

0150-10950-0001

TRANSMITTAL

TO The City Council	DATE 06/11/20	COUNCIL FILE NO.
FROM The Mayor	COUNCIL DISTRICT	

Amended and Restated Professional Services Agreement C-129579 with California Claims Management Services, Inc. to provide services related to the Alternative Dispute Resolution (ADR) Program for civilian employees

Transmitted for your consideration. See the City Administrative Officer report attached. The Council has 60 days from the date of receipt to act, otherwise the Agreement will be deemed approved pursuant to Los Angeles Administrative Code Section 10.5(a).



MAYOR

(Ana Guerrero for)

RHL:RR:11200094t

Report From
OFFICE OF THE CITY ADMINISTRATIVE OFFICER
Analysis of Proposed Contract
(\$25,000 or Greater and Longer than Three Months)

To: The Mayor	Date: 06-04-20	C.D. No. All	CAO File No.: 0150-10950-0001
Contracting Department/Bureau: Personnel Department		Contact: Michael Daco (213) 473-9195 David Noltemeyer (213) 473-3374	
Reference: Personnel Department transmittal dated April 30, 2020; referred by Mayor for report on May 11, 2020.			
Purpose of Contract: To provide services related to the Alternative Dispute Resolution (ADR) program for civilian employees.			
Type of Contract: () New contract (X) Amendment, C-129579		Contract Term Dates: Original Contract: June 9, 2017 through June 8, 2020 Amended and Restated: June 9, 2017 through June 8, 2021	
Contract/Amendment Amount: \$4,045,000			
Proposed amount \$1,000,000 + Prior award(s) \$3,045,000 = Total \$4,045,000			
Source of funds: Human Resources Benefits, General Fund, Contractual Services Account			
Name of Contractor: California Claims Management Services, Inc.			
Address: 23001 Hawthorne Blvd Suite 205, Torrance, CA 90505			
	Yes	No	N/A
1. Council has approved the purpose	X		
2. Appropriated funds are available	X		
3. Charter Section 1022 findings completed	X		
4. Proposals have been requested	X		
5. Risk Management review completed	X		
6. Standard Provisions for City Contracts included	X		
7. Workforce that resides in the City: 0%			
8. Business Inclusion Program	X		
9. Equal Benefits & First Source Hiring Ordinances	X		
10. Contractor Responsibility Ordinance	X		
11. Disclosure Ordinances	X		
12. Bidder Certification CEC Form 50	X		
13. Prohibited Contributors (Bidders) CEC Form 55	X		
14. CA Iran Contracting Act of 2010*		X	

RECOMMENDATIONS

That the Council:

1. Approve, and authorize the General Manager of the Personnel Department to execute, the Amended and Restated Professional Services Agreement C-129579 with California Claims Management Services, Inc. to (i) extend the term resulting in a four-year term effective June 9, 2017 through June 8, 2021, and (ii) increase the expenditure authority by \$1,000,000 providing a not to exceed total of \$4,045,000, subject to approval as to form by the City Attorney; and,
2. Instruct the Personnel Department to ensure the Contractor submits current documentation in compliance with contractual requirements including the CA Iran Contracting Act of 2010 prior to executing the Agreement.

SUMMARY

In accordance with Executive Directive No. 3 (Villaraigosa Series), the Personnel Department (Department) requests approval to execute the proposed Amended and Restated Agreement C-129579 (Agreement) with California Claims Management Services, Inc. (Contractor). Approval of the proposed

Robert Roth			 City Administrative Officer
RR	Analyst	11200094	

Agreement is necessary to continue services supporting the City's Alternative Dispute Resolution (ADR) Program for active civilian employees represented by the Coalition of Los Angeles City Unions including bargaining units 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 34, 36, 37, 62, and 63.

The original Agreement included a three-year term effective June 9, 2017 through June 8, 2020 with an expenditure authority not to exceed \$3,045,000. Approval of the proposed Agreement will (i) extend the term by one additional year resulting in a four-year term effective June 9, 2017 through June 8, 2021, and (ii) increase the expenditure authority by \$1,000,000 from \$3,045,000 to a not to exceed amount of \$4,045,000. Actual costs during the initial three-year term (as of May 22, 2020) total approximately \$1.88 million resulting in a remaining expenditure authority of \$1.17 million. The proposed Agreement includes a ratification clause to allow the Contractor to continue providing services prior to execution of the proposed Agreement.

The ADR program provides that disputes related to workers' compensation claims be resolved utilizing the ADR program, instead of through litigation. The goal of the ADR Program is to avoid unnecessary disputes, improve the speed and quality of medical care, improve claim resolution time, reduce workers' compensation claim costs, reduce litigation, and increase injured workers' satisfaction. The scope of work under the Agreement includes:

- Providing services of ombudspersons to resolve concerns and misunderstandings through informal discussions with the injured employee and to serve as an advocate for non-represented employees and other parties involved in the claim;
- Providing mediation services to facilitate communication between the parties and to help reach a voluntary resolution of a dispute that is timely, fair, and cost-effective;
- Providing arbitration services with a qualified active or retired attorney or qualified retired Workers' Compensation judge who has extensive background and experience in mediating Workers' Compensation claims and related matters; and,
- Utilizing services of a nurse advocate provided through the City's managed care contract to provide medical expertise and communication between parties.

The Contractor was selected as a result of a Request for Proposals released by the Department on February 15, 2017. In accordance with Charter Section 1022, the Personnel Department's Contract Review Report indicates that City employees do not have expertise to perform the scope of work of this Agreement. The Contractor is in compliance with the applicable contracting requirements, except for the CA Iran Contracting Act of 2010. The Department is advised to work with the Contractor to ensure compliance with all applicable contracting requirements prior to executing the proposed Agreement. In accordance with Los Angeles Administrative Code Section 10.5(a), City Council approval of the Agreement is required because the cumulative term exceeds three years.

The Mayor's Fiscal Year 2019-20 Belt-tightening Measures Memorandum dated March 19, 2020 directed departments to suspend the execution of new contracts, with limited exceptions for contracts that 1) are essential to public health and safety, 2) generate revenue, or 3) are legally mandated. The Services performed under the proposed Agreement are contractual obligations mandated within labor agreements between the City and various employee bargaining units. Therefore, the execution of the proposed contract is eligible for exemption from the direction in this Memorandum.

FISCAL IMPACT STATEMENT

Funding is included in the Human Resources Benefits 2019-20 Adopted Budget and 2020-21 Adopted Budget, Contractual Services Account for this purpose. There is no additional impact to the General Fund.

FINANCIAL POLICIES STATEMENT

As budgeted funds are available to support the proposed Agreement's anticipated expenditures in the current year, and future year expenditures are limited to the appropriation of funds, the recommendations of this report comply with the City's Financial Policies.

RHL:RR:11200094

**BOARD OF CIVIL SERVICE
COMMISSIONERS**

Room 360, PERSONNEL BUILDING

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CITY OF LOS ANGELES
CALIFORNIA



ERIC GARCETTI
MAYOR

PERSONNEL DEPARTMENT

PERSONNEL BUILDING
700 EAST TEMPLE STREET
LOS ANGELES, CA 90012

—
Wendy G. Macy
GENERAL MANAGER

April 30, 2020

Honorable Eric Garcetti
Mayor, City of Los Angeles
Room 303, City Hall
Los Angeles, CA 90012

Attention: Heleen Ramirez, Legislative Coordinator

**Subject: REQUEST FOR REVIEW AND APPROVAL OF AMENDED AND RESTATED
PERSONAL SERVICES AGREEMENT WITH CALIFORNIA CLAIMS
MANAGEMENT SERVICES, INC.**

In accordance with Executive Directive No. 3, attached for your review and approval is a draft Amended and Restated Personal Services Agreement (Contract No. C-129579) between California Claims Management Services, Inc. ("Contractor") and the City of Los Angeles Personnel Department ("City") to provide all professional and support staff and services necessary to continue and possibly expand the City's current civilian Alternative Dispute Resolution (ADR) Program, which includes a program manager, ombudspersons, mediators, arbitrators and an as-needed nurse advocate.

Background

The City implemented an ADR Program in July 2008 for employees in certain civilian bargaining units, to resolve disputes related to their workers' compensation claims.

The City released a Request for Proposals on February 15, 2017 seeking firms able to provide all professional and support staff and services necessary to continue and possibly expand the civilian ADR Program, which includes a program manager, ombudspersons, mediators, arbitrators, and as-needed nurse advocate.

The City reviewed and found Contractor's proposal complete and acceptable for the services needed, determined that Contractor, by virtue of its extensive experience and background, is qualified to provide the unique and specialized services, and that Contractor has the equipment and staff to provide the necessary services immediately required by the City.

City and Contractor entered into City of Los Angeles Contract Number C-129579 commencing on June 9, 2017 through June 8, 2020.

This Amended and Restated Agreement will extend the contract for one additional year from June 9, 2020 through June 8, 2021. The City's total obligation under this contract for complete and satisfactory performance of the contract terms shall not exceed \$4,045,000.

Contract Compliance

Contractor's compliance documentation statuses are as follows:

- Equal Benefits/First Source Hiring Ordinance, Slavery Disclosure Ordinance, and Border Wall Contracting Disclosure Ordinance affidavits are current.
- Contractor's insurance certificate has been updated.

The headquarters address for this Contractor is as follows:

California Claims Management Services, Inc.
23001 Hawthorne Blvd., Suite 205
Torrance, CA 90505

Fiscal Impact

Funding for this personal services agreement is budgeted in the Human Resources Benefits Budget, Contractual Services Account 3040.

Recommendation

That the General Manager of the Personnel Department, or designee, be authorized to execute an amended and restated agreement to Personal Services Agreement No. C-129579 with California Claims Management Services, Inc. to provide all professional and support staff and services necessary to continue and possibly expand the City's current civilian Alternative Dispute Resolution (ADR) Program for an additional one-year term commencing on June 9, 2020 through June 8, 2021.

Please contact Michael Daco at (213) 473-9195 with any additional questions.

Respectfully submitted,



Wendy G. Macy
General Manager

Attachment

ec: Robert Roth, CAO

PROFESSIONAL SERVICES AGREEMENT

Contractor: California Claims Management Services, Inc.

**Regarding: Alternative Dispute Resolution (ADR)
Workers' Compensation Services for
Personnel Department**

Said Agreement is Number: C-129579

Professional Services Agreement

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ATTACHMENTS

Attachment A – Standard Provisions for City Contracts (Rev. 10/17 [v.3])
Attachment B – Confidentiality and Conflict of Interest Agreement (v.2)
Attachment C – Scope of Work
Attachment D – Fee Schedule
Attachment E – IOA's Code of Ethics (Rev. 1/07)
Attachment F – IOA's Standards of Practice (Rev. 10/09)
Attachment G – IOA's Best Practices (Rev. 10/13/09)
Attachment H – Model Standards of Conduct for Mediators April 2007

**FIRST AMENDED AND RESTATED
PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF LOS ANGELES AND
CALIFORNIA CLAIMS MANAGEMENT SERVICES, INC.**

THIS AGREEMENT is made and entered into by and between the City of Los Angeles ("City"), a municipal corporation, acting by and through its Personnel Department ("Department") and California Claims Management Services, Inc., a California Corporation ("Contractor"), with reference to the following:

RECITALS

1. Whereas, City implemented an Alternative Dispute Resolution (ADR) Program (Program) in July 2008 for employees in bargaining units 4, 14, 15 and 18, which are represented by the Service Employees International Union (SEIU) Local 721, to resolve disputes related to their workers' compensation claims;
2. Whereas, in May 2018 City expanded the program to include employees represented by the Coalition of Unions. The ADR Program now covers employees in bargaining units 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 34, 36, 37, 62, and 63
3. Whereas, City has a need for contractor to provide all professional and support staff and services necessary to continue and possibly expand the current program, which includes a program manager, ombudspersons, mediators, arbitrators, and an as-needed nurse advocate;
4. Whereas, City, pursuant to Charter Section 1022, does not have personnel available in its employ with sufficient time or the necessary expertise to undertake these specialized professional tasks in a timely manner, and it is therefore more feasible, economical, and in City's best interest to secure these services by contract;
5. Whereas, the services required are of an expert and technical nature and are temporary and occasional in character, therefore, competitive bidding under Charter Section 371 is neither practicable nor advantageous;
6. Whereas, City released a Request for Proposals ("RFP"), pursuant to Charter Section 372, seeking qualified businesses to perform the above-referenced services and found Contractor satisfied the required qualifications and experience to provide the type of service required by City;
7. Whereas, Contractor has the necessary equipment and staff possessing sufficient competence, knowledge, expertise, and experience required to provide the necessary services and is available and willing to perform the services required by City with respect to the Agreement;

8. Whereas, City and Contractor entered into a three year agreement, effective June 9, 2017, expiring June 8, 2020;
9. Whereas, at its meeting of Month Day, Year, (CFXX-XXXX) the City Council authorized the Personnel Department General Manager or designee to execute this First Amendment and Restated Agreement to extend the Contract for one year through June 8, 2021 and to increase the maximum payable to Contractor by \$4,045,000; and to make other changes deemed necessary by the City Attorney; and
10. Whereas, the Personnel Department is funded for these services.

NOW, THEREFORE, in consideration of the promises and of the terms, covenants, conditions, representations, and agreements set forth herein, the parties hereby covenant, represent, and agree as follows:

ARTICLE A – PURPOSE AND SCOPE

1. Purpose. The purpose of Contractor's work under this Agreement is to provide Alternative Dispute Resolution (ADR) Services in accordance with California Labor Code Section 3201.7. The ADR program applies to all work related injuries occurring on or after July 1, 2008 and covers employees represented by bargaining units 4, 14, 15, and 18. On May 1, 2018 the ADR Program was expanded and now includes bargaining units 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 34, 36, 37, 62, and 63.

Union Name	Bargaining Unit(s)
Los Angeles/Orange Counties Building and Construction Trades Council (Trades Council)	2 and 13
American Federation of State, County and Municipal Employees (AFSCME) Council 36, Local 3090	3
Service Employees International Union (SEIU) Local 721	4, 8, 14, 15, 17, 18, 36, and 63
American Federation of State, County and Municipal Employees (AFSCME) Council 36, Local 2626	6 and 16
American Federation of State, County and Municipal Employees (AFSCME) Council 36, Local 741	7
International Union of Operating Engineers (IUOE) Local 501	9 and 62
American Federation of State, County and Municipal Employees (AFSCME) Council 36, Local 2006	10

American Federation of State, County and Municipal Employees (AFSCME) Council 36, Local 901	11
Laborers International Union of North America (LIUNA) Local 777	12
International Brotherhood of Teamsters (Teamsters) Local 911	34
American Federation of State, County and Municipal Employees (AFSCME) Council 36, Local 3672	37

2. Services to be Provided. As directed by City, Contractor agrees to provide alternative dispute resolution services, as provided in **Attachment C, Scope of Work**, and perform such other functions as further articulated in this Agreement.
3. Statement of Work. Any modifications in the terms and/or conditions to this Agreement shall require the execution of an amendment, approved and signed by an authorized representative of both the requesting Department and Contractor. If Contractor performs any modification without a written amendment, City shall neither pay for, nor be obligated to accept said modification.
4. Definitions
 - a. "ADR services" shall mean Alternative Dispute Resolution services for City's workers' compensation program, which are provided by ADR Manager, ombudspersons, mediators, arbitrators, and nurse advocates.
 - b. "Agreement" shall be considered synonymous with the term "Contract."
 - c. "City" shall mean the City of Los Angeles.
 - d. "Contractor" shall mean the individual, partnership, corporation or other entity to which this agreement is awarded, and shall be synonymous with the term "Vendor".
 - e. "Department" shall be considered synonymous with City's Personnel Department.
 - f. "Contract Administrator" shall mean Rose Nakanishi, or designee.
 - g. "Managed Care Contract" shall mean the contract that provides workers' compensation medical and disability management and cost containment services for all existing and new City and Third Party Administrator (TPA) workers' compensation claims.

