

**COUNTY OF SAN MATEO  
AGREEMENT WITH INDEPENDENT CONTRACTOR**

Agreement No. \_\_\_\_\_

Contractor Name and Address:

**Contractor:** Upon completion of work or agreed-upon work periods, mail invoice with above Agreement Number to:

Arthem Claims Management, LLC

Department: Risk Management

P.O. Box 6385

Attention: Steve Rossi

San Mateo, Ca 95406

Address: 455 County Center, 5<sup>th</sup> Floor, EPS 163

City, State, Zip: Redwood City, Ca 94063-1663

is agreed between the County of San Mateo, California, and Contractor as follows:

**Services to be performed by Contractor** In consideration of the payments hereinafter set forth, Contractor shall perform services in accordance with the terms, conditions and specifications set forth herein for the COUNTY OF SAN MATEO, Department of Employee and Public Services, Division of Risk Management. Specifically, contractor shall:

- 1.1 Comply with all laws, rules and regulations governing the administrator of self-insurance as required by California and advise the County of any legislative or regulatory changes either when proposed or enacted.
- 1.2 In all non litigated lost time cases, telephone or personal contact will be established with the injured employee within two (2) working days of case makeup. Such contact will continue as often as necessary, but in no case less than once per month.
- 1.3 Within 60 days from commencement of an agreement with the County, the contractor will develop internal written procedures subject to County approval delineating handling of County claims in the following areas:
  - a. compensability of claims;
  - b. provision of benefit information to employees;
  - c. payment of any and all state mandated workers' compensation benefits;
  - d. medical treatment;
  - e. medical-legal examinations;
  - f. litigation support;
  - g. establishment and maintenance of reserve;
  - h. case closure
  - i. handling and copying mail to the County;
  - j. system for payment of bills to insure no duplicate payments.
- 1.4 The contractor shall assign three (3) fully qualified claims examiners to the County account. In no case will the contractor assign more than 200 cases per fully qualified examiner. The contractor shall maintain an up to date listing of the cases assigned to each examiner on the County account and shall furnish said list to County at the County's request. The County may have the option to participate in the selection and interview process of staff assigned to the County account.
- 1.5 The contractor shall assign one (1) fully qualified certified claims supervisor. This supervisor should possess at least five (5) years of experience in the claims industry to include two (2) years of experience with Public Agency accounts. This supervisor should have strong leadership skills and possess the following abilities:
  - a. to communicate with County any and all new rules and regulations;
  - b. to effectively communicate and deal with the claims examiners so as to reduce the turnover of the claims examiners on the County account;
  - c. to deal with defense counsel;
  - d. to monitor the County account to ensure that claims files are being properly handled and that the examiner's claims counts are not in excess of 200 files.
- 1.6 All claims files will be created within two (2) working days following receipt of the Employer's First Report of Injury, or two (2) working days after the contractor has knowledge of a potential claim and obtains information from the County necessary to create the file, whichever occurs first.

The compensability determination and the reasons for such determination will be made and documented in the file

delayed, a "Delay of Benefits" letter shall be mailed in compliance with the Division of Workers' Compensation guidelines.

