement discussions in excess of Contractor's maximum authority of \$20,000 per incident, Contractor will notify the CCA, County Counsel, Department Liaison, Risk Management Inspector General and the Department Facility Liaison of Contractor's intent to negotiate a proposed settlement, and the factor upon which the liability of the County is based.
- 7.2.2 Within twenty-four (24) hours after negotiating a proposed settlement, or as soon as practical, Contractor will send a "Notification of Settlement" to the CCA, County Counsel, Department Liaison, and Department Facility Liaison by fax, or by E-mail.
- 7.2.3 The "Notification of Settlement" will contain the terms and conditions of the proposed settlement, a statement of the reasons/factors upon which the proposed settlement is based, a statement that the facts and the legal and medical theories of liability upon which the settlement is based are accurate and appropriate, a statement that Contractor has discussed the facts and medical theories of liability with the Department Liaison and Department Facility Liaison, and a statement that Contractor has obtained the Department Liaison's, and/or Department Facility Liaison's concurrence in the reasons/factors for settlement.
- 7.2.4 When there are multiple County departments involved in the same settlement, Contractor will evaluate the case and provide, to County Counsel, the CCA, and involved County Department Liaisons, recommendations as to each department's respective share of liability. When necessary to resolve a conflict between departments, the Chief Executive Officer, or designee, will make a final determination as to apportionment of liability.
- 7.2.5 Contractor will forward a formal "**Settlement Authority Letter**" to the CCA, County Counsel, Department Liaison, and the involved Department Facility Liaison within fifteen (15) business days of the date the terms of the proposed settlement were accepted by plaintiff/claimant.

- 7.2.6** In addition to the “Settlement Authority Letter”, Contractor will also provide, in support of Contractor’s request for a proposed settlement, the following applicable documents:
- A. Defense Panel Member’s Trial Counsel Report (TCR) of the facts and the legal and medical theories of liability, including each reason/factor upon which settlement is recommended;
 - B. Defense Panel Member’s current Persons Named or Alleged report, if the settlement is of a medical professional liability matter;
 - C. Contractor’s medical/legal consultant’s evaluations of the medical theories of liability, including the consultant’s concurrence in each reason/factor upon which settlement is recommended, where applicable;
 - D. A statement that the facts and the legal and medical theories of liability upon which the settlement is based are accurate and appropriate;
 - E. Other documents County may request as necessary to evaluate Contractor’s recommendation for settlement.
- 7.2.7** All proposed settlements above Contractor’s maximum authority, up to and including \$100,000, will be subject to approval by County Counsel and the CCA. When the proposed settlement is for an amount over \$100,000, the settlement will be subject to approval by County Counsel, and approval by the County’s Claims Board, and Board of Supervisors.
- 7.2.8** The County may approve or deny the proposed settlement, approve the proposed settlement in a sum or manner other than requested, or instruct that the matter proceed to trial.
- 7.2.9** The County may direct Contractor, or the Legal Defense Panel Member to whom the Allegation File is assigned, to accomplish additional tasks and re-submit a revised settlement proposal.

7.3 **Liens and Incumbrances:** Contractor will be responsible for verifying and reporting to the County the existence of all liens and incumbrances against a settlement or proposed settlement of a litigated matter, and asserting all appropriate defenses to any such liens and incumbrances, and will be responsible for protecting the County’s interests by insuring that all such liens and incumbrances are satisfied, or will be satisfied, either by plaintiff/claimant, outside third parties, compromise and release by the lien holder, or by the stated terms and conditions of the settlement or proposed settlement.

7.4 **Future Medical Care:** Whenever the terms and conditions of a proposed settlement involving DHS include the provision of free future medical care to claimant/plaintiff, such free future medical care will be limited to care and treatment necessary to and arising from the specific injuries upon which the claim/lawsuit is based. In addition, such free future medical care will be limited to

care and treatment at a County of Los Angeles-owned-and-operated medical facility. Such agreements are rare, and are generally limited to acute care.

7.5 Structured Settlements: Contractor will insure that all structured settlements offered as part of a negotiated settlement are offered in relation to a fixed dollar amount. Under the general supervision of the CCA, Contractor will:

7.5.1 Arrange and purchase annuity policies for payment of structured settlements in accordance with County established guidelines (see Attachment F – Periodic Payment Program Guidelines). The annuity premium will be considered a settlement cost.

7.5.2 Aggressively monitor, handle payments, and report semi-annually on the remaining 59 County self-funded annuities written in the early 1980s, per County established guidelines (see Attachment F – Periodic Payment Program Guidelines). Contractor may retain investigators from time to time to ascertain that the beneficiaries of these self-funded or Executive Life annuities remain alive. Such costs will be allocated to the respective files.

7.6 Nothing in this Settlement Process and TPA Authority Paragraph will preclude Contractor from negotiating and securing a proposed settlement with plaintiff/plaintiff's counsel or claimant prior to the matter being assigned to a Legal Defense Panel Member, provided that Contractor follows the procedures outlined above and/or as approved by County Counsel.

8.0 MANDATORY REPORTING – Contractor will be responsible for preparing, obtaining, reviewing, and providing the following mandatory reports:

8.1 Contractor's Mandatory Reports: Contractor will be responsible for preparing and submitting to designated county personnel, the following mandatory reports:

8.1.1 Case Management Report (CMR): A "Case Management Report" (CMR) will be prepared by Contractor on every open Allegation File, whether opened in response to an incident or a claim. LMU's will count as CMR's.