ARTICLE B – NOTICES AND TERM

1. Representatives of the Parties and Service of Notices

- 1.1. The representatives of the respective parties authorized to administer this Agreement, and to whom formal notices, demands, and communications will be given are as follows:

- 1.1.1. The representative of City will be, unless otherwise stated in the Agreement:

Wendy G. Macy
General Manager
Personnel Department
700 E. Temple Street, Room 305
Los Angeles, California 90012

With copies to:

David Noltemeyer
Workers' Compensation Division Chief
Personnel Department, Workers' Compensation Division
700 E. Temple Street, Room 210
Los Angeles, California 90012

- 1.1.2. The representative of Contractor will be:

Sandy Gutierrez
California Claims Management Services, Inc.
23001 Hawthorne Blvd., Suite 205
Torrance, CA 90505

- 1.2. Formal notices, demands, correspondences, and communications required hereunder by either party will be made in writing and may be effected by personal delivery or by registered or certified mail, postage prepaid, return receipt requested and will be deemed communicated three (3) days after the date of mailing.
 - 1.3. If the name of the person designated to receive the notices, demands, correspondences, or communications, or the address of such person is changed, written notice will be given, in accordance with Article I, within five (5) business days of said change.
2. Time of Performance. The term of this Agreement commenced on June 9, 2017 and will end on June 8, 2021 subject to the termination provisions herein and availability of City budgeted funds.
 - 2.1. Due to the need for Contractor's services to be provided continuously on an ongoing basis, Contractor may have provided services prior to the execution of this Agreement. To the extent that said services were performed in

accordance with the terms and conditions of this Agreement, those services are hereby ratified.

ARTICLE C – DATA SECURITY AND PRIVACY

1. Data Ownership. City is the sole and exclusive owner of all data and information provided to Contractor by or on behalf of City pursuant to this Agreement and any and all updates or modifications thereto or derivatives thereof made by Contractor (“City Data”), and all intellectual property rights in the foregoing, whether or not provided to any other party under this Agreement. City Data is Confidential Information for the purposes of this Agreement. Contractor shall not use City Data for any purpose other than that of rendering the services under this Agreement, nor sell, assign, lease, dispose of or otherwise exploit City Data. Contractor shall not possess or assert any lien or other right against or to City Data. City may request an export of City Data stored within the systems or held by Contractor in any form or format at no charge to City.

Subject to the restrictions articulated elsewhere in this Agreement, City grants Contractor a non-transferable, non-exclusive, terminable at-will license, solely for the term of this Agreement, to use City Data solely for purposes of performing the services pursuant to this Agreement for City’s benefit.

All documents and records (hereinafter collectively referred to as “Documents”) provided by City to Contractor shall remain the property of City and must be returned to City upon termination of this Contract or at the request of City.

The provisions of this Section survive expiration or termination of this Agreement.

2. Data Protection
 - 2.1 Contractor shall use best efforts, but in no event less than information security industry standard protections, to prevent unauthorized use, disclosure, or exposure of City Data. To this end, Contractor shall safeguard the confidentiality, integrity, and availability of City Data.
 - 2.2 Contractor shall implement and maintain appropriate administrative, technical, and organization security measures to safeguard against unauthorized access, disclosure, or theft of City Data. Such security measures shall be in accordance with recognized industry best practices and not less stringent than the measures Contractor applies to Contractor’s own personal data and non-public data of similar kind.
 - 2.3 Unless otherwise expressly agreed to by City in writing, Contractor shall encrypt all City Data at rest and in transit and limit access to only those individuals whose access is essential for performance of the services contemplated by this Agreement.

- 2.4 At no time may any content or City processes be copied, disclosed, or retained by Contractor or any party related to Contractor for subsequent use in any transaction that does not include City.
3. Compliance with Privacy Laws. Contractor shall ensure that Contractor's performance of Contractor's obligations under this Agreement complies with all applicable local, state, and federal privacy laws and regulations. If this Agreement or any practices which could be, or are, employed in performance of this Agreement are inconsistent with or do not satisfy the requirements of any of these privacy laws and regulations, City and Contractor shall in good faith execute an amendment to this Agreement sufficient to comply with these laws and regulations and Contractor shall complete and deliver any documents necessary to compliance.
4. Disclosure of Information. In no event will Contractor, its employees, agents or subcontractors, disclose any detailed information regarding City's claims management program or about any individual claimant, including even confirmation of the existence or non-existence of a claim, without the express written permission of City, except as necessary to conduct its business and provide the services identified in this Agreement. Contractor will issue no press release or respond to any media inquiry regarding the program as a whole or individual claimant.
5. Conflict of Interest.
- 5.1. Contractor is required to have a procedure to identify and disclose any applicable familial, financial relationships, or any potential conflict of interest between any employee and any claimant, agent or subcontractor providing services to City. Furthermore, contractors, their employees, agents and subcontractors shall neither accept, nor offer any entertainment, gift or gratuity as an inducement or reward for securing City business.
- 5.2. In the event of identified unethical behavior, as described above, on the part of any employee, agent, or subcontractor of Contractor, City may immediately rescind the contract. In such an event, contractor shall be responsible for all costs associated with the return of all City property and for all costs associated with transition to an alternative service provider, as well as all attorney fees and costs which may be generated by such an action. Contractor shall report any investigation or allegation of impropriety to City immediately upon becoming aware of such.
- 5.3. Contractor affirms that it has disclosed to City, and will continue to disclose to City, any and all of contractor's corporate, financial ties or relationships maintained with subcontractors, subsidiaries, vendors or supplies of any service utilized to meet the requirements of the contract. Any association disclosable under this provision, which is entered into by contractor during the term of the contract, shall be disclosed in advance of authorization for services to be provided to City's account.

6. Confidential Information. Contractor understands that all original material, whether written or readable by machine, including written or recorded data, documents, graphic displays, reports, and other documentation or other materials which contain information relating to Contractor's performance hereunder are considered confidential property of City. Contractor understands the sensitive nature of the above and therefore agrees that neither its officers, partners, employees, agents, contractors or subcontractors will release, disseminate, or otherwise publish said reports or other such data, information, documents, graphic displays, nor other materials except as provided herein or as authorized, in writing, by City's representative. This section shall remain in effect after the termination of this Agreement until such time as the confidential information has been released by City. Contractor must submit a signed copy of the **Confidentiality and Conflict of Interest Agreement v.2**, that is attached hereto as **Attachment B**, and incorporated herein, which includes, but is not limited to, media contacts, nondisclosure of information relating to claims management issues, and prohibited relationships with vendors, and that conforms, to the extent possible, to City's own ethics and confidentiality statements. Contractor shall require it from each employee and subcontractor working on City's account or those that provide direct support to those performing services for City and who have access to City's confidential information under this contract. Such statements shall be reviewed annually by Contractor with its employees.
- a) Contractor shall be responsible for safeguarding all City claims and property provided for Contractor's use or in Contractor's care, custody and control. At the close of each workday, checks, cases, files, supplies, equipment and computer access shall be secured by Contractor using the most secure means and technologies that are commercially available.
 - b) THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT, IN ITS ENTIRETY, IS A PUBLIC RECORD OF THE CITY OF LOS ANGELES. All documents, records and information provided by City to Contractor, or accessed, reviewed or produced by Contractor, during performance of this Agreement, including but not limited to employee/claimants' medical information, shall remain the property of City. All documents, records, and information provided by City to Contractor, or accessed, reviewed, or produced by Contractor during performance of this Agreement, are confidential (hereinafter collectively referred to as "Confidential Information").
 - c) Contractor agrees not to provide Confidential Information, or disclose its content or any information contained in it either orally or in writing, to any other person or entity. Contractor agrees that all Confidential Information used or reviewed in connection with Contractor's work for City will be used only for the purpose of carrying out City business and cannot be used for any other purpose. Contractor shall be responsible for protecting the confidentiality and maintaining the security of all Confidential Information in its possession.

- d) Any Confidential Information provided by City to Contractor, or accessed, reviewed or produced by Contractor, during performance of this Agreement, shall be made available to its employees, agents, and subcontractors only on a need-to-know basis. Further, Contractor will provide written instructions to all of its employees, agents and subcontractors with access to the Confidential Information about the penalties for its unauthorized use or disclosure.
 - e) Contractor must not receive, move or transfer Confidential Information or any other documents or information used or reviewed in connection with Contractor's work for City from City facilities or Contractor's office without prior written approval from City.
 - f) Contractor shall implement such reasonable and prudent measures to keep secure and private medical history information accessed by its employees, agents and subcontractors during the performance of this Contract as are required by law and this Contract. Contractor shall advise its employees, agents and subcontractors of this confidentiality requirement.
7. Provision of Data. Upon termination of this Agreement for any cause or reason (including City's breach), Contractor shall provide City with a copy of all City Data in Contractor's possession within the time period designated by City in a format approved by City.

Contractor shall transition Data and Documents efficiently, cooperatively, responsibly, and according to industry best practice standards. Contractor shall be responsible for the reasonable cost of transition. City may withhold any payments due Contractor until this requirement is satisfied. Contractor and its employees, agents, and subcontractors may have access to confidential medical records information, which access is controlled by statute. Misuse of such information may adversely affect the subject individual's civil rights and violates the law.

8. Data, Development, and Access-Point Location. Contractor shall provide its hosting services to City and its end users solely from data centers in the continental United States of America. Storage of Content at rest shall be located in the continental United States of America. Contractor shall not allow its personnel or contractors to store City Data on portable devices, including personal computers, except for devices that are used and kept only at Contractor's continental United States of America headquarters or data centers. Contractor may permit its personnel and contractors to access City Data remotely only as required to provide technical support. Contractor shall neither access, nor allow a third-party access to the systems from any location outside of the continental United States of America. Contractor shall not provide any services under this Agreement from a location outside of the continental United States of America, absent receipt of City's express approval.

9. Data Breach. Contractor shall protect City Data using the most secure means and technology that is commercially available. Contractor shall notify City as soon as reasonably feasible, but in no event less than twenty-four (24) hours in writing and by telephone of Contractor's discovery or reasonable belief of any unauthorized access to or disclosure of City Data (a "Data Breach"), or of any incident affecting, or potentially affecting City Data related to cyber security (a "Security Incident"), including, but not limited to, denial of service attack, ransomware, system outage, and/or instability or degradation due to computer malware or virus. Contractor shall begin remediation immediately. Contractor shall provide daily updates, or more frequently if required by City, regarding findings and actions performed by Contractor until the Data Breach or Security Incident has been effectively resolved to City's satisfaction. Contractor, at its own cost, shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with City. At City's sole discretion, City and/or its authorized agents shall have the right to lead or participate in the investigation. Contractor shall cooperate fully with City, its agents and law enforcement. Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon or defined by law.
- a. Data Breach Liability. In the event of a Data Breach or Security Incident, Contractor shall defend, indemnify, and hold harmless City and any of its boards, officers, agents, employees, assigns, and successors in interest from and against lawsuits and causes of action, claims, losses, demands, deficiencies, judgments, government investigations, fines, settlements, costs, and expenses of any kind, including, but not limited to, attorney's fees and costs of litigation (including all actual costs incurred by CITY, including costs of experts and consultants, discovery vendors, and court reporting services) relating to the Data Breach or Security Incident. , Contractor's obligations in this Section 9 are in addition to Contractor's obligations set forth in the Standard Provisions for City Contracts (Rev. 10/17 [v.3]), attached hereto as Attachment A.
 - b. If required by law or directed by City, Contractor shall be responsible for all applicants affected by such breach. Contractor shall also be responsible for all costs associated with such notification and identity protection services. Any such notice shall be subject to final approval by City. In the event, City incurs any costs related to the breach referenced above, City will be entitled to reimbursement from Contractor or reduce Contractor's invoice for costs associated with breach of security.
 - c. This Contractor shall contact City upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies

related to City's data under this contract, or which in any way might reasonably require access to City's data. Contractor shall not respond to subpoenas, service of process and other legal requests related to City without first notifying City, unless prohibited by law from providing such notice.

- d) The provisions of this Section shall survive termination/expiration of this Contract.

10. Firewalls and Access Controls

10.1. Access Precautions. Contractor shall use precautions, including, but not limited to, physical software and network security measures, employee screening, training and supervision, and appropriate agreements with employees to:

10.1.1. Prevent anyone other than City, Contractor, and authorized City or Contractor personnel from monitoring, using, gaining access to, or learning the import of City Data;

10.1.2. Protect appropriate copies of City Data from loss, corruption, or unauthorized alteration; and

10.1.3. Prevent the disclosure of City and Contractor passwords and other access control information to anyone other than authorized City personnel.

10.2. Security Best Practices. Contractor shall implement the following security best practices with respect to any service provided:

10.2.1. Least Privilege: Contractor shall authorize access only to the minimum amount of resources required for a function.

10.2.2. Separation of Duties: Contractor shall divide functions among its staff members to reduce the risk of one person committing fraud undetected.

10.2.3. Role-Based Security: Contractor shall restrict access to authorized users and base access control on the role a user plays in an organization.

10.3. Access Restrictions. Contractor shall restrict the use of, and access to, administrative credentials for City accounts and Contractor's systems to only those of Contractor's employees and other agents whose access is essential for the purpose of providing the services of this Agreement. Contractor shall require these personnel to log on using an assigned user-name and password when administering City accounts or accessing City Data.

11. Right of Audit by City. Without limiting any other audit rights of City, City may review Contractor's data privacy and data security program prior to the commencement of this Agreement and from time to time during the term of this Agreement. During the performance of this Agreement, on an ongoing basis from time to time and without notice, City, may, by itself or by retaining a certified public accounting firm or information security professional, perform, or have performed, an on-site audit of Contractor's data privacy and information security program. In lieu of an on-site audit, at City's discretion and upon request by City, Contractor agrees to complete, within fourteen (14 days) of receipt, an audit questionnaire provided by City regarding Contractor's data privacy and information security program.
12. Change in Service. Contractor shall notify City of any changes, enhancement, and upgrades to Contractor's systems, or changes in other related software services, as applicable, which can impact the security of the services.

ARTICLE D – PAYMENT AND INVOICING

1. Payment Terms and Deliverables. Contractor understands and agrees that it may not make any financial commitment on behalf of City, incur any cost or expense on behalf of City, or obligate City to make payments for any costs or expenses, unless authorized in the approved work plans. City's total obligation under this Agreement shall not exceed \$4,045,000 for the term of this Agreement for complete and satisfactory performance of the terms of this Agreement, as provided in **Attachment D, Fee Schedule**. City shall pay Contractor a fixed monthly fee for the provision of all services, except those listed in Attachment D As-Needed Services (Not Included in Fixed Monthly Fee). Contractor may not charge City an amount that will exceed the total obligation under this Agreement. Any increase in the total obligation under this Agreement must be approved by a written amendment to the Agreement. Contractor further understands and agrees that execution of this Agreement does not guarantee that any or all of these funds will be expended.
2. Limitation of City's Obligation to Make Payments to Contractor. Notwithstanding any other provision of this Agreement, including any exhibits or attachments incorporated therein, and in order for City to comply with its governing legal requirements, City shall have no obligation to make any payments to Contractor unless City shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in said Agreement. Contractor agrees that any services provided by Contractor, purchases made by Contractor or expenses incurred by Contractor in excess of said appropriation(s) shall be free and without charge to City and City shall have no obligation to pay for said services, purchases or expenses. Contractor shall have no obligation to provide any services, provide any equipment or incur any expenses in excess of the appropriated amount(s) until City appropriates additional funds for this Agreement.
3. Invoicing

3.1. Invoices must be submitted to:

David Noltemeyer or designee
Workers' Compensation Division Chief
Personnel Department, Workers' Compensation Division
700 E. Temple Street, Room 210
Los Angeles, California 90012

or david.noltemeyer@lacity.org

3.2. To ensure that services provided under personal services contracts are measured against services as detailed in the Agreement, the Controller of the City of Los Angeles has developed a policy requiring that specific supporting documentation be submitted with invoices.