- 1.8. Initial indemnity payments will be issued in accordance with County procedures, together with the properly completed DWC Benefit Notice no later than fourteen (14) days after the first day of disability. All indemnity payments subsequent to the first payment will be verified with the County and issued in compliance with Labor Code Section 4651.
- 1.9. Claimed transportation reimbursement will be issued and mailed within ten (10) days of the receipt of the claim for reimbursement. Advance travel expense will be issued and mailed to the injured employee ten (10) days prior to the anticipated day of travel.
- 1.10. Medical billings will be matched to the file, reviewed for correctness, approved for payment and paid within thirty (30) to forty-five (45) days of receipt, or objected to within thirty (30) days as required by law.
- 1.11. In cases involving anticipated loss of time from work in excess of ten (10) working days, contact will be established with the treating physician within five (5) working days of case makeup. Such contacts may be via telephone and will continue on a biweekly basis during the continuation of temporary disability to assurance that treatment is related to a compensable injury or illness.
- 1.12. The contractor shall refer litigated cases to defense counsel as approved by the County within five (5) working days after receiving approval from the County to refer said cases to counsel.
- 1.13. Except where agreed with defense counsel, the contractor shall arrange all medical legal examinations, including writing the cover letter to the doctor and sending all records to the doctor.
- 1.14. The contractor shall obtain medical records whether on its own or at the request of the County or defense counsel.
- 1.15. The contractor shall forward all original medical reports to the defense attorney within twenty (20) working days, with a copy to applicant's attorney and the County.
- 1.16. The contractor shall within ten (10) days of receiving any permanent and stationary report, or within ten (10) days of receiving any Declaration of Readiness to Proceed filed by an applicant, prepare a written evaluation of the medical report with copies to the County and the defense counsel.
- 1.17. The contractor shall prepare a legal review sheet containing its recommendation for settlement of litigated cases not later than ten (10) days prior to any conference or hearing.
- 1.18. The contractor shall on receipt of medical information indicating that a case should be finalized, take appropriate action to finalize the case within ten (10) working days. This shall include the preparation of a legal review sheet containing the recommendations of the claims examiner.
- 1.19. The contractor shall prepare Stipulations with Request for Award and Compromise Release agreements in all non-litigated cases, as appropriate, after obtaining approval from the County.
- 1.20. The contractor shall make payments on Awards, Commutations and Compromise and Release agreements in a timely manner and in accordance with the Labor Code.
- 1.21. The contractor shall within seventy-five (75) days of aggregate total disability, notify the County of potential Qualified Injured Worker status. The contractor shall assign a Qualified Rehabilitation Representative within ninety (90) days of aggregate temporary total disability benefits. The contractor shall monitor and control the vocational rehabilitation process to ensure a prompt, satisfactory conclusion.
- 1.22. The contractor shall, within ten (10) days of receipt of a physician's report or knowledge of a physician's opinion indicating that an employee is medically eligible for vocational rehabilitation, or within ten (10) days after the employee has been totally temporarily disabled for an aggregate of 365 days, notify the employee of his or her potential eligibility for vocational rehabilitation services. The contractor shall also notify the County within ten (10) days of notice from physician's report that:
  - a. employee is eligible for vocational rehabilitation based on said report;
  - b. County may comply with legal requirements through providing permanent modified or alternate work.

- 1.23. The contractor shall balance all active case accounts with appropriate file documentation. The contractor shall balance every case at least once a year.
- 1.24. The contractor shall report potential excess cases to the excess carrier on a per case basis in accordance with the following:
  - a. when total reserves for the occurrence exceed 50% of the County's S.I.R.;
  - b. when the re-opening of any claim in which further award might exceed 50% of the County's S.I.R.;
  - c. when any occurrence may involve:
    - death
    - injury to the spinal cord
    - amputation of a major extremity
    - serious health injury
    - severe burns
    - permanent total disability as defined by law possible disability of more than nine (9) months
    - an occurrence involving serious injury to two (2) or more employees
- 1.25. The contractor shall advise the County within five (5) working days of the assessment of any penalty delayed payment and the reason therefore. The contractor shall be financially responsible for payment of any penalty for which the contractor is at fault.
- 1.26. The contractor shall, at the time of case makeup, using the information available, establish an initial reserve which takes into consideration the type of injury, temporary disability, potential permanent disability and cost of medical treatment.
- 1.27. The contractor shall return telephone and e-mail inquiries within one (1) business day of the inquiry.
- 1.28. The contractor shall clearly date stamp all correspondence on the text side.
- 1.29. The contractor will copy and mail to the County on a daily basis, all documents as requested by the County from time to time.
- 1.30. The contractor shall answer all correspondence requiring an answer within ten (10) days of receipt.
- 1.31. The contractor shall obtain County authorization on all settlements or stipulations.
- 1.32. The contractor shall suggest to County those claims requiring outside referrals for services and arrange for those services after authorization by the County.
- 1.33. The contractor shall supply all necessary forms to accomplish the services outlined in this RFP, with the exception of check and/or voucher stock.
- 1.34. The contractor shall maintain an up to date listing of the cases assigned to the defense counsel and shall furnish said list to the County on an as requested basis.
- 1.35. The contractor shall be able to prepare reports, including, but not limited to, the following:
  - a. a computerized loss analysis and summary covering significant activity on claims;
  - b. a payment authorization register in the form of a computerized printout;
  - c. a report by location covering significant activity on claims reported to the contractor and cumulative loss information to date;
  - d. the annual self insurance report in a form acceptable to the State of California Self-Insurance Plans Department.
- 1.36. The contractor shall have the capacity to electronically transfer payment information to both County Risk Management and County Controller's Office.
- 1.37. The contractor shall have software that is compatible and interfaces with the software presently used by The County.
- 1.38. The contractor shall be available to provide guidance on laws and issues peripheral to workers' compensation.