CMR's will not be sent on litigated matters. Contractor will monitor reports from Defense Counsel on litigated matters.

The CMR will serve as a summary of all significant case activity and developments, and will include, but not be limited to, the following information: name of injured party or claimant; date of incident; a brief and accurate summary of the facts; nature of injury; amount of damages claimed; current status of the investigation; case number, where applicable; and amount of settlement demand, where applicable.

The data grid of the CMR or LMU may be drawn from RMIS, or be a Profile.

Contractor will submit a brief initial CMR to the CCA, County Counsel, and Department Liaison approximately thirty (30) days after opening of an

Allegation File. An updated CMR covering interim developments will be provided every ninety (90) days thereafter on all open Incident and Claim Allegation Files. A comprehensive CMR will be submitted at completion of investigation or 6 months, whichever is earlier.

8.1.2 Ad Hoc Reports – Contractor will be required to provide such other reports on an ad hoc basis. Ad hoc reports are those reports generated at the request of the CCA, County Counsel, or Department Liaison on a one-time informal and improvised basis. These reports generally arise in response to inquiries from the Board of Supervisors or events of such significance that information is needed on an expedited basis.

8.1.3: B&P 801 - Contractor will prepare and submit reports as required by State Business and Professions Code 801.1 et. Seq., including but not limited to the State of California Healing Arts Board, Board of Registered Nursing, and Hearing Aid Dispensers Examining Committee, as well as other reports as required by law. The County will provide the factual information.

8.2 Monitoring of Legal Defense Panel Reports – For each Allegation File assigned to Legal Defense Panel Members, Contractor will obtain and evaluate the following reports that are prepared by the Legal Defense Panel members, in a format as required by County Counsel.

8.2.1 Case Evaluation and Plan (CEP), and Budget – As set forth in the Liability Severity Index, and following the processes of “E-Billing,” for each Allegation File that has been assigned to a legal Defense Panel Member, the Legal Defense Panel Member is required to submit to County Counsel a “Case Evaluation and Plan” (CEP) and budget. The CEP is a confidential and independent evaluation of the Allegation File and serves as a basis for controlling litigation costs and documenting the County’s legal position, strategy, and status. It is based on the Legal Defense Panel Member’s evaluation of the pleadings, discovery, reports, other documents; examination of physical evidence (if any); and review of any other matters as deemed appropriate and necessary.

8.2.2 Case Status Reports and Status Update Reports – Case Status Reports and Updates will be prepared by Defense Counsel and submitted in accordance with the Liability Severity Index.

8.2.3 Demands for Settlement in Excess of \$100,000: Within five (5) days of receipt, Defense Counsel will notify the CCA, County Counsel and Contractor of all oral or written demands to settle a lawsuit in an amount exceeding \$100,000 in an approved format. Defense counsel will respond to and answer each of the questions contained in the approved format, and will provide County Counsel with Panel Member’s recommendations.

8.2.4 Trial Reports – Prior to trial, Contractor will obtain from the Legal Defense Panel Member, and thereafter, provide to the CCA, County

Counsel, Department Liaison, and the involved Department Facility Liaison the following reports:

- A. **A Trial Notification Report** will be faxed to County Counsel five (5) business days prior to trial. At a minimum, the Trial Notification Report will consist of: one or two paragraphs setting forth a concise and accurate statement of the facts; a statement of the principal theories of liability; and any other information as may be required by County Counsel.
- B. **A Daily Trial Status Report** will be faxed daily to County Counsel once the trial begins. The Daily Trial Status Report will be a summary of each day's developments in the proceeding, and will include additional information as may be required by County Counsel.
- C. As soon as Contractor is informed that a judgment, verdict, or other award has been rendered, Contractor will immediately give County Counsel verbal notice. Thereafter, a **Trial Verdict Report** will be faxed to County Counsel one (1) business day after the judgment, verdict, or other award has been rendered. The Trial Verdict Report will be limited to two (2) pages and will include all information that may be required by County Counsel.

9.0 FINANCIAL AND RELATED ADMINISTRATIVE SERVICES MANAGEMENT

Contractor shall provide a full range of financial and related administrative services. This includes but is not limited to the following:

9.1 Expense Payments on non-litigation files: – Contractor shall be responsible for reviewing and approving all expense invoices for all files not assigned to Defense Counsel. These expense payments are generally, but not always, related to the copying of medical records, other records or translation services. Once approved, these payments will be entered into RMIS for processing and payment by the County's E-Caps payment processing system. Contractor will send a Payment Voucher report and a copy of all invoices being paid to CEO. CEO will have final approval authority for such payments.

9.2 Indemnity Payments: - Contractor shall be responsible for initiating all Indemnity Payments. Indemnity payments will be entered into RMIS for processing and payment by the County's E-Caps payment processing system. Contractor will send a Payment Voucher report and all required supporting documentation for each payment to CEO. CEO will have final approval authority for such payments.

- A. Indemnity payment supporting documentation will include a signed release and concurrence. Some payments will require additional supporting documentation such as: Approved Minors' Comp, Copy of annuity broker letter for annuity premium requests, copy of Medi-Cal net lien notice, copy of Medicare net lien notice, etc.