3.3. Contractor shall submit invoices that conform to City standards and include, at a minimum, the following information:

- i. Name and address of Contractor
- ii. Name and address of City department being billed
- iii. Date of invoice and period covered
- iv. Contract number or authority (purchase order) number
- v. Contractor's Business Tax Registration Number
- vi. Description of completed task and amount due for task with appropriate and complete supporting documentation, to include payroll records for ombudspersons, mediators and arbitrators
- vii. Payment terms, total due and due date
- viii. Certification by a duly authorized officer
- ix. Discount and terms (if applicable)
- x. Remittance Address (if different from Contractor's address)

3.4. All invoices must be submitted electronically and will be on Contractor's letterhead, contain Contractor's official logo, or other unique and identifying information such as the name and address of Contractor. Evidence that tasks have been completed, in the form of a report, brochure, or photograph, shall be attached to all invoices. Invoices must be submitted on a calendar month basis, within 30 days of service, and will be payable to Contractor no later than 30 days after acknowledged receipt of a complete invoice. Invoices are considered complete when appropriate documentation or services provided are signed off as satisfactory by City's Fiscal Officer. Notwithstanding the foregoing, City shall not be responsible for, and Contractor waives the right to seek, any late fees, late charges,

penalties, or interest. Payment by City does not waive any claims or defenses by City or relieve Contractor from curing any performance defaults.

- 3.5. In no event shall vendor be entitled to payment prior to City's verifying and approving that: 1) the services were received and satisfactory; 2) the work was approved; and 3) a full and complete invoice has been submitted. Invoices submitted must be accompanied by a report detailing the staff assigned to City's account for that month. Such staffing report shall include the staff member's name, title, date of assignment to position, date of separation or absence from position, and identification of any temporary employees and how fee adjustments, if any, were derived.
- 3.6. City reserves the right to audit staffing reports and adjust billings to recover overpayments, if any. In order to facilitate such audits, Contractor shall provide timesheets and/or payroll records upon City's request. All Contractor costs associated with the audit and response shall be Contractor's responsibility.
- 3.7. Invoices and supporting documentation must be prepared at the sole expense and responsibility of Contractor. City shall not compensate Contractor for costs incurred in invoice preparation. City may request, in writing, changes to the content and format of the invoice and supporting documentation at any time. City reserves the right to request additional supporting documentation to substantiate costs at any time.
- 3.8. Subcontractors' Requirements. Tasks that are completed by subcontractors must be supported by subcontractor invoices, copies of pages from reports, brochures, photographs, or other unique documentation that substantiates their charges.
- 3.9. Most Favored Public Entity. If Contractor's prices decline, or should Contractor at any time during the term of the contract provide the same services under similar conditions to the State of California or any county, municipality, or district of the State at prices below those set forth in the contract, then such lower price shall immediately be extended to City.
- 3.10. ***Failure to adhere to these policies may result in nonpayment or non-approval of demands, pursuant to Charter Section 262(a)***, which requires the Controller to inspect the quality, quantity, and condition of services, labor, materials, supplies, or equipment received by any City office or department, and to approve demands before they are drawn on City Treasury.

ARTICLE E – STANDARD PROVISIONS FOR CITY CONTRACTS

1. Standard Provisions for City Contracts. Contractor shall comply with the **Standard Provisions for City Contracts (Rev. 10/17 [v.3])**, attached hereto as **Attachment A** and made a part hereof.
2. Indemnification and Liability. In addition to any indemnification obligations set forth in this Agreement, Contractor shall abide by the indemnification language described in the Standard Provisions for City Contracts (Rev. 10/17 [v.3]), attached hereto as Attachment A and made a part hereof.
3. Disclosure of Border Wall Contracting. Contractor shall comply with Los Angeles Administrative Code (LAAC) Section 10.50 et seq., "Disclosure of Border Wall Contracting." City may terminate this Contract at any time if City determines that Contractor failed to fully and accurately complete the required affidavit and disclose all Border Wall Bids and Border Wall Contracts, as defined in LAAC Section 10.50.1.

ARTICLE F – MISCELLANEOUS

1. Insurance. Contractor shall maintain the level of insurance required in the completed Form Gen. 146, Required Insurance and Minimum Limits, which is attached as [Exhibit 1] to **Attachment A, Standard Provisions for City Contracts (Rev. 10/17, [v.3])**. The insurance must name City as additional insured with respect to liability coverage. No policies or certificates with respect to such insurance may be cancelled or materially changed without at least 30 days' prior written notice by the respective insurer to City.
2. Within ninety (90) days of commencement of this Agreement, Contractor must provide City with copies of the following documents:
 - Contractor's Articles of Incorporation and all amendments thereto, as filed with the Secretary of State.
 - Resolutions or other corporate actions of Contractor's Board of Directors, properly attested or certified, which specify the name(s) of the person(s) authorized to obligate Contractor and execute contractual documents.
 - Certificate of Good Standing from Secretary of State.
3. Public Records Act.
 - Any documents submitted by Contractor and all information obtained in connection with City's right to audit and inspect Contractor's documents, books, and accounting records pursuant to Section 7, Record Retention and Inspection/Audit and Inspection/Audit of this Contract will become the exclusive property of City. All such documents will become a matter of public record and will be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret," "confidential," or

"proprietary." City shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.

- In the event City is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a proposal marked "trade secret," "confidential," or "proprietary," Contractor shall defend and indemnify City from all costs and expenses, including reasonable attorney's fees, in any action or liability arising under the Public Records Act.
4. Separation Assistance. In the event of separation, Contractor shall provide separation assistance to City to facilitate separation. Contractor shall further guarantee elimination from Contractor's services of all City Data upon separation.
 5. Contractor Evaluation Program. When the term of the contract has concluded, City will conduct an evaluation of Contractor's performance. City may also conduct evaluations of Contractor's performance during the term of the contract. As required by Section 10.39.2 of the Los Angeles Administrative Code, evaluations will be based on a number of criteria, including the quality of the work product or service performed the timeliness of performance, financial issues, and the expertise of personnel that Contractor assigns to the contract. A contractor who receives a "Marginal" or "Unsatisfactory" rating will be provided with a copy of the final City evaluation and allowed 14 calendar days to respond. City will use the final City evaluation, and any response from Contractor, to evaluate Proposals and to conduct reference checks when awarding other service contracts.
 6. Record Retention and Inspection/Audit
 - a) Contractor shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. Contractor shall also maintain accurate and complete employment and other records relating to its performance of this Agreement. Contractor agrees that City, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or records relating to this Agreement. All such material, including, but not limited to, all financial records, timecards and other employment records, and property data and information, shall be kept and maintained by Contractor and shall be made available to City during the term of this Agreement and for a period of four (4) years thereafter unless City's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by Contractor at a location in Los Angeles County, or another location approved in writing by City, provided that if any such material is located outside Los Angeles County, then, at City's option, Contractor shall pay City for travel, per diem, and other costs incurred by City to examine, audit, excerpt, copy, or transcribe such material at such other location.

- b) In the event that an audit of Contractor is conducted specifically regarding this Contract by any Federal or State auditor, or by any auditor or accountant employed by Contractor or otherwise, Contractor shall immediately notify City of such audit. Contractor shall also provide a copy of such audit report to City within thirty (30) days of Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Agreement. City shall make a reasonable effort to maintain the confidentiality of such audit report(s).
 - c) Failure on the part of Contractor to comply with any of the provisions of Agreement shall constitute a material breach of this Agreement upon which City may terminate or suspend this Agreement.
 - d) Periodic Independent Audit. City reserves the right to assign an independent auditor to assess the quality of services being provided and the extent to which the vendor is conducting City business within generally accepted industry standard practices. Contractor will be required to cooperate fully with any external audit.
 - e) Financial Audit. Firms providing services to City will be responsible for the verification of the legitimacy of payments made to service providers and their subcontractors. City therefore reserves the right for staff of its Office of the Controller of their designee to conduct audits of financial accountability procedures.
7. Contractor's Personnel & Subcontractors. Except as expressly provided in Subsection 7.1 below, Contractor shall use its own employees to perform the services described in this Agreement. Contractor shall provide a program manager and a panel of ombudspersons, mediators, and arbitrators, to deliver ADR services. The as-needed nurse advocates will be provided through City's Managed Care contracts. City shall have the right to review and approve any personnel who are assigned to work under this Agreement. Contractor agrees to remove personnel from performing work under this Agreement if requested to do so by City. City reserves the right, at its sole discretion, to have Contractor replace any project personnel with equally or better qualified staff upon submitting written notice to Contractor. In addition, City reserves the right to approve in advance any changes in project personnel or levels of commitment by Contractor to the project.
- 7.1 Subcontractors. Contractor may utilize subcontractors to assist in performance of this Agreement. Notwithstanding the fact that Contractor may utilize subcontractors, Contractor shall remain responsible for performing all aspects of this Agreement. City has the right to approve Contractor's subcontractors and City reserves the right to request replacement of a subcontractor. City does not have any obligation to pay subcontractors and nothing herein creates any privity between City and the subcontractors.

8. Non-Exclusive Agreement. Contractor understands and agrees that this is a non-exclusive agreement to provide services to City and that City has entered into contracts with other contractors and will continue to do so. City may terminate this agreement and use any of the contractors with whom City has current or future contracts and, therefore, City cannot estimate nor guarantee the volume or amount of work to be received by Contractor under this Agreement.
9. No Third-Party Beneficiaries. Nothing herein is intended to create a third party beneficiary in any subcontractor. City has no obligation to any subcontractor. No privity is created with any subcontractor by this Agreement. Even if Contractor uses subcontractors, Contractor remains responsible for complete and satisfactory performance of the terms of this Agreement.
10. Contractor's Interaction with the Media; Publicity. Contractor shall refer all inquiries from the news media to City, shall immediately contact City to inform City of the inquiry, and shall comply with the procedures of City's Public Affairs staff regarding statements to the media relating to this Agreement or Contractor's services hereunder.

Contractor shall not disclose any details in connection with this Contract to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing Contractor's need to identify its services and related clients to sustain itself, City shall not inhibit Contractor from publishing its role under this Contract within the following conditions:

10.1 Contractor shall develop all publicity material in a professional manner.

10.2 During the term of this Contract, Contractor shall not publish or disseminate (or authorize another to publish or disseminate) any commercial advertisements, press releases, feature articles, or other materials using the name of City without the prior written consent of City. City shall not unreasonably withhold written consent.

Contractor may, without the prior written consent of City, indicate in its proposals and sales materials that it has been awarded this Contract with the City of Los Angeles, provided that the requirements of this Section shall apply.

11. Ambiguity. Each party has reviewed and understood the Agreement and has had an opportunity to consult with counsel of its choosing. No ambiguity in this Agreement may be interpreted against any one party by virtue of that party being drafter of the Agreement.
12. Amendments to Agreement. Any changes in the terms of this Agreement, including changes in the services to be performed by Contractor, extension of the term, and any increase or decrease in pricing, must be incorporated into this Agreement by a written amendment properly executed by both parties.

13. Notice of Delays. Except as otherwise provided under this Agreement, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within one (1) business day, give notice thereof, including all relevant information with respect thereto, to the other party.
14. Entire Agreement. This Agreement contains the full and complete Agreement between the parties. No verbal agreement or conversation with any officer or employee of either party will affect or modify any of the terms and conditions of this Agreement.
15. Order of Precedence. In the event of any inconsistency between the provisions in the body of this Agreement and the attachments, the provisions in the body of this Agreement take precedence, followed by **Attachment A, Standard Provisions for City Contracts (Rev. 10/17 [v.3])**, followed by any other exhibits or attachments to this Agreement and made a part hereof in the order in which they are attached.

This Agreement is executed in three (3) duplicate originals,
each of which is deemed to be an original.

(Signature Page to Follow)

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

THE CITY OF LOS ANGELES

By: _____
WENDY G. MACY
General Manager,
Personnel Department

Date: _____

CALIFORNIA CLAIMS MANAGEMENT SERVICES, INC.

By: _____
Sandy Gutierrez
President

Date: _____

CALIFORNIA CLAIMS MANAGEMENT SERVICES, INC.

By: _____
Judy Miller
Chief Operating Officer

Date: _____

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By: _____
SAMUEL PETTY
Deputy City Attorney

Date: _____

ATTEST:

HOLLY L. WOLCOTT, City Clerk

By: _____
Deputy City Clerk

Date: _____

*** Approved Signature Methods:**

- 1) Two signatures: One of the Chairman of the Board of Directors, President, or Vice-President, and one of the Secretary, Assistant Secretary, Chief Financial Officer, or Assistant Treasurer.
- 1) One signature of a Corporate-designated individual together with a properly attested resolution of the Board of Directors authorizing the individual to sign.

City Business License Number: _____
Internal Revenue Service Taxpayer Identification Number: _____
Agreement Number: _____

STANDARD PROVISIONS FOR CITY CONTRACTS

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STANDARD PROVISIONS FOR CITY CONTRACTS

PSC-1. Construction of Provisions and Titles Herein

All titles, subtitles, or headings in this Contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions of this Contract. The language of this Contract shall be construed according to its fair meaning and not strictly for or against **CITY** or **CONTRACTOR**. The word "**CONTRACTOR**" includes the party or parties identified in this Contract. The singular shall include the plural and if there is more than one **CONTRACTOR**, unless expressly stated otherwise, their obligations and liabilities shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

PSC-2. Applicable Law, Interpretation and Enforcement

Each party's performance shall comply with all applicable laws of the United States of America, the State of California, and **CITY**, including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. **CONTRACTOR** shall comply with new, amended, or revised laws, regulations, or procedures that apply to the performance of this Contract with no additional compensation paid to **CONTRACTOR**.

In any action arising out of this Contract, **CONTRACTOR** consents to personal jurisdiction, and agrees to bring all such actions, exclusively in state or federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract is held void, illegal, unenforceable, or in conflict with any federal, state or local law or regulation, the validity of the remaining parts, terms or provisions of this Contract shall not be affected.

PSC-3. Time of Effectiveness

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- A. This Contract has been signed on behalf of **CONTRACTOR** by the person or persons authorized to bind **CONTRACTOR**;
- B. This Contract has been approved by the City Council or by the board, officer or employee authorized to give such approval;
- C. The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- D. This Contract has been signed on behalf of **CITY** by the person designated by the City Council, or by the board, officer or employee authorized to enter into this Contract.

PSC-4. Integrated Contract

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter of this Contract, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided for in the provisions of PSC-5 hereof.

PSC-5. Amendment

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of PSC-3.

PSC-6. Excusable Delays

Neither party shall be liable for its delay or failure to perform any obligation under and in accordance with this Contract, if the delay or failure arises out of fires, floods, earthquakes, epidemics, quarantine restrictions, other natural occurrences, strikes, lockouts (other than a lockout by the party or any of the party's Subcontractors), freight embargoes, terrorist acts, insurrections or other civil disturbances, or other similar events to those described above, but in each case the delay or failure to perform must be beyond the control and without any fault or negligence of the party delayed or failing to perform (these events are referred to in this provision as "Force Majeure Events").