2. **Contract Term**. The term of this Agreement shall be from June 1, 2005 through May 31, 2008 unless terminated earlier by the County. Additionally, San Mateo County may, at its sole option, exercise two additional one-year options that would extend the term of this agreement to May 31, 2009 if the first option year is exercised, and to May 31, 2010 if the second option year is exercised.
3. **Payments** In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein, County shall make payment to Contractor as follows:
  - (a) \$660,912 for the period June 1, 2005 through May 31, 2006;
  - (b) \$674, 130 for the period June 1, 2006 through May 31, 2007;
  - (c) \$687,612 for the period June 1, 2007 through May 31, 2008;
  - (d) \$701,364 for the period June 1, 2008 through May 31, 2009, if the County exercises the first option year; and
  - (e) \$715,392 for the period June 1, 2009 through May 31, 2010 if the County exercises the second option year.

Payments shall be payable in equal monthly installments, determined by dividing each yearly amount as set forth above by twelve. As such, monthly payments shall be as follows:

- (a) \$55,076 per month for the period June 1, 2005 through May 31, 2006;
- (b) \$56,177.50 per month for the period June 1, 2006 through May 31, 2007;
- (c) \$57,301 per month for the period June 1, 2007 through May 31, 2008;
- (d) \$58,447 per month for the period June 1, 2008 through May 31, 2009, if the County exercises the first option year; and
- (e) \$59,616 per month for the period June 1, 2009 through May 31, 2010 if the County exercises the second option year.

In the event that the County makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination. The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall total payment for services under this Agreement exceed three million four hundred thirty-nine thousand for hundred ten (\$3,439,410.00) dollars.

4. **Relationship of the Parties** Contractor agrees and understands that the work/services performed under this Agreement are performed as an Independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers or advantages of County employees.
5. **Workers' Compensation Insurance** The Contractor shall have in effect, during the entire life of this Agreement, Worker's Compensation and Employer Liability Insurance providing full statutory coverage. In signing this Agreement, Contractor certifies awareness of the provisions of section 3700 of the California Labor Code which requires every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions of the Code, and certifies compliance with such provisions before commencing the performance of this work of the Agreement as set forth in California Labor Code section 1861.
6. **Insurance** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all operations under this Agreement, whether such operations be by himself/herself or by any Subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amount specified by Risk Management.
7. **Hold Harmless** Contractor agrees to indemnify and defend the County, its employees and agents from any and all claims, damages and liability in any way occasioned by or arising out of the negligence of the contractor in the performance of this agreement, including any sanctions, penalties or claims of damages resulting from Contractor's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated there under, as amended.
8. **Health Insurance Portability and Accounting Act of 1996 (HIPAA)**

Contractor shall perform all services in accordance with HIPAA, and the Federal regulations promulgated thereunder, as amended, and will comply with the County's requirements as follows:

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations section 160.103 164.304 and 164.501. (All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.)

- a. *Designated Record Set.* "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- b. *Electronic Protected Health Information.* "Electronic Protected Health Information" ("EPHI") means individually identifiable health information that is transmitted or maintained in electronic media, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- c. *Individual.* "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- d. *Privacy Rule.* "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E.
- e. *Protected Health Information.* "Protected Health Information" shall have the same meaning as the term "protected health information" in Section 164.501 and is limited to the information created or received by Contractor from or on behalf of County.
- f. *Required By Law.* "Required by law" shall have the same meaning as the term "required by law" in Section 164.501.
- g. *Secretary.* "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- h. *Security Incident.* "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a daily basis, such as scans, "pings", or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate
- i. *Security Rule.* "Security Rule" shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

#### **Obligations and Activities of Contractor**

- a. Contractor agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Contractor agrees to use appropriate safeguards to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement.
- d. Contractor agrees to report to County any use or disclosure of the Protected Health Information not provided for by this Agreement.
- e. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of County, agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information.
- f. If Contractor has protected health information in a designated record set, Contractor agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.
- g. If Contractor has protected health information in a designated record set, Contractor agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- h. Contractor agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Contractor on behalf of, County available to the County, or at the request of the County to the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- i. Contractor agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

- j. Contractor agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (i) of this Schedule, to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- k. Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Contractor creates, receives, maintains, or transmits on behalf of County.
- l. Contractor shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- m. Contractor shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- n. Contractor shall report to County any Security Incident within 5 business days of becoming aware of such incident.
- o. Contractor shall make its policies, procedures, and documentation relating to the security and privacy of protected health information, including EPHI, available to the Secretary of the U.S. Department of Health and Human Services and, at County's request, to the County for purposes of the Secretary determining County's compliance with the HIPAA privacy and security regulations.