9.3 Payment of invoices on cases assigned to Defense Counsel: - Defense counsel is responsible for entering their invoices for time and expense into TyMetrix, the County's e-billing system. For all invoices completing the multi-level approval process in TyMetrix, the County will create an Interface file for these payments and download the file to RMIS. The Contractor shall:

- A. Check RMIS daily for an Interface file.
- B. Process Interface file through the approval levels in RMIS.
- C. Process Payment Voucher report from RMIS for these payments and the Invoice Summary from TyMetrix for each invoice included in the Interface file.
- D. The Payment Voucher report and Invoice Summaries will be sent to CEO. CEO will have final approval authority for such payments. For payments not approved by CEO, Contractor will research CEO concerns and report back to CEO. Payment may then be finalized by CEO or payment may be rejected back to Contractor for further research or for rejecting back to Defense Counsel for revision and/or correction.

9.4 County Budget - Contractor shall provide necessary support in development of the County's liability claims administration budget.

9.5 Fraud - Contractor shall immediately report to the CCA any alleged, suspected or known incident involving any fraud. Contractor shall be liable for any loss to the County resulting from the Contractor's failing to report such an incident within 48 hours upon discovery of such incident.

9.6 County Audits of TPA Financials and Performance – Contractor's staff shall cooperate fully with all County audits. Financial, performance and related audits may be performed by the CCA or its designee, and by the CEO or designee, and may be conducted by outside auditing services at County's sole direction. Such audits shall be scheduled at a frequency determined by County. The County reserves the right to update the scope of work and audit measurements as necessary to meet requirements of legal changes affecting claims handling.

10.0 INFORMATION MANAGEMENT

Contractor shall maintain program information necessary to meet the requirements of this contract. The majority of the needed information will be available through the use of County's Risk Management Information System (RMIS). Contractor shall use RMIS for the risk management and claims administration information management services required under this contract. See *Attachment I – The Risk Management Information System*, which describes the system requirements.

10.1 Equipment – Contractor has installed a full T1 link between the Contractor and the County for the RMIS connection, Contractor shall maintain and/or upgrade the required PC configurations, software and hardware, to keep up with industry standards and to maintain compatibility with RMIS. The upgrade of hardware and/or software will be as determined by the County or the Contractor.

- 10.2 System Security** – RMIS equipment will be housed at Contractor’s facility. Contractor will provide access to County for necessary installation and repair of RMIS equipment. The Contractor shall also meet any additional security measures as required by the County. The Contractor’s security measures must be approved by the County.
- 10.3 System Data Maintenance** – Contractor shall, on a daily basis, accurately input, update, and maintain all data fields on RMIS for all cases administered by Contractor. Contractor shall provide a Local Area Network (LAN) that will be required to be connected to County’s Wide Area Network (WAN) via a dedicated frame relay line. All costs associated with the transition to and implementation of RMIS shall be the responsibility of Contractor. Contractor shall be responsible for system security as required by County.
- 10.4 RMIS Training** – County shall furnish necessary RMIS system instructional material and security information, and shall provide initial RMIS system training to Contractor’s staff. Follow-up training will be provided by County to Contractor’s key information system staff. These key information system staff will provide training as needed to insure Contractor’s staff is proficient in the use and security of the RMIS system and the Contractor’s LAN. Contractor’s trained staff shall be available during County business hours to:
- 10.4.1** Attend County provided RMIS meetings and update training sessions’
 - 10.4.2** Process ad hoc report requests from the CCA, County Counsel, or Department Liaison;
 - 10.4.3** Run regular reports and distribute them timely to County departments/staff as directed by the CCA.
- 10.5 RMIS Maintenance, Repair, and Replacement** – County shall provide maintenance, repair and/or replacement of RMIS equipment. Contractor shall be responsible fro damage to RMIS system equipment, other than that caused by normal wear and tear, as determined by the County. Contractor shall maintain insurance for the full replacement value of RMIS equipment as specified in *Appendix A, Subparagraph 8.23, General Insurance Requirements.*”

11.0 EDUCATION AND RISK MANAGEMENT PROGRAMS

- 11.1 Education and Risk County Staff** – Contractor shall participate in County Risk Control Committees when requested by the CCA, and may submit risk management information to the CCA and Department Liaison to enable implementation of practical and effective programs to reduce County’s future liability costs.
- 11.2 Continuing Education for TPA Staff** - Contractor will be expected to provide ongoing claims administration training to Contractor’s staff to insure its staff are knowledgeable concerning relevant developments in liability risk management and industry claims administration practices.

In-service education capabilities should be specifically outlined by contractors with special attention to incident evaluation, new employee orientation, establishment and adjustment of reserves, claims investigation, and other significant program issues.

12.0 RESPONSIBILITIES – CONTRACTOR

Contractor's services shall be provided by professional staff having work experience and expertise that includes, but is not limited to, the following areas: California public entity law; California Governmental Tort Liability; the California Medical Injury Compensation and Reform Act (MICRA) and its impact on medical malpractice litigation; statutory rules and regulations concerning medical teaching institutions; California Evidence Code Section 1157; and the negotiation and resolution of Medi-Cal and Medicare liens; and structured settlements.