Notwithstanding the foregoing, a delay or failure to perform by a Subcontractor of **CONTRACTOR** shall not constitute a Force Majeure Event, unless the delay or failure arises out of causes beyond the control of both **CONTRACTOR** and Subcontractor, and without any fault or negligence of either of them. In such case, **CONTRACTOR** shall not be liable for the delay or failure to perform, unless the goods or services to be furnished by the Subcontractor were obtainable from other sources in sufficient time to permit **CONTRACTOR** to perform timely. As used in this Contract, the term "Subcontractor" means a subcontractor at any tier.

In the event **CONTRACTOR'S** delay or failure to perform arises out of a Force Majeure Event, **CONTRACTOR** agrees to use commercially reasonable best efforts to obtain the goods or services from other sources, and to otherwise mitigate the damages and reduce the delay caused by the Force Majeure Event.

PSC-7. Waiver

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

PSC-8. Suspension

At **CITY'S** sole discretion, **CITY** may suspend any or all services provided under this Contract by providing **CONTRACTOR** with written notice of suspension. Upon receipt of the notice of suspension, **CONTRACTOR** shall immediately cease the services suspended and shall not incur any additional obligations, costs or expenses to **CITY** until **CITY** gives written notice to recommence the services.

PSC-9. Termination

A. Termination for Convenience

CITY may terminate this Contract for **CITY'S** convenience at any time by providing **CONTRACTOR** thirty days written notice. Upon receipt of the notice of termination, **CONTRACTOR** shall immediately take action not to incur any additional obligations, costs or expenses, except as may be necessary to terminate its activities. **CITY** shall pay **CONTRACTOR** its reasonable and allowable costs through the effective date of termination and those reasonable and necessary costs incurred by **CONTRACTOR** to effect the termination. Thereafter, **CONTRACTOR** shall have no further claims against **CITY** under this Contract. All finished and unfinished documents and materials procured for or produced under this Contract, including all intellectual property rights **CITY** is entitled to, shall become **CITY** property upon the date of the termination. **CONTRACTOR** agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

B. Termination for Breach of Contract

1. Except as provided in PSC-6, if **CONTRACTOR** fails to perform any of the provisions of this Contract or so fails to make progress as to endanger timely performance of this Contract, **CITY** may give **CONTRACTOR** written notice of the default. **CITY'S** default notice will indicate whether the default may be cured and the time period to cure the default to the sole satisfaction of **CITY**. Additionally, **CITY'S** default notice may offer **CONTRACTOR** an opportunity to provide **CITY** with a plan to cure the default, which shall be submitted to **CITY** within the time period allowed by **CITY**. At **CITY'S** sole discretion, **CITY** may accept or reject **CONTRACTOR'S** plan. If the default cannot be cured or if **CONTRACTOR** fails to cure within the period allowed by **CITY**, then **CITY** may terminate this Contract due to **CONTRACTOR'S** breach of this Contract.
2. If the default under this Contract is due to **CONTRACTOR'S** failure to maintain the insurance required under this Contract, **CONTRACTOR** shall immediately: (1) suspend performance of any services under this Contract for which insurance was required; and (2) notify its employees and Subcontractors of the loss of insurance coverage and Contractor's obligation to suspend performance of

services. **CONTRACTOR** shall not recommence performance until **CONTRACTOR** is fully insured and in compliance with **CITY'S** requirements.

3. If a federal or state proceeding for relief of debtors is undertaken by or against **CONTRACTOR**, or if **CONTRACTOR** makes an assignment for the benefit of creditors, then **CITY** may immediately terminate this Contract.
4. If **CONTRACTOR** engages in any dishonest conduct related to the performance or administration of this Contract or violates **CITY'S** laws, regulations or policies relating to lobbying, then **CITY** may immediately terminate this Contract.
5. Acts of Moral Turpitude
 - a. **CONTRACTOR** shall immediately notify **CITY** if **CONTRACTOR** or any Key Person, as defined below, is charged with, indicted for, convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, any act which constitutes an offense involving moral turpitude under federal, state, or local laws ("Act of Moral Turpitude").
 - b. If **CONTRACTOR** or a Key Person is convicted of, pleads nolo contendere to, or forfeits bail or fails to appear in court for a hearing related to, an Act of Moral Turpitude, **CITY** may immediately terminate this Contract.
 - c. If **CONTRACTOR** or a Key Person is charged with or indicted for an Act of Moral Turpitude, **CITY** may terminate this Contract after providing **CONTRACTOR** an opportunity to present evidence of **CONTRACTOR'S** ability to perform under the terms of this Contract.
 - d. Acts of Moral Turpitude include, but are not limited to: violent felonies as defined by Penal Code Section 667.5, crimes involving weapons, crimes resulting in serious bodily injury or death, serious felonies as defined by Penal Code Section 1192.7, and those crimes referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2); in addition to and including acts of murder, rape, sexual assault, robbery, kidnapping, human trafficking, pimping, voluntary manslaughter, aggravated assault, assault on a peace officer, mayhem, fraud, domestic abuse, elderly abuse, and child abuse, regardless of whether such acts are punishable by felony or misdemeanor conviction.

- e. For the purposes of this provision, a Key Person is a principal, officer, or employee assigned to this Contract, or owner (directly or indirectly, through one or more intermediaries) of ten percent or more of the voting power or equity interests of **CONTRACTOR**.
- 6. In the event **CITY** terminates this Contract as provided in this section, **CITY** may procure, upon such terms and in the manner as **CITY** may deem appropriate, services similar in scope and level of effort to those so terminated, and **CONTRACTOR** shall be liable to **CITY** for all of its costs and damages, including, but not limited to, any excess costs for such services.
- 7. If, after notice of termination of this Contract under the provisions of this section, it is determined for any reason that **CONTRACTOR** was not in default under the provisions of this section, or that the default was excusable under the terms of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to PSC-9(A) Termination for Convenience.
- 8. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- C. In the event that this Contract is terminated, **CONTRACTOR** shall immediately notify all employees and Subcontractors, and shall notify in writing all other parties contracted with under the terms of this Contract within five working days of the termination.

PSC-10. Independent Contractor

CONTRACTOR is an independent contractor and not an agent or employee of **CITY**. **CONTRACTOR** shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of **CITY**.

PSC-11. Contractor's Personnel

Unless otherwise approved by **CITY**, **CONTRACTOR** shall use its own employees to perform the services described in this Contract. **CITY** has the right to review and approve any personnel who are assigned to work under this Contract. **CONTRACTOR** shall remove personnel from performing work under this Contract if requested to do so by **CITY**.

CONTRACTOR shall not use Subcontractors to assist in performance of this Contract without the prior written approval of **CITY**. If **CITY** permits the use of Subcontractors, **CONTRACTOR** shall remain responsible for performing all aspects of this Contract and paying all Subcontractors. **CITY** has the right to approve **CONTRACTOR'S** Subcontractors, and **CITY** reserves the right to request replacement of any

Subcontractor. **CITY** does not have any obligation to pay **CONTRACTOR'S** Subcontractors, and nothing herein creates any privity of contract between **CITY** and any Subcontractor.

PSC-12. Assignment and Delegation

CONTRACTOR may not, unless it has first obtained the written permission of **CITY**:

- A. Assign or otherwise alienate any of its rights under this Contract, including the right to payment; or
- B. Delegate, subcontract, or otherwise transfer any of its duties under this Contract.

PSC-13. Permits

CONTRACTOR and its directors, officers, partners, agents, employees, and Subcontractors, shall obtain and maintain all licenses, permits, certifications and other documents necessary for **CONTRACTOR'S** performance of this Contract. **CONTRACTOR** shall immediately notify **CITY** of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents that relate to **CONTRACTOR'S** performance of this Contract.

PSC-14. Claims for Labor and Materials

CONTRACTOR shall promptly pay when due all amounts owed for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any **CITY** property (including reports, documents, and other tangible or intangible matter produced by **CONTRACTOR** hereunder), and shall pay all amounts due under the Unemployment Insurance Act or any other applicable law with respect to labor used to perform under this Contract.

PSC-15. Current Los Angeles City Business Tax Registration Certificate Required

For the duration of this Contract, **CONTRACTOR** shall maintain valid Business Tax Registration Certificate(s) as required by **CITY'S** Business Tax Ordinance, Section 21.00 *et seq.* of the Los Angeles Municipal Code ("LAMC"), and shall not allow the Certificate to lapse or be revoked or suspended.

PSC-16. Retention of Records, Audit and Reports

CONTRACTOR shall maintain all records, including records of financial transactions, pertaining to the performance of this Contract, in their original form or as otherwise approved by **CITY**. These records shall be retained for a period of no less than three years from the later of the following: (1) final payment made by **CITY**, (2) the expiration of this Contract or (3) termination of this Contract. The records will be subject to examination and audit by authorized **CITY** personnel or **CITY'S** representatives at any time. **CONTRACTOR** shall provide any reports requested by **CITY** regarding

performance of this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

In lieu of retaining the records for the term as prescribed in this provision, **CONTRACTOR** may, upon **CITY'S** written approval, submit the required information to **CITY** in an electronic format, e.g. USB flash drive, at the expiration or termination of this Contract.

PSC-17. Bonds

All bonds required by **CITY** shall be filed with the Office of the City Administrative Officer, Risk Management for its review and acceptance in accordance with Los Angeles Administrative Code ("LAAC") Sections 11.47 *et seq.*, as amended from time to time.

PSC-18. Indemnification

Except for the active negligence or willful misconduct of **CITY**, or any of its boards, officers, agents, employees, assigns and successors in interest, **CONTRACTOR** shall defend, indemnify and hold harmless **CITY** and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including **CONTRACTOR'S** employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of an act, error, or omission by **CONTRACTOR**, Subcontractors, or their boards, officers, agents, employees, assigns, and successors in interest. The rights and remedies of **CITY** provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-19. Intellectual Property Indemnification

CONTRACTOR, at its own expense, shall defend, indemnify, and hold harmless the **CITY**, and any of its boards, officers, agents, employees, assigns, and successors in interest from and against all lawsuits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by **CITY**, including but not limited to, costs of experts and consultants), damages or liability of any nature arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity, and proprietary information: (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by **CONTRACTOR**, or its Subcontractors, in performing the work under this Contract; or (2) as a result of **CITY'S** actual or intended use of any Work Product (as defined in PSC-21) furnished by **CONTRACTOR**, or its Subcontractors, under this Contract. The rights and remedies of **CITY** provided in this section shall not be exclusive

and are in addition to any other rights and remedies provided by law or under this Contract. This provision will survive expiration or termination of this Contract.

PSC-20. Intellectual Property Warranty

CONTRACTOR represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributorily, upon any third party's intellectual property rights, including, without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information.

PSC-21. Ownership and License

Unless otherwise provided for herein, all finished and unfinished works, tangible or not, created under this Contract including, without limitation, documents, materials, data, reports, manuals, specifications, artwork, drawings, sketches, blueprints, studies, memoranda, computation sheets, computer programs and databases, schematics, photographs, video and audiovisual recordings, sound recordings, marks, logos, graphic designs, notes, websites, domain names, inventions, processes, formulas, matters and combinations thereof, and all forms of intellectual property originated and prepared by **CONTRACTOR** or its Subcontractors under this Contract (each a "Work Product"; collectively "Work Products") shall be and remain the exclusive property of **CITY** for its use in any manner **CITY** deems appropriate. **CONTRACTOR** hereby assigns to **CITY** all goodwill, copyright, trademark, patent, trade secret and all other intellectual property rights worldwide in any Work Products originated and prepared under this Contract. **CONTRACTOR** further agrees to execute any documents necessary for **CITY** to perfect, memorialize, or record **CITY'S** ownership of rights provided herein.

CONTRACTOR agrees that a monetary remedy for breach of this Contract may be inadequate, impracticable, or difficult to prove and that a breach may cause **CITY** irreparable harm. **CITY** may therefore enforce this requirement by seeking injunctive relief and specific performance, without any necessity of showing actual damage or irreparable harm. Seeking injunctive relief or specific performance does not preclude **CITY** from seeking or obtaining any other relief to which **CITY** may be entitled.

For all Work Products delivered to **CITY** that are not originated or prepared by **CONTRACTOR** or its Subcontractors under this Contract, **CONTRACTOR** shall secure a grant, at no cost to **CITY**, for a non-exclusive perpetual license to use such Work Products for any **CITY** purposes.

CONTRACTOR shall not provide or disclose any Work Product to any third party without prior written consent of **CITY**.

Any subcontract entered into by **CONTRACTOR** relating to this Contract shall include this provision to contractually bind its Subcontractors performing work under this Contract such that **CITY'S** ownership and license rights of all Work Products are preserved and protected as intended herein.

PSC-22. Data Protection

- A. **CONTRACTOR** shall protect, using the most secure means and technology that is commercially available, **CITY**-provided data or consumer-provided data acquired in the course and scope of this Contract, including but not limited to customer lists and customer credit card or consumer data, (collectively, the "City Data"). **CONTRACTOR** shall notify **CITY** in writing as soon as reasonably feasible, and in any event within twenty-four hours, of **CONTRACTOR'S** discovery or reasonable belief of any unauthorized access of City Data (a "Data Breach"), or of any incident affecting, or potentially affecting City Data related to cyber security (a "Security Incident"), including, but not limited to, denial of service attack, and system outage, instability or degradation due to computer malware or virus. **CONTRACTOR** shall begin remediation immediately. **CONTRACTOR** shall provide daily updates, or more frequently if required by **CITY**, regarding findings and actions performed by **CONTRACTOR** until the Data Breach or Security Incident has been effectively resolved to **CITY'S** satisfaction. **CONTRACTOR** shall conduct an investigation of the Data Breach or Security Incident and shall share the report of the investigation with **CITY**. At **CITY'S** sole discretion, **CITY** and its authorized agents shall have the right to lead or participate in the investigation. **CONTRACTOR** shall cooperate fully with **CITY**, its agents and law enforcement.
- B. If **CITY** is subject to liability for any Data Breach or Security Incident, then **CONTRACTOR** shall fully indemnify and hold harmless **CITY** and defend against any resulting actions.

PSC-23. Insurance

During the term of this Contract and without limiting **CONTRACTOR'S** obligation to indemnify, hold harmless and defend **CITY**, **CONTRACTOR** shall provide and maintain at its own expense a program of insurance having the coverages and limits not less than the required amounts and types as determined by the Office of the City Administrative Officer of Los Angeles, Risk Management (template Form General 146 in Exhibit 1 hereto). The insurance must: (1) conform to **CITY'S** requirements; (2) comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto); and (3) otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. **CONTRACTOR** shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

PSC-24. Best Terms

Throughout the term of this Contract, **CONTRACTOR**, shall offer **CITY** the best terms, prices, and discounts that are offered to any of **CONTRACTOR'S** customers for similar goods and services provided under this Contract.

PSC-25. Warranty and Responsibility of Contractor

CONTRACTOR warrants that the work performed hereunder shall be completed in a manner consistent with professional standards practiced among those firms within **CONTRACTOR'S** profession, doing the same or similar work under the same or similar circumstances.

PSC-26. Mandatory Provisions Pertaining to Non-Discrimination in Employment

Unless otherwise exempt, this Contract is subject to the applicable non-discrimination, equal benefits, equal employment practices, and affirmative action program provisions in LAAC Section 10.8 et seq., as amended from time to time.