#### **Permitted Uses and Disclosures by Contractor**

Except as otherwise limited in this Schedule, Contractor may use or disclose Protected Health information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

#### **Obligations of County**

- a. County shall provide Contractor with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- b. County shall provide Contractor with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Contractor's permitted or required uses and disclosures.
- c. County shall notify Contractor of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

#### **Permissible Requests by County**

County shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by County, unless the Contractor will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Contractor.

#### Duties Upon Termination of Agreement

- a. Upon termination of the Agreement, for any reason, Contractor shall return or destroy all Protected Health Information received from County, or created or received by Contractor on behalf of County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.
- b. In the event that Contractor determines that returning or destroying Protected Health Information is infeasible, Contractor shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Contractor shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information.

#### **Miscellaneous**

- a. *Regulatory References.* A reference in this Schedule to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

- b. *Amendment.* The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- Survival.* The respective rights and obligations of Contractor under this Schedule shall survive the termination of the Agreement.
- d. *Interpretation.* Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. *Reservation of Right to Monitor Activities.* County reserves the right to monitor the security policies and procedures of Contractor
9. **Confidentiality** All data produced or compiled by Contractor shall be considered confidential unless it can be obtained as public record and shall not be shared with a third party without the prior written consent of County. All financial, statistical, personal, technical, and other data and information relating to the County's operations which is made available to the Contractor in order to carry out this Agreement shall be presumed to be confidential. Contractor shall protect said data and information from unauthorized use and disclosure by the observance of the same or more effective procedures as the County requires of its own personnel. The Contractor shall not, however, be required by this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession, is independently developed by the Contractor outside the scope of the Agreement or is rightfully obtained from third parties.
10. **Non-Assignability** Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of County, and any attempted assignment without such prior written consent in violation of this Section shall automatically terminate this Agreement.
11. **Termination of Agreement** The County Purchasing Agent may, at any time from execution of Agreement, terminate this Agreement, in whole or in part, for the convenience of the County, by giving written notice specifying the effective date and scope of such termination. Termination shall be effective on a date not less than thirty days from notice. In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. In the event of termination, Contractor shall be paid for all work satisfactorily performed until termination, except where the contracting department determines the quality or quantity of the work performed is unacceptable. Such payment shall be that portion of the full payment, which is determined by comparing the work/services completed to the work/services required by the Agreement.
12. **Payment of Permits/Licenses** It shall be the Contractor's responsibility to obtain any license, permit or approval required from any agency for work/services to be performed at his/her own expense, prior to commencement of said work/services or forfeit any right to compensation under this Agreement.
13. **Non-Discrimination** No person shall be excluded from participation in, denied benefits of, or be subject to discrimination under this Agreement on the basis of their race, color, religion, national origin, age, sex, sexual orientation, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status. Contractor shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and Subcontractors under this Agreement. The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to: i) termination of this Agreement; ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years; iii) liquidated damages of \$2,500 per violation; iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.


To effectuate the provisions of this paragraph, the County Manager shall have the authority to: i) examine Contractor's employment records with respect to compliance with this paragraph; ii) set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Contractor shall provide County with a copy of its response to the Complaint when filed.

Section 504 applies only to contractors who are providing services to member of the public. Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this contract.

4. **Equal Benefits** With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
5. **Retention of Records** Contractor shall maintain all records related to this Agreement for no less than three years after the County makes final payment or after termination of this contract and all other pending matters are closed. All records shall be subject to the examination and/or audit by agents of the County, the State of California and/or Federal grantor agencies.
6. **Merger Clause** This Agreement constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the County authorized agent. This Agreement, or facsimile proposal of the Agreement, constitutes the entire Agreement between County and Contractor.
7. **Governing Law** This Agreement, including any exhibits, shall for all purposes be deemed subject to the laws of the State of California, and in the event of a lawsuit concerning this Agreement shall be venued in the County of San Mateo.

THIS CONTRACT IS NOT VALID UNTIL SIGNED BY ALL PARTIES

  
\_\_\_\_\_  
Contractor's Signature      4-28-05      Northern Claims Management, LLC  
Date  
Print name: JIM BANKSON  
Print title: PRESIDENT

\_\_\_\_\_  
Richard S. Gordon, President  
Board of Supervisors  
San Mateo County      Date