12.1 Contractor's Contract Manager

12.1.1 Contractor shall provide a full-time Contract Manager or designated alternate. The Contract Manager shall have full authority to act for this Contractor on all matters relating to the daily operation of the Contract.

12.1.2 Contract Manager will have a minimum of five (5) years medical malpractice/hospital liability claims work experience, five (5) years public entity medical malpractice/hospital liability claims experience, five (5) years of documented management experience.

12.2 Claims Manager

12.2.1 Contractor shall provide a full-time Claims Manager. The Claims Manager shall be exclusively dedicated to the daily administration and supervision of contractor's activities under this contract. The Claims Manager and the Contract Manager may be the same person.

12.2.2 The Claims Manager shall have will have a minimum of five (5) years Medical malpractice/hospital liability claims work experience, with a minimum of five (5) years public entity medical malpractice/hospital liability claims work experience.

12.3 Contractor's Claims Staff

Contractor shall provide claims staff dedicated solely to administer and manage incidents, claims, and lawsuits filed against the County. To avoid any potential conflict of interest, these staff shall not administer or manage any incidents, claims, or lawsuits on behalf of any client other than the County. Failure to comply with this requirement shall constitute a material breach of contract upon which County may immediately terminate or suspend this agreement.

Contractor's staff shall include supervising claims specialist(s), claims specialist, and medical/legal consultant(s) who meet the minimum requirement listed below. Contractor's staff assignments are to be based on the best practices recommendations of Supervising Claims Specialist and Claims Specialist, which

may include specialized or innovative caseloads such as a “fast track” unit for smaller cases.

12.3.1 Supervising Claims Specialist(s)

- A. The Supervising Claims Specialist(s) shall have a minimum of five (5) years medical malpractice/hospital liability claims experience.
- B. The Supervising Claims Specialist(s) shall have the additional responsibility to review and approve all Allegation File reserves and settlements within Contractor’s authority, and oversee the administration and legal defense management efforts of Claims Specialist under their supervision.

12.3.2 Claims Specialist

- A. Claims Specialist shall have a minimum of five (5) years medical malpractice/hospital liability claims work experience or three (3) years public entity liability claims work experience.
- B. Claims Specialist will administer incidents and claims and manage legal defense of lawsuits. Claims Specialists will attend settlement conferences and meetings as directed by the Claims Supervisors.

12.3.3 Medical/Legal Consultants(s)

- A. Medical/Legal Consultant(s) shall have minimum of five (5) years medical malpractice/hospital liability claims consultation experience.
- B. Medical/Legal Consultant(s) will perform medical/legal reviews to assess the medical procedures utilized, the medical services provided, and the medical outcome to assist Contractor in the timely identification and assessment of potential County liability. Such Medical/Legal Consultant(s) may be an independent contractor.

12.4 Contractor’s Support Staff

Contractor shall provide sufficient qualified and experienced clerical and other support personnel to insure:

12.4.1 Pick-up and Delivery Services to DHS Facilities – Pick-up and delivery of mail between the DHS facilities (See section 13.6) and the Contractor as needed. Contractor may use delivery services or U.S. mail as deemed appropriate.

12.4.2 Proper matching and distribution of mail to appropriate claims personnel within twenty-four (24) hours of receipt;

12.4.3 Completion of processing and mailing of correspondence, forms, and legal notices within forty-eight (48) hours of assignment or receipt;

Support staff shall not be assigned duties of the Contract Manager, Claims Manager, Supervising Claims Specialist, or Claims Specialist, as identified herein and in the Contractor's Incident/Claims/Lawsuit Procedure Manual.

12.5 Contractor Employee Acceptability

County shall have the right to approve Contractor's recommendations for professional staff positions. The Contractor shall remove, at the CCA's request, any employee or subcontractor providing services to the County under this Contract. The Contractor shall not subcontract with any personnel for performance of services hereunder unless the provisions in Sub-paragraph 8.39 of the Contract are met.

12.6 Contractor Office and Hours of Operation

12.6.1 Contractor shall maintain an office with a telephone in the company's name where Contractor conducts business. The office shall be staffed at a minimum during the hours of 8:00 a.m. to 5:00 p.m. (Pacific Time), Monday through Friday, excluding County holidays by at least one employee who can respond to inquiries and complaints which may be received about the Contractor's performance of the Contract. In any case, Contractor shall maintain days and hours of operation and staffing sufficient to complete all services in a time manner.

12.6.2 Emergency Notifications

Contractor shall have one (1) claims staff who is accessible twenty-four (24) hours a day, to the CCA and/or other County staff, for emergency claims consultation and immediate reporting of severe injury incidents. The Contract Manager or the Claims Manager shall be immediately available to the designated claims staff for consultation.

13.0 RESPONSIBILITIES – COUNTY

13.1 County's Contract Administrator (CCA)

The CCA shall be the Chief of Liability Claims in the chief Administrative Office, or his duly authorized designee. Except as otherwise stated herein, the CCA shall:

13.1.2 Have full authority to monitor the Contractor's performance in the daily operation of this contract.

13.1.3 Provide direction to the Contractor in areas relating to policy, information, and procedural requirements.

13.1.4 In the event of a dispute between the CCA and Contractor regarding substantive questions of policy and procedures; the CCA's interpretation shall prevail including without limitation, interpretation of Federal, State and local laws, civil procedures, legal process, court rules and administrative regulations.