- A. **CONTRACTOR** shall comply with the applicable non-discrimination and affirmative action provisions of the laws of the United States of America, the State of California, and **CITY**. In performing this Contract, **CONTRACTOR** shall not discriminate in any of its hiring or employment practices against any employee or applicant for employment because of such person's race, color, religion, national origin, ancestry, sex, sexual orientation, gender, gender identity, age, disability, domestic partner status, marital status or medical condition.
- B. The requirements of Section 10.8.2.1 of the LAAC, the Equal Benefits Ordinance, and the provisions of Section 10.8.2.1(f) are incorporated and made a part of this Contract by reference.
- C. The provisions of Section 10.8.3 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Equal Employment Practices" provisions of this Contract.
- D. The provisions of Section 10.8.4 of the LAAC are incorporated and made a part of this Contract by reference and will be known as the "Affirmative Action Program" provisions of this Contract.

Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-27. Child Support Assignment Orders

CONTRACTOR shall comply with the Child Support Assignment Orders Ordinance, Section 10.10 of the LAAC, as amended from time to time. Pursuant to Section 10.10(b) of the LAAC, **CONTRACTOR** shall fully comply with all applicable State and Federal employment reporting requirements. Failure of **CONTRACTOR** to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment or Notices of Assignment, or the failure of any principal owner(s) of **CONTRACTOR** to comply with any Wage and Earnings Assignment or Notices of Assignment applicable to them personally, shall constitute a default by the **CONTRACTOR** under this Contract. Failure of **CONTRACTOR** or principal owner to cure

the default within 90 days of the notice of default will subject this Contract to termination for breach. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-28. Living Wage Ordinance

CONTRACTOR shall comply with the Living Wage Ordinance, LAAC Section 10.37 *et seq.*, as amended from time to time. **CONTRACTOR** further agrees that it shall comply with federal law proscribing retaliation for union organizing. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-29. Service Contractor Worker Retention Ordinance

CONTRACTOR shall comply with the Service Contractor Worker Retention Ordinance, LAAC Section 10.36 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-30. Access and Accommodations

CONTRACTOR represents and certifies that:

- A. **CONTRACTOR** shall comply with the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12101 *et seq.*, the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 701 *et seq.*, the Fair Housing Act, and its implementing regulations and any subsequent amendments, and California Government Code Section 11135;
- B. **CONTRACTOR** shall not discriminate on the basis of disability or on the basis of a person's relationship to, or association with, a person who has a disability;
- C. **CONTRACTOR** shall provide reasonable accommodation upon request to ensure equal access to **CITY**-funded programs, services and activities;
- D. Construction will be performed in accordance with the Uniform Federal Accessibility Standards (UFAS), 24 C.F.R. Part 40; and
- E. The buildings and facilities used to provide services under this Contract are in compliance with the federal and state standards for accessibility as set forth in the 2010 ADA Standards, California Title 24, Chapter 11, or other applicable federal and state law.

CONTRACTOR understands that **CITY** is relying upon these certifications and representations as a condition to funding this Contract. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-31. Contractor Responsibility Ordinance

CONTRACTOR shall comply with the Contractor Responsibility Ordinance, LAAC Section 10.40 *et seq.*, as amended from time to time.

PSC-32. Business Inclusion Program

Unless otherwise exempted prior to bid submission, **CONTRACTOR** shall comply with all aspects of the Business Inclusion Program as described in the Request for Proposal/Qualification process, throughout the duration of this Contract. **CONTRACTOR** shall utilize the Business Assistance Virtual Network ("BAVN") at <https://www.labavn.org/>, to perform and document outreach to Minority, Women, and Other Business Enterprises. **CONTRACTOR** shall perform subcontractor outreach activities through BAVN. **CONTRACTOR** shall not change any of its designated Subcontractors or pledged specific items of work to be performed by these Subcontractors, nor shall **CONTRACTOR** reduce their level of effort, without prior written approval of **CITY**.

PSC-33. Slavery Disclosure Ordinance

CONTRACTOR shall comply with the Slavery Disclosure Ordinance, LAAC Section 10.41 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-34. First Source Hiring Ordinance

CONTRACTOR shall comply with the First Source Hiring Ordinance, LAAC Section 10.44 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-35. Local Business Preference Ordinance

CONTRACTOR shall comply with the Local Business Preference Ordinance, LAAC Section 10.47 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-36. Iran Contracting Act

In accordance with California Public Contract Code Sections 2200-2208, all contractors entering into, or renewing contracts with **CITY** for goods and services estimated at \$1,000,000 or more are required to complete, sign, and submit the "Iran Contracting Act of 2010 Compliance Affidavit."

PSC-37. Restrictions on Campaign Contributions and Fundraising in City Elections

Unless otherwise exempt, if this Contract is valued at \$100,000 or more and requires approval by an elected **CITY** office, **CONTRACTOR**, **CONTRACTOR'S** principals, and **CONTRACTOR'S** Subcontractors expected to receive at least \$100,000 for performance under the Contract, and the principals of those Subcontractors (the "Restricted Persons")

shall comply with Charter Section 470(c)(12) and LAMC Section 49.7.35. Failure to comply entitles **CITY** to terminate this Contract and to pursue all available legal remedies. Charter Section 470(c)(12) and LAMC Section 49.7.35 limit the ability of the Restricted Persons to make campaign contributions to and engage in fundraising for certain elected **CITY** officials or candidates for elected **CITY** office for twelve months after this Contract is signed. Additionally, a **CONTRACTOR** subject to Charter Section 470(c)(12) is required to comply with disclosure requirements by submitting a completed and signed Ethics Commission Form 55 and to amend the information in that form as specified by law. Any **CONTRACTOR** subject to Charter Section 470(c)(12) shall include the following notice in any contract with any Subcontractor expected to receive at least \$100,000 for performance under this Contract:

“Notice Regarding Restrictions on Campaign Contributions and Fundraising in City Elections

You are a subcontractor on City of Los Angeles Contract #_____. Pursuant to the City of Los Angeles Charter Section 470(c)(12) and related ordinances, you and your principals are prohibited from making campaign contributions to and fundraising for certain elected City of Los Angeles (“**CITY**”) officials and candidates for elected **CITY** office for twelve months after the **CITY** contract is signed. You are required to provide the names and contact information of your principals to the **CONTRACTOR** and to amend that information within ten business days if it changes during the twelve month time period. Failure to comply may result in termination of this Contract and any other available legal remedies. Information about the restrictions may be found online at ethics.lacity.org or by calling the Los Angeles City Ethics Commission at (213) 978-1960.”

PSC-38. Contractors’ Use of Criminal History for Consideration of Employment Applications

CONTRACTOR shall comply with the City Contractors’ Use of Criminal History for Consideration of Employment Applications Ordinance, LAAC Section 10.48 *et seq.*, as amended from time to time. Any subcontract entered into by **CONTRACTOR** for work to be performed under this Contract must include an identical provision.

PSC-39. Limitation of City’s Obligation to Make Payment to Contractor

Notwithstanding any other provision of this Contract, including any exhibits or attachments incorporated therein, and in order for **CITY** to comply with its governing legal requirements, **CITY** shall have no obligation to make any payments to **CONTRACTOR** unless **CITY** shall have first made an appropriation of funds equal to or in excess of its obligation to make any payments as provided in this Contract. **CONTRACTOR** agrees that any services provided by **CONTRACTOR**, purchases made by **CONTRACTOR** or expenses incurred by **CONTRACTOR** in excess of the appropriation(s) shall be free and without charge to **CITY** and **CITY** shall have no obligation to pay for the services, purchases or expenses. **CONTRACTOR** shall have no obligation to provide any services,

provide any equipment or incur any expenses in excess of the appropriated amount(s) until **CITY** appropriates additional funds for this Contract.

PSC-40. Compliance with Identity Theft Laws and Payment Card Data Security Standards

CONTRACTOR shall comply with all identity theft laws including without limitation, laws related to: (1) payment devices; (2) credit and debit card fraud; and (3) the Fair and Accurate Credit Transactions Act ("FACTA"), including its requirement relating to the content of transaction receipts provided to Customers. **CONTRACTOR** also shall comply with all requirements related to maintaining compliance with Payment Card Industry Data Security Standards ("PCI DSS"). During the performance of any service to install, program or update payment devices equipped to conduct credit or debit card transactions, including PCI DSS services, **CONTRACTOR** shall verify proper truncation of receipts in compliance with FACTA.

PSC-41. Compliance with California Public Resources Code Section 5164

California Public Resources Code Section 5164 prohibits a public agency from hiring a person for employment or as a volunteer to perform services at any park, playground, or community center used for recreational purposes in a position that has supervisory or disciplinary authority over any minor, if the person has been convicted of certain crimes as referenced in the Penal Code, and articulated in California Public Resources Code Section 5164(a)(2).

If applicable, **CONTRACTOR** shall comply with California Public Resources Code Section 5164, and shall additionally adhere to all rules and regulations that have been adopted or that may be adopted by **CITY**. **CONTRACTOR** is required to have all employees, volunteers and Subcontractors (including all employees and volunteers of any Subcontractor) of **CONTRACTOR** working on premises to pass a fingerprint and background check through the California Department of Justice at **CONTRACTOR'S** sole expense, indicating that such individuals have never been convicted of certain crimes as referenced in the Penal Code and articulated in California Public Resources Code Section 5164(a)(2), if the individual will have supervisory or disciplinary authority over any minor.

PSC-42. Possessory Interests Tax

Rights granted to **CONTRACTOR** by **CITY** may create a possessory interest. **CONTRACTOR** agrees that any possessory interest created may be subject to California Revenue and Taxation Code Section 107.6 and a property tax may be levied on that possessory interest. If applicable, **CONTRACTOR** shall pay the property tax. **CONTRACTOR** acknowledges that the notice required under California Revenue and Taxation Code Section 107.6 has been provided.

PSC-43. Confidentiality

All documents, information and materials provided to **CONTRACTOR** by **CITY** or developed by **CONTRACTOR** pursuant to this Contract (collectively "Confidential Information") are confidential. **CONTRACTOR** shall not provide or disclose any Confidential Information or their contents or any information therein, either orally or in writing, to any person or entity, except as authorized by **CITY** or as required by law. **CONTRACTOR** shall immediately notify **CITY** of any attempt by a third party to obtain access to any Confidential Information. This provision will survive expiration or termination of this Contract.

EXHIBIT 1

INSURANCE CONTRACTUAL REQUIREMENTS

CONTACT For additional information about compliance with City Insurance and Bond requirements, contact the Office of the City Administrative Officer, Risk Management at (213) 978-RISK (7475) or go online at www.lacity.org/cao/risk. The City approved Bond Assistance Program is available for those contractors who are unable to obtain the City-required performance bonds. A City approved insurance program may be available as a low cost alternative for contractors who are unable to obtain City-required insurance.

CONTRACTUAL REQUIREMENTS

CONTRACTOR AGREES THAT:

- 1. Additional Insured/Loss Payee.** The CITY must be included as an Additional Insured in applicable liability policies to cover the CITY'S liability arising out of the acts or omissions of the named insured. The CITY is to be named as an Additional Named Insured and a Loss Payee As Its Interests May Appear in property insurance in which the CITY has an interest, e.g., as a lien holder.
- 2. Notice of Cancellation.** All required insurance will be maintained in full force for the duration of its business with the CITY. By ordinance, all required insurance must provide at least thirty (30) days' prior written notice (ten (10) days for non-payment of premium) directly to the CITY if your insurance company elects to cancel or materially reduce coverage or limits prior to the policy expiration date, for any reason except impairment of an aggregate limit due to prior claims.
- 3. Primary Coverage.** CONTRACTOR will provide coverage that is primary with respect to any insurance or self-insurance of the CITY. The CITY'S program shall be excess of this insurance and non-contributing.
- 4. Modification of Coverage.** The CITY reserves the right at any time during the term of this Contract to change the amounts and types of insurance required hereunder by giving CONTRACTOR ninety (90) days' advance written notice of such change. If such change should result in substantial additional cost to CONTRACTOR, the CITY agrees to negotiate additional compensation proportional to the increased benefit to the CITY.
- 5. Failure to Procure Insurance.** All required insurance must be submitted and approved by the Office of the City Administrative Officer, Risk Management prior to the inception of any operations by CONTRACTOR.

CONTRACTOR'S failure to procure or maintain required insurance or a self-insurance program during the entire term of this Contract shall constitute a material breach of this Contract under which the CITY may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the CITY'S interests and pay any and all premiums in connection therewith and recover all monies so paid from CONTRACTOR.

- 6. Workers' Compensation.** By signing this Contract, CONTRACTOR hereby certifies that it is aware of the provisions of Section 3700 *et seq.*, of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake

self-insurance in accordance with the provisions of that Code, and that it will comply with such provisions at all time during the performance of the work pursuant to this Contract.

7. California Licensee. All insurance must be provided by an insurer admitted to do business in California or written through a California-licensed surplus lines broker or through an insurer otherwise acceptable to the CITY. Non-admitted coverage must contain a **Service of Suit** clause in which the underwriters agree to submit as necessary to the jurisdiction of a California court in the event of a coverage dispute. Service of process for this purpose must be allowed upon an agent in California designated by the insurer or upon the California Insurance Commissioner.

8. Aggregate Limits/Impairment. If any of the required insurance coverages contain annual aggregate limits, CONTRACTOR must give the CITY written notice of any pending claim or lawsuit which will materially diminish the aggregate within thirty (30) days of knowledge of same. You must take appropriate steps to restore the impaired aggregates or provide replacement insurance protection within thirty (30) days of knowledge of same. The CITY has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect the CITY'S protection are allowed without the CITY'S prior written consent.

9. Commencement of Work. For purposes of insurance coverage only, this Contract will be deemed to have been executed immediately upon any party hereto taking any steps that can be considered to be in furtherance of or towards performance of this Contract. The requirements in this Section supersede all other sections and provisions of this Contract, including, but not limited to, PSC-3, to the extent that any other section or provision conflicts with or impairs the provisions of this Section.

Required Insurance and Minimum Limits

Name: _____

Date: _____

Agreement/Reference: _____

Evidence of coverages checked below, with the specified minimum limits, must be submitted and approved prior to occupancy/start of operations. Amounts shown are Combined Single Limits ("CSLs"). For Automobile Liability, split limits may be substituted for a CSL if the total per occurrence equals or exceeds the CSL amount.

Limits

Workers' Compensation (WC) and Employer's Liability (EL)
WC Statutory

EL _____

☐ Waiver of Subrogation in favor of City☐ Longshore & Harbor Workers☐ Jones Act

General Liability
☐ Products/Completed Operations☐ Sexual Misconduct☐ Fire Legal Liability☐ _____

Automobile Liability (for any and all vehicles used for this contract, other than commuting to/from work)

Professional Liability (Errors and Omissions)

Discovery Period _____

Property Insurance (to cover replacement cost of building - as determined by insurance company)
☐ All Risk Coverage☐ Boiler and Machinery☐ Flood☐ Builder's Risk☐ Earthquake☐ _____

Pollution Liability
☐ _____

Surety Bonds - Performance and Payment (Labor and Materials) Bonds

Crime Insurance

Other:

**Professional Services Agreement
CALIFORNIA CLAIMS MANAGEMENT SERVICES, INC.
Attachment B – Confidentiality & Conflict of Interest Agreement (v.2)**

For Employees, California Claims Management Services, Inc. (CCMS) Agents and Subcontractors Providing Services to City of Los Angeles for Workers Compensation Alternative Dispute Resolution Program

Contract C-129579

I understand that workers' compensation files, medical invoices and utilization review medical reports contain information which is extremely confidential. This information is protected by the Confidentiality of Medical Information Act of California, which strictly governs who may have access to such information (in general, access is limited to the employee, his/her doctor and attorney, and the analyst in charge of the employee's claim). I agree not to provide confidential information, nor disclose the content or any information contained in a confidential file, either orally or in writing to any unauthorized person or entity. I will not issue any press release or respond to media inquiries regarding the City's workers' compensation program as a whole or regarding an individual claimant. Personal information, such as addresses and phone numbers, is also protected by company policy. If I have any doubt about releasing any file information to anyone, I should receive authorization from City before I release it.