13.1.5 The County will inform the Contractor of the name, address, and telephone number of the CCA, in writing, at the time this contract is awarded, and at any time, thereafter, a change of CCA is made.

13.1.6 Not be authorized to make any changes in the standard Terms and Conditions of the contract or to obligate the County in any way whatsoever.

13.1.7 Meet at least quarterly with the Contractor's Program Manager(s) to review contract performance issues and other items of concern to the County's program. At the option of CCA, meetings may be scheduled monthly.

13.1.8 Except as otherwise provided herein, all work performed by Contractor under this contract shall be subject to approval by the CCA.

13.2 County Counsel Liaison – County Counsel retains final authority on all legal matters. In addition, the County Counsel Liaison shall have responsibility for the overall management of legal defense services, which shall include, but not be limited to, the addition or deletion of Legal Defense Panel members, the assignment of litigation to the defense panel, review and approval of litigation strategy, Legal Defense Panel firms' billings, and advice on legal issues as may be requested, by Contractor.

The CCA will seek input from County Counsel Liaison on Contractor's performance.

13.3 Quality Assurance Evaluator (QAE) – The County will designate one (a) or more persons who will act as a Quality Assurance Evaluator(s) for the County on all services, requirements, and deliverables pertinent to the contract and monitor the Contractor's performance using procedures that may be necessary to ascertain that the Contractor is in compliance with this Contract. The County will inform the Contractor of the name, address, and telephone number of the QAE, in writing, at the time this Contract is awarded, and at any time, thereafter, a change of QAE is made.

The QAE and the CCA may be the same person. The QAE is not authorized to make any changes in the terms and conditions of this Contract or to obligate the County in any way whatsoever.

13.4 Department Liaisons – One or more persons will be designated by each County department to work with the CCA, Quality Assurance Evaluator and Contractor. There are approximately thirty (30) Departmental Liaisons who will be responsible for:

13.4.1 Insuring required department documents are provided to Contractor.

13.4.2 Discussing allegations, incidents, and lawsuits with Contractor as needed, including attending Roundtable Meetings;

13.4.3 Providing concurrence of the factors of settlement for settlements for their department; and

13.4.4 Providing input to the CCA on Contractor's performance.

13.5 Department Facility Liaisons – DHS has twelve (12) separate and distinct health care facilities. They are as follows:

1. LAC+USC Medical Center, 1200 N. State St., L.A. CA 90033
2. Harbor/UCLA Medical Center, 1000 W. Carson St., Torrance, CA 90509
3. Olive View/UCLA Medical Center, 14445 Olive View Dr., Sylmar, CA 91342
4. Kind/Drew Medical Center, 12021 S. Wilmington, L.A., CA 90059
5. High Desert Health System, 44900 N. 69th St., Lancaster, CA 93538
6. Rancho Los Amigos National Rehabilitation Center, 7601 E. Imperial High, Downey, CA 90242
7. Hubert H. Humphrey Comprehensive Health Center, 5850 S. Main St., L.A., CA 90003
8. H. Claude Hudson Comprehensive Health Center, 2829 S. Grand Ave., L.A., CA 90007
9. Edward R. Royall Comprehensive Health Center, 254 S. Fetterly Ave., L.A., CA 90022
10. Long Beach Comprehensive Health Center, 1333 Chestnut Ave., Long Beach, CA 90813
11. El Monte Comprehensive Health Center, 10953 Ramona Blvd, El Monte, CA 91731
12. Mid Valley Comprehensive Health Center, 7515 Van Nuys, CA 91405

One or more persons will be designated as a Department Facility Liaison by each of the above facilities to work with CCA, QAE, and Contractor. The Department Facility Liaison will be responsible for:

13.5.1 Insuring required department documents are provided to Contractor;

13.5.2 Discussing allegations, incidents, and lawsuits with Contractor as needed, including attending Round Table Meetings;

13.5.3 Providing concurrence of the factors of settlement for settlements for their facility; and

13.5.4 Providing input to the CCA on Contractor's performance.

13.5.5 The DHS Department Liaison will have final authority for all matters pertaining to DHS' facilities. Any problems or conflicts arising between the Contractor and the Department Facility should be referred to the DHS Department Liaison.

14.0 COUNTY FURNISHED ITEMS

14.1 The CCA shall arrange for the release of all Allegation Files and other documents for pick-up by Contractor prior to December 31, 2006.

14.2 The CCA will provide without cost to Contractor, orientation to the County liability claims administration program for key Contractor personnel prior to the start date of the contract. Contractor shall not be reimbursed for any expenses during orientation.

In addition, the CCA will provide without cost to Contractor, initial technical assistance to Contractor after the contract is awarded to insure a smooth transition.

15.0 CONTRACTOR FURNISHED ITEMS

Contractor shall provide all staff, facilities, materials, and equipment necessary to provide services required under this contract, except as stated in Paragraph 14.0, "County Furnished Items."

15.1 Contractor shall provide training materials, supplies, and support equipment necessary to perform all services required by this Statement of Work and adhere to all requirements imposed on the Contractor by the contract, except as provided by County under Paragraph 14.0, "County Furnished Items." The Contractor shall also provide other office-related items such as personal computers, printers and monitors, fax machines, photocopy machines, video tape, players (VHS) and monitors, and other program-related items, as required by the County, due to program changes.