I understand that the computer system of CCMS, Inc. is an extension of the company's file. As such, the laws and procedures that govern access to information in the files must apply in equal measure to the information in the computer. Consequently, all passwords, codes and any other means of acquiring information from the computers are strictly confidential.

As an employee or independent contractor of a company providing services to the City of Los Angeles, I understand that I hold a position of public trust. In recognition of this, the City Council has adopted a Code of Ethics by which I must abide. I have received a copy of this Code, I have read and understand it, and I agree to abide by it. I shall abide by all professional standards and codes of conduct applicable by reason of my profession, professional license, or industry, including those codes of conduct articulated in Contract C-129579.

Under the Code of Ethics, I understand that I will not engage in or continue any outside employment that would create a conflict of interest with doctor or medical facilities of any kind, private investigation companies, photocopy services, medical laboratory services, law firms, attorneys, rehabilitation vendors, adjusting agencies, or any other vendor or class of vendor for which I have personal knowledge does or might do business with, for or against City. I understand that I may not knowingly accept gifts or gratuities of any kind from any doctor, medical facility, investigative agency, photocopying firm, rehabilitation vendor, attorney or law firm, City employee, or any other person or agency which does business with, for, or against City. I must also avoid any appearance of such actions whether or not there is any real conflict. My conduct must be above reproach or the suspicion of conflict or wrongdoing. I understand that City's Code of Ethics does not in any way preclude me from receiving compensation from, or participating in any benefit plans or programs of any kind offered to me by, my employer. I shall disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to me and could reasonably be seen as raising a question about my impartiality. After disclosure, if all parties agree, I may proceed with the required services.

By my signature below, I certify that I understand the necessity of (1) keeping medical and other City information confidential; (2) securing and keeping confidential computer passwords, and all other codes if they are given to me; (3) abiding by City Code of Ethics; (4) not accepting or continuing any outside employment to avoid any real or appearance of conflict ; (5) not accepting

gifts or gratuities from known providers of workers' compensation services to City; and (6) conducting myself in a manner consistent with public trust which my employment with a company providing services to City represents.

I further understand that my failure to comply with the terms of this Confidentiality and Conflict of Interest Agreement and/or City's Code of Ethics may be grounds for disciplinary action, including termination of my employment or services contract with the company providing services to City.

Employer Name

Employee/Independent Contractor Name Employee/Independent Contractor Signature Date

**Professional Services Agreement
CALIFORNIA CLAIMS MANAGEMENT SERVICES, INC.
Attachment C – Scope of Work**

1. SCOPE OF WORK:

City and Service Employees International Union (SEIU) Local 721 entered into an agreement establishing an Alternative Dispute Resolution (ADR) program in accordance with California Labor Code Section 3201.7. The program applies to all work-related injuries occurring on or after July 1, 2008, and covers employees represented by bargaining units 4, 14, 15, and 18. Beginning May 1, 2018 the ADR Program was expanded to include employees represented by the Coalition of Unions. The unions and bargaining units covered by the ADR Program are listed below.

Union Name	Bargaining Unit(s)
Los Angeles/Orange Counties Building and Construction Trades Council (Trades Council)	2 and 13
American Federation of State, County and Municipal Employees (AFSCME) Council 36, Local 3090	3
Service Employees International Union (SEIU) Local 721	4, 8, 14, 15, 17, 18, 36, and 63
American Federation of State, County and Municipal Employees (AFSCME) Council 36, Local 2626	6 and 16
American Federation of State, County and Municipal Employees (AFSCME) Council 36, Local 741	7
International Union of Operating Engineers (IUOE) Local 501	9 and 62
American Federation of State, County and Municipal Employees (AFSCME) Council 36, Local 2006	10
American Federation of State, County and Municipal Employees (AFSCME) Council 36, Local 901	11
Laborers International Union of North America (LIUNA) Local 777	12
International Brotherhood of Teamsters (Teamsters) Local 911	34
American Federation of State, County and Municipal Employees (AFSCME) Council 36, Local 3672	37

This program may be expanded to include other bargaining units (or MOUs) within City (excluding the Department of Water and Power) once labor agreements have been executed and the necessary State approvals have been obtained.

The ADR program requires that disputes related to workers' compensation claims be resolved utilizing the steps described in the ADR program, instead of litigating them with the Workers' Compensation Appeals Board (WCAB). It includes the services of

ombudspersons, mediators, arbitrators and nurses, all provided by a neutral third party. Contractor shall serve as this neutral third party and shall provide services as described in this Contract.

1.1. Goals of the ADR Program

The goals of the ADR Program are as follows:

- Avoid unnecessary misunderstandings and disputes
- Improve the speed and quality of medical care
- Improve claim resolution time
- Reduce workers' compensation claim costs
- Reduce litigation
- Increase injured workers' satisfaction

The ADR program shall replace all dispute resolution processes provided by workers' compensation law to the maximum extent permitted under California Labor Code Section 3201.7.

1.2. Project Coordination

- a) Before performing services under this Contract, Contractor shall designate in writing an account service team and designate an ADR Program Manager, subject to the written approval of City. If Contractor elects to replace the ADR Program Manager, prior notice will be given to City, and City reserves the right to meet with, review and approve in writing the background, education, and experience of any potential assignee to this position throughout the term of this Contract at its sole and absolute discretion.
- b) The ADR Program Manager will have full authority to administer the Contract and serve as the prime contact on behalf of Contractor with City and will have overall management responsibility for the supervision of Contractor's performance under this Contract.

1.3. ADR Staffing and Program Components

City's ADR program will consist of an ADR Program Manager, ombudspersons, mediator(s), arbitrator(s), and as-needed nurse advocates. The ombudsperson will make the initial contact with the injured worker, explaining the program and facilitating the workers' compensation process between the injured worker and workers' compensation analyst. If resolution of a workers' compensation problem is unsuccessful at the ombudsperson level, the injured employee may request to have the matter moved to mediation. The mediator will mediate the resolution of non-medical disputes. If resolution is unsuccessful at the level of the mediator, the injured employee may have the matter moved to arbitration. At any time

during the process, the ombudsperson or ADR Program Manager may also refer injured employees to a nurse advocate who can answer medical questions. The parties may also submit settlements for review and approval by a mediator or arbitrator at any time.

Injured employees may retain legal representation at their own expense at any stage of the ADR process. City is not responsible for the payment of attorney's fees unless ordered by the arbitrator or a WCAB judge. If so ordered, the attorney's fee will be deducted from some of the injured employees' benefits. All workers' compensation claims subject to this ADR program may not be litigated with the WCAB until the ombudsperson, mediation and arbitration processes have been completed.

1.4. ADR Program Manager

The ADR Program Manager shall manage and direct the ADR program and all of its components. At the discretion of City, the ADR Program Manager may attend mediations and arbitrations to explain the status of the claim and to prepare a summary of the negotiations for both sides. ADR Program Manager must meet the requirements listed in Attachment C, Section 1.18. Minimum Qualification or Training Requirements. ADR Program Manager shall disseminate current copies of the City of Los Angeles Labor-Management (Carve-Out) Agreements filed with the State of California, Department of Industrial Relations to each employee and subcontractor.

1.5. Ombudspersons

Contractor shall provide, at a minimum, three (3) full-time ombudspersons for the ADR program. No additional ombudspersons will be hired except as mutually agreed upon and negotiated by City and Contractor. Ombudspersons are neutral and available to all parties. Their primary role is to resolve concerns and misunderstandings through informal discussions with the injured employee and to serve as an advocate for non-represented employees and others involved in the claim. Ombudspersons provide information to the employee, assist with setting up and completing paperwork for med-legal examinations, answer questions, listen to concerns, investigate complaints, and help avoid or resolve problems before they become formal disputes.

Since ombudspersons are essential to the success of the ADR program, they must be knowledgeable in workers' compensation law and the rights and responsibilities of the worker and employer. They must meet the requirements listed in Attachment C, Section 1.18. Minimum Qualification or Training Requirements.

1.5.1. Role of Ombudsperson

The role of an ombudsperson is to:

- a) Act as a neutral party – strive to be objective and impartial by providing services free from bias or conflict of interest. Considers the concerns of all parties involved in a dispute.
- b) Maintain confidentiality – takes all reasonable steps to keep confidential any records and files pertaining to private discussions with the injured employee, employer, workers' compensation analyst, or labor organization, and shall not disclose confidential information without consent. The ombudsperson shall maintain the parties' expectations of confidentiality and not disclose confidential information in mediation sessions or arbitration hearings. This includes information that the ombudsperson may share in mediation and/or arbitration.
- c) Develop a range of options – presents responsible options available under workers' compensation to resolve problems and facilitate discussion to identify the best options.

1.5.2. Responsibilities of Ombudsperson

Responsibilities may include, but are not limited, the following:

- a. City will notify Contractor of all newly filed workers' compensation claims that are subject to the ADR program. An ombudsperson shall proactively contact the injured employee by the next working day of said notification to provide information on the mechanics of the ADR program and to offer assistance in resolving any disputes with City. Such contact shall include, at a minimum, a telephone call and a letter.
- b. The ombudsperson shall make two (2) additional attempts, within fourteen (14) days of a claim being filed, to contact the injured worker via telephone call, if the ombudsperson is unable to speak with the injured worker on the first attempt.
- c. The ombudsperson shall proactively contact the injured worker thirty (30) calendar days after the initial contact, and then every thirty (30) calendar days thereafter until the claim is settled.
- d. Maintain an electronic log to document all ombudsperson activity, including the date of each contact, nature of inquiry, and action taken.

- e. Be readily available to injured employees, Workers' Compensation Division staff, and participating unions who may request information or assistance in resolving a dispute from 8AM – 5PM Pacific Time, Monday through Friday, except on City holidays.
- f. Ombudspersons shall work full-time in Contractor's office, and shall be available to meet with injured employees should they prefer to discuss matters in person.
- g. Ombudspersons shall be required to visit City facilities, when requested to do so by City and/or the union.
- h. When an ombudsperson is unavailable, voicemail and email must be available so the injured worker may contact the ombudsperson.
- i. Respond to inquiries from injured employees the same working day, but no later than the next working day, which may be at the request of City and/or union.
- j. Return voicemail messages and emails, if any, from injured employees, City staff, and/or union staff the same business day, but no later than the next working day. If an ombudsperson is not available to do so, the ombudsperson shall make arrangements to have a knowledgeable backup make contact within the above-mentioned timeframe.
- k. Contact City staff by the next working day after contacting an injured employee to advise the workers' compensation analyst of the call and to report any change in the status of the claim or if a claimant is dissatisfied.
- l. Contact City staff the same working day when a contact with an injured employee requires any action to be taken as a result of the call.
- m. Assist injured employee with any questions, concerns, or problems that arise related to employee's claim and if necessary, refer employee to a nurse advocate to help with medical questions or treatment issues.
- n. Ensure issues of medical confidentiality during the ombudsperson process, i.e. waivers, report distribution, inquiries from the union, etc.

- o. Encourage systemic improvements by analyzing patterns in claims and meeting regularly with City to explore ways to improve claims handling practices, return-to-work procedures, and other components of the carve-out.
- p. Coordinate mediation, arbitration, and settlement requests, which shall include but not be limited to explaining the mechanics of the three processes and assisting injured employees with completion of the necessary forms, scheduling, etc., and be available to attend mediations and arbitration hearings.
- q. Maintain an electronic log of all settlements with details of the settlements.
- r. Maintain a log of claims that are litigated (represented) cases.
- s. Coordinate med-legal examinations on behalf of non-represented employees. This includes assistance with selection of an Agreed Medical Examiner (AME) and with completing all necessary forms and documents.
- t. At the discretion of City, may attend mediation and arbitration hearings to provide an overview of both sides of the dispute.
- u. **Note:** City will provide access on a limited basis to its claims management system, iVOS, to assist in tracking data.

1.5.3. Language Translations at Ombudsperson Level

If an employee is not capable of communication in English at the ombudsperson level, Contractor shall provide language translation at no additional cost to City. Languages shall include Spanish, Vietnamese, Danish, Russian and others that may be deemed necessary.

1.6. Mediations

If resolution of a workers' compensation problem is unsuccessful at the level of the ombudsperson, the injured employee may move the matter to the next step, which is formal mediation by an independent, neutral mediator. The mediator's job is to engage the parties in formal discussions to help the parties find a solution that is mutually agreeable. Contractor shall provide mediators on an as-needed basis.

1.6.1. Role of Mediator

The primary role of a mediator is to facilitate communication between the parties in conflict with a view to helping them reach a voluntary resolution to their dispute that is timely, fair and cost-effective. The mediator may provide information about the process, raise issues, and help parties explore options. The mediator shall also:

- a. Facilitate self-determination – this is the fundamental principle of mediation; it requires that the mediation process rely upon the ability of the parties to reach a voluntary, un-coerced agreement.
- b. Ensure impartiality – this is central to the mediation process. A mediator shall mediate only those matters in which she or he may remain impartial. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.
- c. Conflict of Interest - shall disclose all actual and any potential conflicts of interest reasonably known to the mediator. After disclosure, the mediator shall decline to mediate unless all the parties choose to retain the mediator. The need to protect against conflicts of interest also governs conduct that occurs during the mediation.
- d. Competence. A mediator shall mediate only when the mediator has the necessary qualifications to satisfy the reasonable expectations of the parties.
- e. Maintain confidentiality – this is also critical to the role of the mediator. The mediator shall not disclose any matter that a party expects to be confidential unless given permission by all parties or unless required by law or other public policy. The mediator should avoid communicating information about how the parties acted in the mediation process, the merits of the case, or settlement offers.
- f. **Note:** Mediators and arbitrators shall be unique roles, handled by different personnel, and shall be assigned mediations and arbitrations on a rotating basis. To the extent possible, mediators shall not have a professional or personal association with arbitrators, particularly on the same claim.

1.6.2. Conduct of Mediations

- a. Mediators shall be qualified active or retired attorneys or qualified retired Workers' Compensation judges who have extensive up-to-date background and experience in

mediating Workers' Compensation claims and related matters. Refer to Attachment C, Section 1.18 for the Minimum Qualification or Training Requirements.

- b. Contractor shall provide a mediator to City within three (3) working days of Contractor's receipt of a request. The mediator will contact the parties to the dispute, including City, and shall take whatever steps the mediator deems reasonable to bring the dispute to an agreed conclusion.
- c. The mediator shall have experience and knowledge of the workers' compensation industry.
- d. The mediator shall be selected and paid for by Contractor and reimbursed by City at the rate indicated in Attachment D Fee Schedule.
- e. Mediation shall be completed within fifteen (15) working days from the date of referral unless both the injured employee and City mutually agree to an extension and the extension is documented by Contractor.
- f. Mediations shall last no longer than one (1) day, unless jointly agreed by the injured employee and City, and shall take place at:

City of Los Angeles Personnel Department
700 E. Temple St.
Los Angeles, CA 90012, or other designated location
- g. In no event shall an issue be permitted to proceed beyond mediation until the mediation process has been completed.
- h. Telephonic mediations may be used on less complicated issues upon agreement by both parties.

1.7. Arbitrations

Any party not satisfied with the outcome of the mediation may file with Contractor a request that the matter be referred for arbitration by an outside neutral arbitrator, who is a qualified active or retired attorney or qualified retired Workers' Compensation judge who has extensive up-to-date background and experience in mediating Workers' Compensation claims

and related matters. Refer to Attachment C, Section 1.18 for the Minimum Qualification or Training Requirements.