15.2 Contractor shall provide adequate workspace including RMIS access and e-mail, telephone service, and free parking for one County monitor, as necessary for required program auditing or monitoring.

15.3 **Claims Administration Procedure Manual** – Within 90 days of contract award, Contractor will provide a draft "Claim Administration Procedure Manual," describing policies and procedures for the administration of County cases, detailing approval limits, responsibilities, reporting requirements, review of legal services billing etc. Such manual shall be provided to and utilized by Contractor claims staff handling County claims and to the CCA.

15.4 Business Continuity Plan

Within six (6) months of contract award, Contractor will provide a written Business Continuity Plan describing a structured and integrated process that ensures uninterrupted provision of critical services related to this Contract following an event which could interrupt these business operations. The plan shall include, but not be limited to, the following:

1. A description of critical services and business processes.
2. Contractor policies and procedures to assure continued business operations following an event.
3. Address, computer, telephone, facsimile, key contract and all other critical information concerning alternative business and/or locations(s) following an event.

Contractor shall provide the CCA with annual plan updates on the annual anniversary of the Contract.

This plan is subject to the County's review. The CCA shall not be required to identify, nor notify Contractor of, deficiencies in the Contractor's Business Continuity Plan. The County shall neither assume responsibility nor liability for the Contractor's Business Continuity Plan.

16.0 CONTRACTOR REPORTS

Reports programmed into County's RMIS will be generated and provided by e-mail to RMIS system users by County's RMIS service provider. Contractor shall provide other periodic reports required by the CCA and the Chief Administrative Officer or his designee to enable analysis and monitoring of incidents, claims, frequency, severity, funding/department, cause, fiscal status, law firm activity, location, claim activity trends, lawsuits settlements, allocated costs, reserve aging, litigation defense activity, legal fees and costs and disposition of suits. Reports that Contractor will provide are shown in *Attachment J- Contractor Reports*.

17.0 ADMINISTRATIVE SERVICES

17.1 Physical Security – Contractor shall be responsible for safeguarding all County property provided for the Contractor's use. At the close of each workday, cases, files, supplies, equipment and computer access shall be secured.

17.2 Employee Records – Contractor shall keep current and accurate records of all its employees providing services under this contract. Such records shall include a "Contractor Employee Acknowledgment and Confidentiality Agreement" (see *Exhibit F1, of the Contract*), date of employment, current address, phone number, current salary and required licensing background pertinent to the provision of this contract.

- 17.3 **Record Retention** – All allegations and Allegation Files will be retained for a minimum of five (5) years beyond the date they are closed. No Allegation Files may be destroyed without the CCA’s approval and the Contractor will be responsible for storage of all retained files during the term of this contract at Contractor’s cost.
- 17.4 **Other County Contractors and Vendors** – The County has relationships with a number of private agencies in business to provide services related to the management of claims, such as structured settlement brokers and legal defense firms. Contractor shall use only those companies approved for use by the County and shall utilize a rotational system for making these assignments, unless otherwise instructed by the CCA or County Counsel.
- 17.5 **E-Mail** – Contractor shall maintain the capacity to send and receive email for, at a minimum, each administrator, supervisor and claims staff member. Contractor shall comply with the CCA specified e-mail protocol dealing with content and confidentiality when using e-mail for County information.
- 17.6 **Delivery to CCA, County Counsel, and DHS Liaison** – Pick-up and delivery of mail between the CCA, County Counsel, DHS Liaison and Contractor as needed. Contractor may use delivery services or U.S. mail as deemed appropriate.

18.0 **CONTRACTOR’S QUALITY CONTROL**

The contractor shall establish and maintain a Quality Control Plan to assure that the requirements of the contract are met. The plan shall be provided to and approved by the CCA before services under this Agreement are implemented. The Plan shall be effective on the implementation date and will be updated and re-submitted for CCA’s approval as changes occur. The plan shall include, but not be limited to, the following:

- 18.1 The method for ensuring the services, deliverables, and requirements defined in the contract are being provided at or above the level of quality agreed upon by the County and Contractor.
- 18.2 The method for identifying and preventing deficiencies in the quality of service before the level of performance becomes unacceptable.
- 18.3 The methods for assuring and verifying that the minimum requirements for claims personnel are met as stated in Paragraph 12.3, “Contractor’s Claims Staff.”
- 18.4 A record of all inspections conducted by Contractor, the corrective action taken, the time a problem is first identified, a clear description of the problem, and the time elapsed between identification and completed corrective action, shall be provided to the CCA upon request.

18.5 The method for continuing to provide services to the County in the event of a strike or other labor action of Contractor's employees.

19.0 COUNTY'S QUALITY ASSURANCE

The CAO or designee will evaluate Contractor's performance under this Contract, to insure contract compliance and achievement of performance standards. Such evaluation will include assessing Contractor's compliance with all contract terms.

As part of the County's quality assurance for this contract, the County currently uses an outside claim auditing service to review the Contractor's services. A copy of the audit evaluation for selected Allegation Files is included in *Attachment B*. Currently these audits occur bi-annually and involve detailed review of approximately 50 Allegation Files. This, however, is subject to change at the County's discretion.

19.1 County Quality Assurance Monitoring Plan

The monitoring of the Contractor's compliance to the requirements outlined in the Contract may be performed through the use of either or both the County staff and an independent, outside auditor.

At the sole discretion of the County, a variety of methods may be used to evaluate the Contractor's performance, including but not limited to:

19.1.1 Monthly inspection of files, databases, logs, reports and other information.

19.1.2 A comprehensive and complete audit conducted annually beginning the first year of the Contract.

19.1.3 Inspecting the appropriate employment documentation to verify that Claims Specialists meet the minimum qualifications and experience.

19.1.4 Complaints received by County Risk Management Branch.

19.1.5 Monitoring the timeliness of responses from the Contractor against the time a request for work or service is made by the County.

19.1.6 Staff/user complaints.

19.1.7 Sampling of claims, records, reports, and logs.

19.1.8 Direct observation of work.

19.1.9 Other methods deemed by the County to be appropriate for the evaluation of the Contract.

The County shall monitor the Contractor's performance under this Contract. The County's procedure may include but not necessary be limited to those specified in *Attachment L – Performance Requirements Summary*. All monitoring observations shall be recorded. Significant deviation from performance standards may result in Contract termination.

19.2 Notice of Contract Discrepancy – Verbal or written notification of a Contract discrepancy will be made to the Contract Manager or designee as soon as possible whenever a Contract discrepancy is identified. The Contract Manager shall resolve the problem within a time period agreed upon by the COUNTY and CONTRACTOR.

19.2.1 The CCA will determine whether a formal "Contract Discrepancy Report" (see *Attachment C*) shall be issued.

19.2.2 If a Contract Discrepancy Report is issued, it will either be hand delivered or sent by certified mail to Contract Manger, who will sing for receipt.

19.2.3 Upon receipt of this document. Contractor is required to respond, via phone call and in writing to the CCA within five (5) workdays, acknowledging the reported discrepancies or presenting contrary evidence. A plan for correction of all deficiencies identified in the Contract Discrepancy Report shall be submitted within ten (10) business days.

19.3 Fraud Investigation – The CCA or its agent will evaluate the internal controls established by the Contractor to protect against fraudulent, activity, incorrect or improper claims processing, inappropriate settlement and/or disbursement, and any other illegal activity related to the services provided under this agreement.

19.4 Reported Deficiencies

19.4.1 When deficiencies in performance standards are noted by the County, a Program Deficiency Report shall be issued to the Contractor. The Contractor shall respond in writing to the CCA within five working days. Contractor's response shall include:

A. Acknowledging the reported discrepancies or presenting any contrary evidence, and

B. Present a program for their immediate correction.

19.4.2 The CCA shall evaluate the Contractor's explanation and determine what further action, if any, should be taken. Failure on the part of the Contractor to perform at any acceptable level shall constitute grounds for reducing

amount of payments to Contractor or termination of contract.

19.5 Performance Evaluation Meetings – The Contractor and the CCA shall meet during the term of the contract at regularly scheduled intervals as determined by the County. The purpose of such meetings shall be to review Contractor's performance and the County's monitoring function, and to discuss methods and plans to maintain or improve effectiveness of services provided to the County under the contract.

20.0 PAYMENT AND ADJUSTMENTS TO PAYMENTS

20.1 Payment

20.1.1 Base Monthly

The County shall pay the Contractor on a fee basis as set for in the Payment Schedule. See revision at 20.3. Payment for assumption and administration of all take-over claims is included in this fee. The County will not make and Contractor is not entitled to any additional payment for the assumption or administration of any take-over claim.

20.1.2 Monthly Invoice and Adjustment to Monthly Invoices

The Contractor shall invoice the County monthly in arrears for fees due for the billing period. The invoices shall clearly reflect and provide reasonable detail, as determined by the County, of the service provided. The County will adjust the invoice as follows and pay the invoice within 60 days of receipt.

- A. The County may reduce the monthly invoice for assessments of adjustments to payments for which the County has notified the Contractor pursuant to Subparagraphs 20.2.2 and 20.2.3
- B. The County shall increase or reduce the monthly invoice pursuant to the provisions of Subparagraphs 21.1, 21.2 and 21.3.
- C. The County may increase or reduce the monthly invoice pursuant to Subparagraphs 21.4, 21.5, 21.6, 21.7, 21.8, 21.9, 21.10 and 21.11 provided the County has notified the Contractor of its intention to increase or reduce pursuant to these Subparagraphs at any time prior to receipt of the monthly invoice.

20.1.3 The total fees paid will be reduced for overpayments, fines, penalties and other costs incurred due to the Contractor's failure to comply with any term or condition of this Contract as further set forth in Subparagraph 20.2, "Adjustments to Payments to Contractor".

20.1.4 The total fees paid will be reduced or increased pursuant to Subparagraph 21.1 through 21.11.

20.1.5 The County's payment is subject to adjustment following audit as set forth in Subparagraph 22.0.

20.2 Adjustments to Payments to Contractor

The Contractor shall reimburse the County for any overpayment, fine, penalty or other cost incurred due to the Contractor's failure to comply with State of California statutes, codes, regulations, or any term or condition of the Contract.