The arbitrator holds a hearing to receive testimony from parties and witnesses, and considers all reports and other facts that are relevant to the dispute. Both sides have an opportunity to present witnesses and evidence and to engage in cross-examination. The arbitrator then makes a final binding decision, based on workers' compensation laws, to resolve the dispute.

The competence, neutrality, and independence of the arbitrator are of paramount concern to a fair process and to the parties' perception of a fair process.

1.7.1. Role of Arbitrator

The role of the arbitrator is to:

- a. Be knowledgeable in the workers' compensation dispute process.
- b. Appoint an Agreed Medical Examiner (AME) to assist in the resolution of any medical issue, if necessary.
- c. Render a decision (award) within ten (10) working days from the completion of the proceedings.
- d. Determine the fee for an attorney representing an injured employee, taking into account the prevailing wage of attorneys practicing in workers' compensation for the geographical area in which the dispute has arisen.

Note: Mediators and arbitrators shall be unique roles, handled by different personnel, and shall be assigned mediations and arbitrations on a rotating basis. To the extent possible, mediators shall not have a professional or personal association with arbitrators, particularly on the same claim.

1.7.2. Conduct of Arbitrations

- a. The arbitration date shall be set with sufficient advance notice to permit the parties to prepare for the arbitration.
- b. The arbitrator shall be selected and paid for by Contractor and reimbursed by City at the rate indicated in Attachment D Fee Schedule

- c. Contractor shall provide an arbitrator to the parties within three (3) working days of Contractor's receipt of a request.
- d. Arbitrations shall take place at:

City of Los Angeles Personnel Department
700 E. Temple St.
Los Angeles, CA 90012, or other designated location
- e. Contractor shall provide and pay for a court reporter to document arbitration proceedings, and be reimbursed by City, at the rate indicated in Attachment D Fee Schedule. A copy of the report shall be provided to City, the injured employee, and the arbitrator at no additional cost to City.
- f. Arbitrator shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented and to issue interim, interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case.
- g. Arbitration shall be conducted pursuant to the rules of the American Arbitration Association.
- h. No written or oral offer, finding or recommendation made during the mediation process by any party or mediator shall be admissible in the arbitration proceedings except by mutual agreement of the parties. Said agreement shall be documented by Contractor
- i. Unless the parties to the matter otherwise agree, arbitration proceedings shall be completed within sixty (60) calendar days after referral, and an arbitration decision rendered within ten (10) working days of the completion of the proceedings. The arbitrator's decision shall be written in a form consistent with the WCAB practices and shall have the same force and effect as an award, order, or decision of a workers' compensation judge.
- j. Although the decisions of the arbitrator are binding, any party not satisfied with the arbitration decision may file a petition for reconsideration with the WCAB in San Francisco pursuant to California Code of Regulations Section 10865, to review the decision in the same manner as it would review a decision of a state workers' compensation judge.

- k. Per California Code of Regulations Section 10865(f), within fifteen (15) days after receiving the petition for reconsideration, the arbitrator shall submit to the WCAB in San Francisco a photocopy of the complete record of proceedings, including:
- The transcript of proceedings, if any
 - A summary of testimony if the proceedings were not transcribed
 - The documentary evidence submitted by each of the parties
 - An opinion that sets forth the rationale for the decision
 - A report on the petition for reconsideration, consistent with the provisions of California Code of Regulations Section 10860. The original arbitration record shall not be filed.

1.8. Judicial Review of Settlements, Orders, and Motions

The parties may submit a proposed settlement to Contractor at any time for assignment to a mediator or arbitrator for expeditious issuance of award and/or order. Any such settlement shall be in the form of a Compromise and Release Agreement or in the form of Stipulation with Request for Award.

In addition to the above settlements, Motions and Orders to Compel Attendance to Deposition or Medical Examinations, Subpoenas, and various other motions and orders may be resolved through judicial review.

1.9. Nurse Advocate (As-Needed)

Inquiries from either party that require medical expertise shall be handled by a Nurse Advocate provided through City's Managed Care contract

1.9.1. Responsibilities of Nurse Advocate

Responsibilities may include, but are not limited to the following:

- a. Facilitating and assuring adequate communication between the injured employee and his or her primary treating physician and any specialists required and the workers' compensation analyst.
- b. Answering injured employee's questions regarding the medical care they will be given.

- c. If necessary, discuss with the doctor or other health professional, the injured employee's questions concerning their treatment.

Note: Any dispute on the medical necessity and appropriateness of the treatment plan will be resolved by an expedited Utilization Review Process.

1.10. AME List

Contractor shall propose a network of AMEs or a model to be used for vetting AMEs. Contractor shall maintain a list of those AMEs, which must be agreed to in writing by City and the Union. All AMEs must be certified as AMEs, in good standing, by the California Division of Workers' Compensation's Medical Unit.

City reserves the right to remove a panel doctor for cause.

Any time a medical evaluation is required to resolve disputes related to compensability of claim, permanent disability evaluations, and all other disputes per California Labor Code Sections 4060, 4061, and 4062, such evaluation shall be completed by an AME.

Upon the injured employee's or City's request for a medical evaluation by an AME, Contractor shall provide in writing to the injured employee and City a panel of AMEs (selected from Contractor's AME list based on specialty within two (2) business days), from which the injured employee may select one.

The selected AME shall be required to conduct the examination of the injured worker within forty-five (45) days of the panel issue date. Additionally, the AME report shall be forwarded to the Workers' Compensation Analyst within thirty (30) days of the exam.

Contractor shall prepare and maintain Service Agreements with each AME, to manage their compliance and performance with the Contract.

1.11. Attorneys

The injured employee has a right to obtain legal representation at his/her expense at any stage of the ADR process. Attorneys may provide support to an injured employee by giving information and advice, working with the ombudsperson to facilitate discussion, and preserving employee's rights. City is not responsible for the payment of attorney's fees, unless ordered by the arbitrator or WCAB judge in accordance with California Code of Regulations Section 10775. If so ordered, attorney's fees shall be deducted from some of the injured employee's benefits.

1.12. Claims Not Subject to ADR Program

Certain claims by injured employees must be handled outside the ADR program. Such claims include:

- a. **Discrimination in workers' compensation** – Additional workers' compensation benefits and other compensation are provided by the California Division of Workers' Compensation, if there was discriminatory action by the employer or claims administrator.
- b. **Disability rights** – Claims involving discrimination because of a disability, governed by the California Fair Employment and Housing Act (FEHA) and the Federal Americans with Disabilities Act (ADA), are handled by other state and federal agencies.
- c. **Family and medical leave** – Claims involving protected leave, governed by the California Family Rights Act (CFRA) and the federal Family and Medical Leave Act (FMLA), are handled by other state and federal agencies.
- d. **Public benefits** – Claims for public benefits such as State Disability Insurance (SDI), state unemployment insurance, and Social Security disability benefits are handled by other state and federal agencies.
- e. **Wrongful terminations in violation of public policy** – These claims are handled in the state superior court system.
- f. **Third-party claims** – Claims against parties other than the employer are handled in the state superior court system.

1.13. Marketing the ADR Program

Contractor shall market the ADR program to participating employees to ensure that employees know they are covered by a carve-out agreement. Such outreach should commence at least one month prior to each union's carve-out implementation date, and continue on an ongoing basis as necessary. Contractor shall be required to present to City staff and participating union members, their proposed marketing approach, and obtain written approval from City prior to distributing any marketing materials. City must approve all marketing materials.

Contractor's marketing efforts shall include, but not be limited to, the following:

- Notify current ADR claimants of the transition from former ADR provider.

- Develop and maintain a website dedicated to City's ADR program. Website shall be in English and Spanish, and can be translated into other languages as required at no cost to City.
- Contact newly injured employees to explain the mechanics of the ADR program by the next working day of notice of claim filing. Such contact shall include a phone call, a letter sent via First Class Mail, and email if available.
- Upon provision of an email list, develop an email campaign to participating unions and employees covered under the ADR program. Such campaign shall commence prior to initiation of the ADR program and, if necessary, on a recurring basis.
- Develop brochure, flyer or other informational material for posting on participating unions' websites.

1.14. Program Monitoring/Quality Assurance

Contractor shall establish and maintain a Quality Control Plan to assure that the requirements of this Contract are met. The plan shall include, but not be limited to, the following.

1. The methods for assuring and verifying that Contractor's staff are qualified and properly trained to perform the services required under this Contract.
2. A system for monitoring compliance with all the services under this Contract. It must specify the activities to be inspected/audited on either a scheduled or unscheduled basis and the title of the individual(s) who will perform the inspection/audits.
3. The methods of identifying, correcting and preventing deficiencies in the quality of service performed before the level of performance becomes unacceptable.
4. Contractor shall attend monthly, as-needed meetings, or performance feedback meetings with City to discuss program status, issues that may arise, or fulfilling the service level agreements contained in the contract. The meetings will provide a forum to informally discuss opportunities for improving contract terms and conditions, service level agreements, and cost reductions for both parties.
5. Contractor will provide City with monthly statistical or summary reports of ombudspersons activity, including the notification of any trends the ombudspersons find in quality of medical care, frequency in type or location of accidents within a department, etc. Contractor

will also notify City of such trends at the time they are identified, not only on a monthly basis.

1.15. Annual Survey

City shall at its sole discretion require Contractor to design and conduct an annual survey in English and Spanish, as mandated by California Code of Regulations Section 10203(b) (17), which measures employee satisfaction with the Labor Code 3201.7 ADR program. The surveys may cover all employees covered under City's ADR program.

The scope and content of the surveys must be pre-approved by both City and participating unions. Surveys shall be sent to injured employees with Settlement documents. Surveys and survey results shall be made available to City upon request.

1.16. Data and Communication

Contractor must be compliant with the Health Insurance Portability and Accountability Act (HIPAA) Title II, related to electronic data interchange for all of the services included in this Contract, as well as with any other applicable Federal or State requirements.

1.16.1. Computerized Case Management System

- a. Contractor shall utilize its own in-house computerized case management system to document claims activity, which shall include but not be limited to managing all correspondence and conversation notes from ombudspersons, nurse advocates, and other Contractor personnel. Certain information within the system shall be available to City for viewing and report generation purposes via Contractor's ADR website, including:
 - Date of initial phone call and letter to claimant
 - Name of ombudsperson assigned to claim
 - If the claim has moved to mediation or arbitration
 - Settlement percentage (%) and amount
 - Date claim was settled
- b. To ensure the confidentiality of private discussions with ombudspersons, mediators, arbitrators, and nurse advocates, City's access to information shall be limited and shall be mutually determined by City and Contractor.
- c. Contractor shall also provide periodic and ad hoc reports as required by City at no additional cost.

1.16.2. Dedicated Website, Emails, and Toll-Free Phone Service

Contractor shall provide the following, all of which must be dedicated to City's ADR program:

- **Website – TBD** and City reserves the right to require Contractor to promptly remove any website content that does not meet City's approval.
- **Toll-free telephone number with voicemail capabilities – 1-TBD**
- **Email –** for all personnel assigned to this Contract.

All inquiries submitted via the above must be responded to by either telephone call or email by the next working day.

1.17. Key Personnel

- a) ADR Program Manager – person with overall authority over Contract and responsible for the day-to-day management of City's ADR program. The ADR Program Manager is also responsible for coordinating the workflow to ensure that the best possible service is provided to City, unions, and covered employees. Shall serve as City's main contact.
- b) Contractor shall also provide ombudspersons, mediators, and arbitrators to deliver ADR Services.
- c) The as-needed Nurse Advocate will be provided through City's Managed Care Contract.
- d) For each person listed, Contractor must provide the following information:
 1. Description of the work he or she will perform
 2. Amount of time he or she will be assigned to work on the program
 3. Copy of certificate showing successful completion of the State of California Self-Insurance Administrator's exam for all ombudspersons, upon awarding of the Contract.
- e) City requires that all Contractor and subcontractor staff performing work under the Contract undergo, and pass, to the satisfaction of City, a background investigation, as a condition of beginning and continuing to work under the Contract.
- f) The background clearances to be used will, at minimum, include the following:
 1. Social Security Number Trace
 2. DMV/Driver History
 3. County Criminal Court Search (based on social security number trace and Lived/Worked/Studied information from application)

4. Federal District Criminal Court Search (based on criteria in number 3 above)
 5. National Criminal Database Search
 6. Basic Employment Verification (up to 3 employers and 7 years)
 7. Education Verification
 8. Professional Reference Interview
 9. Employment Credit Report
- g) The fees associated with obtaining the background clearance information shall be at the expense of Contractor, regardless of whether Contractor's staff passes or fails the background clearance investigation.
 - h) City reserves the right to approve/accept key personnel. Contractor must notify City of any key personnel cannot continue on a project. City must approve in writing replacement personnel before they begin work on a project pursuant to a Contract with City. City also reserves the right to request termination/removal of certain personnel who fail to provide services in accordance with the terms of the Contract.

1.18. Minimum Qualifications of Training Requirements:

ADR Program Manager

- a) Shall have at least three (3) years experience managing or directing a workers' compensation program for California workers' compensation claims.
- b) Shall manage and direct the ADR Program and its components, including overseeing ombudspersons, mediators, arbitrators, AME panel list, and the use of a nurse advocate.
- c) At the discretion of City, may attend mediation and arbitration hearings to provide an overview of both sides of the dispute.
- d) Shall prepare a written report summarizing the details of the hearing, if attending the hearing.

Ombudsperson

- a) Shall have successfully completed the State of California Self-Insurance Administrator's exam. Shall successfully complete this exam within 6 months of being hired as an Ombudsperson. Failure to complete this exam, will constitute breach for the purposes of this Contract.
- b) Shall have five (5) years of experience as a senior workers' compensation analyst, or equivalent experience.
- c) Shall complete fifteen (15) hours of continuing education in workers' compensation every Contract year.
 1. An ombudsperson may not apply completed continuing education hours to more than one Contract year. No hours of continuing education that are completed in a new Contract year to fulfill the requirement of a previous Contract year may be utilized to fulfill

the requirement of fifteen (15) hours of continuing education per Contract year. E.g., an ombudsperson who completes ten (10) hours in a Contract year, must complete twenty (20) hours in the subsequent year (the five hours missing for the previous Contract year plus the fifteen hours required for the new Contract year) in order to fulfill the requirements of this Section.

2. A fine of \$500 will be assessed for every ombudsperson that fails to successfully complete the continuing education requirement within the Contract year. The \$500 fine will be assessed each subsequent month until City receives satisfactory documentation evidencing that each ombudsperson has completed the continuing education requirements for the previous Contract year. Fees payable to Contractor pursuant to this Contract will be reduced each month by the exact amount of outstanding fines.
- d) At City's request, Contractor shall submit proof of completion of the continuing education requirement.
1. Proof must be received within 90 days of City's notice to Contractor. If proof has not been received within the 90 day period, Contractor shall replace at City's request, the ombudsperson who has not submitted proof of continuing education completion, with an individual from a list of approved qualified candidates.
- e) At the discretion of City, may attend mediation and arbitration hearings to provide an overview of both sides of the dispute.
- f) Shall prepare a written report summarizing the details of the hearing, if attending the hearing.
- g) Prior experience as an ombudsperson desired.
- h) Must be a current member of the International Ombudsman Association's (IOA) and shall abide by the following:
1. IOA Code of Ethics (Rev. 1/07), attached hereto as Attachment E
 2. IOA Standards of Practice (Rev. 10/09), attached hereto as Attachment F
 3. IOA Best Practices (Rev. 10/13/09), attached hereto as Attachment G

Mediator

- a) Mediators shall be qualified, active or retired attorneys or qualified retired Workers' Compensation Judges who have extensive, up-to-date background and experience in mediating Workers' Compensation claims and related matters.
- b) Will be required to complete the Minimum Continuing Legal Education (MCLE) requirements set forth by the State Bar of California.
 1. A fine of \$500 will be assessed for every mediator that fails to successfully complete the MCLE requirements. The \$500 fine will be assessed each subsequent month until City

receives satisfactory documentation evidencing that each mediator has completed the MCLE requirements for the previous Contract year. Fees payable to Contractor pursuant to this Contract will be reduced each month by the exact amount of outstanding fines.