20.2.1 Such failure includes, but is not limited to, the following:

- A. Late payment or nonpayment of any benefit to any applicant or medical provider resulting in penalty or attorney fees.
- B. Overpayment of any benefit owed to any applicant, any lien claimant, or other party in a case due to Contractor's failure to comply with the performance standard set forth in the Statement of Work.
- C. Excessive payment of any benefit to any applicant, lien claimant, or other party in a case due to Contractor's failure to comply with the performance standard set forth in this Statement of Work.
- D. Fines and/or administrative penalties assessed against the County due to the Contractor's failure to comply with the performance standard set forth in the Statement of Work.

20.2.2 Notice of Assessment of Adjustments to Payments

The County shall give notice to the Contractor of any assessment of adjustments to payments pursuant to Subparagraph 20.2. The Contractor shall have 60 calendar days to respond in writing to the notice. If the Contractor does not respond to the notice within 60 days, the Contractor shall lose its right to dispute the assessment. The response shall include, but not be limited to, the following:

- A. Evidence that a penalty was not incurred or an overpayment or excessive cost was not made.
- B. Evidence that the Contractor's act(s) and/or omission(s) did not cause the penalty, overpayment, or excess cost.
- C. Evidence that Contractor obtained prior written approval from an authorized County official.

20.2.3 Second Level Dispute Resolution Process

If, after receipt of Contractor's response to County's notice of assessment of adjustment to payments, the County and Contractor are in disagreement, a second-level dispute resolution process will be conducted. The CCA of his/her appointed designee and an appropriate Contractor designee shall review the evidence and resolve the dispute. The second level dispute resolution process shall be completed within 60 calendar days.

At the end of the second-level dispute resolution process, County shall be entitled to reduce Contractor's monthly invoices for assessments of adjustments to payments.

20.3 Revised Annual Fee Basis

Effective July 1, 2012, the following fee schedule will apply:

20.3.1: July 1, 2012 through Dec. 31, 2012: 20 percent reduction.

20.3.2: Jan. 1, 2013 through Dec. 31, 2013: 19 percent reduction.

20.3.3: Jan. 1, 2014 through Dec. 31, 2014: 20 percent reduction.

20.3.4: Jan. 1, 2015 through Dec. 31, 2015: 21 percent reduction.

These prices are reductions from the 2012 base schedule price of \$2,797,124.00.

21.0 PERFORMANCE INCENTIVES

21.1 At sole discretion of the County, mutually beneficial performance and financial incentives shall be applied as follows:

<u>Performance Index (%)</u>	<u>Incentive Payment (%)</u>
Less than 75%	Base Fee minus 4.5%
75% - 79%	Base Fee minus 1.5%
80% - 89%	Revenue neutral
90% - 94%	Base Fee plus 1.5%
95% - or over	Base Fee plus 3.0%

21.2 The performance index shall be determined by random-sample audits commencing no later than the end of the second contract year and conducted at least annually thereafter by County Quality Assurance Evaluators for compliance with standards set forth in Attachment L – Performance Requirements Summary. The CCA may update the areas to be audited and the factors to be considered in determining the performance index.

21.3 Any increase or decrease under Subparagraph 21.1 shall be calculated using the Base Fee at the time audited work was performed by the Contractor. Payment can be made by lump sum within 60 days after County submits the final audit results, or by equal monthly installments over a one-year period commencing with the same 60 day-period.

21.4 Fee Reduction for Failure to Develop and Implement Procedure Manual and Business Continuity Plan

If the Claims Administration Procedure Manual and the Business Continuity Plan, as per Paragraph 15.0, and the Quality Control Plan, as per Paragraph 18.0, are not developed and actively implemented and integrated into the County claims unit within the specified number of days from contract inception date, payments shall be reduced to Base Fee less 5% until these requirements are met.

22.0 ADJUSTMENT TO PAYMENTS FOLLOWING AUDIT

If, at any time during the term of this Contract or five years after the expiration or termination of this Contract, authorized representatives of the County conduct an audit of Contractor regarding the services provided to County hereunder and if as a result of such audit it is determined that County’s dollar liability for such services is less than

payments made by County to Contractor, then Contractor agrees the difference, at the CCA's option, shall be either: 1) repaid forthwith by Contractor to County by cash payment, or 2) credited against any future payments hereunder to Contractor.

If as a result of such audit it is determined that County's dollar liability for services provided hereunder is more than payments made by County to Contractor, then the difference shall be paid to Contractor by County provided that in no event shall County's maximum obligation exceed the amount appropriated by the Board of Supervisors.

23. CONTRACTOR'S HOULY RATE SERVICES

The following Contractor provided services are to be provided at the request of the CCA or designee. Such services will be paid for at an Hourly Rate as allowed in Section 5.0 (Contract Sum), of the contract.

23.1 Ad Hoc Reports: When County requests Contractor to provide reports that cannot be generated from County's RMIS, and are not required under Paragraph 16.0, "Contractor Reports", reports will be provided and paid as an Hourly Rate Service.

24.0 PROJECT START-UP SUPPORT TEAM

To assist the new TPA on the County's procedures, policies, and requirements, a start-up team will be created. The start-up support team will be comprised of members from the CAO, County Counsel, and various Departments to work closely with the TPA for several months. The team will work on-site with the TPA in an effort to ensure their success in managing this program.