- c) At City's request, shall submit proof of completion of the MCLE requirements.
 - 1. Proof must be received within 90 days of City's notice to Contractor. If proof has not been received within the 90 day period, Contractor shall replace, at City's request, the mediator who has not submitted proof of continuing education completion, with an individual from a list of approved qualified candidates.
- d) Shall have completed training in dispute resolution
- e) Shall abide by the Model Standards of Conduct for Mediators (Rev. 9/05) adopted by the American Arbitration Association, the American Bar Association, and the Association for Conflict Resolution, attached hereto as Attachment H.

Arbitrator

- a) Shall be qualified, active or retired attorneys or qualified retired Workers' Compensation judges who have extensive, up-to-date background and experience in mediating Workers' Compensation claims and related matters.
- b) Shall complete 15 hours of continuing education in workers' compensation laws every Contract year.
- c) An arbitrator may not apply completed continuing education hours to more than one Contract year. No hours of continuing education that are completed in a new Contract year to fulfill the requirement of a previous Contract year may be utilized to fulfill the requirement of fifteen (15) hours of continuing education per Contract year. E.g., an arbitrator who completes ten (10) hours in a Contract year, must complete twenty (20) hours in the subsequent year (the five hours missing for the previous Contract year plus the fifteen hours required for the new Contract year) in order to fulfill the requirements of this Section.
- d) A fine of \$500 will be assessed for every arbitrator that fails to successfully complete the continuing education requirement within the Contract year. The \$500 fine will be assessed each subsequent month until City receives satisfactory documentation evidencing that each arbitrator has completed the continuing education requirements for the previous Contract year.
Fees payable to Contractor pursuant to this Contract will be reduced each month by the exact amount of outstanding fines.
- e) At City's request, shall submit proof of completion of the continuing education requirement.

1. Proof must be received within 90 days of City's notice to Contractor. If proof has not been received within the 90 day period, Contractor shall replace, at City's request, the arbitrator who has not submitted proof of continuing education completion, with an individual from a list of approved qualified candidates.
- f) Shall have completed training in dispute resolution.

Nurse Advocate

- a) Will be provided through City's managed care contract with costs charged against the claim.

NOTE: Repeated failure to comply with any of the contractual provisions listed above will cause City to consider Contractor to be in breach of contract.

**Professional Services Agreement
CALIFORNIA CLAIMS MANAGEMENT SERVICES, INC.
Attachment D – Fee Schedule**

1. City shall compensate Contractor a fixed monthly fee for the provision of all services, except those listed in As-Needed Services (Not Included in Fixed Monthly Fee).

CCMS, INC. Project Cost Form

FIXED MONTHLY COST				
MOU #	Bargaining Unit	Year 1	Year 2	Year 3
0	Non-represented Employees	\$318	\$318	\$318
1	Administrative	\$778	\$778	\$778
2	Building Trades	\$1,185	\$1,185	\$1,185
3	Clerical	\$3,272	\$3,272	\$3,272
4	Equip. Operation & Labor	\$23,612	\$23,612	\$23,612
5	Inspectors	\$345	\$345	\$345
6	Librarians	Included	Included	Included
7	Recreation Assistants	\$363	\$363	\$363
8	Professional Engineering & Scientific	\$97	\$97	\$97
9	Plant Equip. Operators & Repair	\$248	\$248	\$248
10	Professional Medical	Included	Included	Included
11	Recreational	\$230	\$230	\$230
12	Supervisory Blue Collar	\$743	\$743	\$743
13	Supervisory Building Trades	Included	Included	Included
14	Service & Craft	\$5,228	\$5,228	\$5,228
15	Service Employees	\$5,092	\$5,092	\$5,092
16	Supervisory Librarians	Included	Included	Included
17	Supervisory Prof. Engineering & Scientific	Included	Included	Included
18	Safety / Security	\$11,904	\$11,904	\$11,904
19	Supervisory Technical	Included	Included	Included
20	Supervisory Administrative	\$584	\$584	\$584
21	Technical	\$478	\$478	\$478
29	Deputy City Attorneys	\$168	\$168	\$168
31	Confidential Attorneys	Included	Included	Included
32	Management Attorneys	Included	Included	Included
34	Crossing Guards	\$106	\$106	\$106
35	Craft Workers/ Hiring Hall	\$301	\$301	\$301
36	Management Employees	\$150	\$150	\$150
37	Executive Administrative Assistants	Included	Included	Included

61	Senior Administrative and Administrative Analysts	Included	Included	Included
62	Operating Engineers/ Hiring Hall	Included	Included	Included
	Total Monthly Cost	\$55,202.00	\$55,202.00	\$55,202.00
	Total Annual Cost	\$662,424.00	\$662,424.00	\$662,424.00

2. City shall compensate Contractor for As-Needed Services (Not Included in Fixed Monthly Fee) at rates specified below and these rates shall remain fixed during this Contract, inclusive of extensions as follows:

AS-NEEDED SERVICES (Not Included in Fixed Monthly Fee)				
	Half Day	Full Day	Per Occurrence	Comments
Mediation	\$1,400	\$2,800		
Arbitration	\$2,000	\$4,000		
Telephonic Mediation			\$350/hour	\$350 per hour, not to exceed 2 hour maximum. Mediations exceeding 1 hour will be billed in 15 minute increments.
Court Reporter for Arbitrations	\$600	\$1,200		
Arbitrator's Response to Petitions for Reconsideration			\$375/hour	Not to exceed 5 hours maximum Arbitrator's Response for Reconsideration exceeding 2 hours will be billed in 15 minute increments.
Judicial Review of Settlements, Orders and Motions			\$300	Per occurrence
Interpretation Services for Mediations & Arbitrations	\$500	\$1,000		
All costs listed above shall be passed through to City at no markup.				

3. Contractor shall pay upfront for As-Needed Services listed above. Contractor shall be reimbursed by City after proof of payment is submitted.

4. Any other Contractor personnel and their hourly rates not listed herein shall be subject to City's written pre-approval.
5. Fifty percent of the as-needed fees are to be paid to Mediators and Arbitrators if the mediation/arbitration is cancelled by City within 48 hours of the scheduled date, and, 100% if the mediation/arbitration is cancelled within 24 hours of scheduled date.



INTERNATIONAL OMBUDSMAN ASSOCIATION

IOA CODE OF ETHICS

PREAMBLE

The IOA is dedicated to excellence in the practice of Ombudsman work. The IOA Code of Ethics provides a common set of professional ethical principles to which members adhere in their organizational Ombudsman practice.

Based on the traditions and values of Ombudsman practice, the Code of Ethics reflects a commitment to promote ethical conduct in the performance of the Ombudsman role and to maintain the integrity of the Ombudsman profession.

The Ombudsman shall be truthful and act with integrity, shall foster respect for all members of the organization he or she serves, and shall promote procedural fairness in the content and administration of those organizations' practices, processes, and policies.

ETHICAL PRINCIPLES

INDEPENDENCE

The Ombudsman is independent in structure, function, and appearance to the highest degree possible within the organization.

NEUTRALITY AND IMPARTIALITY

The Ombudsman, as a designated neutral, remains unaligned and impartial. The Ombudsman does not engage in any situation which could create a conflict of interest.

CONFIDENTIALITY

The Ombudsman holds all communications with those seeking assistance in strict confidence, and does not disclose confidential communications unless given permission to do so. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm.

INFORMALITY

The Ombudsman, as an informal resource, does not participate in any formal adjudicative or administrative procedure related to concerns brought to his/her attention.



IOA STANDARDS OF PRACTICE

PREAMBLE

The IOA Standards of Practice are based upon and derived from the ethical principles stated in the IOA Code of Ethics.

Each Ombudsman office should have an organizational Charter or Terms of Reference, approved by senior management, articulating the principles of the Ombudsman function in that organization and their consistency with the IOA Standards of Practice.

STANDARDS OF PRACTICE

INDEPENDENCE

- 1.1 The Ombudsman Office and the Ombudsman are independent from other organizational entities.
- 1.2 The Ombudsman holds no other position within the organization which might compromise independence.
- 1.3 The Ombudsman exercises sole discretion over whether or how to act regarding an individual's concern, a trend or concerns of multiple individuals over time. The Ombudsman may also initiate action on a concern identified through the Ombudsman's direct observation.
- 1.4 The Ombudsman has access to all information and all individuals in the organization, as permitted by law.
- 1.5 The Ombudsman has authority to select Ombudsman Office staff and manage Ombudsman Office budget and operations.

NEUTRALITY AND IMPARTIALITY

- 2.1 The Ombudsman is neutral, impartial, and unaligned.
- 2.2 The Ombudsman strives for impartiality, fairness and objectivity in the treatment of people and the consideration of issues. The Ombudsman advocates for fair and equitably administered processes and does not advocate on behalf of any individual within the organization.
- 2.3 The Ombudsman is a designated neutral reporting to the highest possible level of the organization and operating independent of ordinary line and staff structures. The Ombudsman should not report to nor be structurally affiliated with any compliance function of the organization.
- 2.4 The Ombudsman serves in no additional role within the organization which would compromise the Ombudsman's neutrality. The Ombudsman should not be aligned with any formal or informal associations within the organization in a way that might create actual or perceived conflicts of interest for the Ombudsman. The Ombudsman should have no personal interest or stake in, and incur no gain or loss from, the outcome of an issue.
- 2.5 The Ombudsman has a responsibility to consider the legitimate concerns and interests of all individuals affected by the matter under consideration.
- 2.6 The Ombudsman helps develop a range of responsible options to resolve problems and facilitate discussion to identify the best options.

CONFIDENTIALITY

- 3.1 The Ombudsman holds all communications with those seeking assistance in strict confidence and takes all reasonable steps to safeguard confidentiality, including the following: The Ombudsman does not reveal, and must not be required to reveal, the identity of any individual contacting the Ombudsman Office, nor does the Ombudsman reveal information provided in confidence that could lead to the identification of any individual contacting the Ombudsman Office, without that individual's express permission, given in the course of informal discussions with the Ombudsman; the Ombudsman takes specific action related to an individual's issue only with the individual's express permission and only to the extent permitted, and even then at the sole discretion of the Ombudsman, unless such action can be taken in a way that safeguards the identity of the individual contacting the Ombudsman Office. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm, and where there is no other reasonable option. Whether this risk exists is a determination to be made by the Ombudsman.
- 3.2 Communications between the Ombudsman and others (made while the Ombudsman is serving in that capacity) are considered privileged. The privilege belongs to the Ombudsman and the Ombudsman Office, rather than to any party to an issue. Others cannot waive this privilege.
- 3.3 The Ombudsman does not testify in any formal process inside the organization and resists testifying in any formal process outside of the organization regarding a visitor's contact with the Ombudsman or confidential information communicated to the Ombudsman, even if given permission or requested to do so. The Ombudsman may, however, provide general, non-confidential information about the Ombudsman Office or the Ombudsman profession.
- 3.4 If the Ombudsman pursues an issue systemically (e.g., provides feedback on trends, issues, policies and practices) the Ombudsman does so in a way that safeguards the identity of individuals.
- 3.5 The Ombudsman keeps no records containing identifying information on behalf of the organization.
- 3.6 The Ombudsman maintains information (e.g., notes, phone messages, appointment calendars) in a secure location and manner, protected from inspection by others (including management), and has a consistent and standard practice for the destruction of such information.
- 3.7 The Ombudsman prepares any data and/or reports in a manner that protects confidentiality.
- 3.8 Communications made to the ombudsman are not notice to the organization. The ombudsman neither acts as agent for, nor accepts notice on behalf of, the organization and shall not serve in a position or role that is designated by the organization as a place to receive notice on behalf of the organization. However, the ombudsman may refer individuals to the appropriate place where formal notice can be made.

INFORMALITY AND OTHER STANDARDS

- 4.1 The Ombudsman functions on an informal basis by such means as: listening, providing and receiving information, identifying and reframing issues, developing a range of responsible options, and – with permission and at Ombudsman discretion – engaging in informal third-party intervention. When possible, the Ombudsman helps people develop new ways to solve problems themselves.
- 4.2 The Ombudsman as an informal and off-the-record resource pursues resolution of concerns and looks into procedural irregularities and/or broader systemic problems when appropriate.
- 4.3 The Ombudsman does not make binding decisions, mandate policies, or formally adjudicate issues for the organization.
- 4.4 The Ombudsman supplements, but does not replace, any formal channels. Use of the Ombudsman Office is voluntary, and is not a required step in any grievance process or organizational policy.
- 4.5 The Ombudsman does not participate in any formal investigative or adjudicative procedures. Formal investigations should be conducted by others. When a formal investigation is requested, the Ombudsman refers individuals to the appropriate offices or individual.
- 4.6 The Ombudsman identifies trends, issues and concerns about policies and procedures, including potential future issues and concerns, without breaching confidentiality or anonymity, and provides recommendations for responsibly addressing them.
- 4.7 The Ombudsman acts in accordance with the IOA Code of Ethics and Standards of Practice, keeps professionally current by pursuing continuing education, and provides opportunities for staff to pursue professional training.
- 4.8 The Ombudsman endeavors to be worthy of the trust placed in the Ombudsman Office.

IOA Best Practices

A Supplement to IOA's Standards of Practice¹

Version 3, October 13, 2009

The Best Practices guide is intended to provide guidance to Organizational Ombudsmen² in practicing according to IOA Standards of Practice to the highest level of professionalism possible. Any questions or suggested revisions are welcome and should be sent to the Chair of the Professional Ethics, Standards, and Best Practices Committee.

PREAMBLE

The IOA Standards of Practice are based upon and derived from the ethical principles stated in the IOA Code of Ethics.

Each Ombudsman Office should have an organizational Charter or Terms of Reference, approved by senior management, articulating the principles of the Ombudsman function in that organization and their consistency with the IOA Standards of Practice.

Before implementing an Ombudsman program, an organization should educate all affected constituencies about the nature and scope of the program, including the role of the Ombudsman within the organization and the Standards of Practice that will govern the activities of the office.

Each entity that establishes an organizational Ombudsman Office should make certain that the office has a Charter that ensures that the Ombudsman will function according to the Standards of Practices and the core values of independence, impartiality/neutrality, confidentiality, and informality. These Standards of Practice will govern the way in which the Ombudsman receives complaints, works to resolve issues, and makes recommendations for the general improvement of the organization. The Charter should also specify the Ombudsman's scope of practice, limitations on Ombudsman authority, and qualifications to be an Ombudsman.

IOA asserts that communications with an ombudsman are confidential and strives to protect confidentiality for all protected communications.

One basis for protecting confidentiality is a claim of privilege. The law on this issue is still evolving and the determination of whether such a privilege is applicable is made by courts on a case-by-case basis since there is no statute creating such a privilege. In addition, ombudsman offices have been able to protect the confidentiality of communications where program materials

¹ IOA Standards of Practice are indicated by text boxes; recommended Best Practices follow each text box. IOA Code of Ethics, Standards of Practice, and Best Practices are designed to guide "Organizational Ombudsmen" as distinguished from "Classical", "Advocate", "Executive" or other types of Ombudsmen.

² The term Ombudsman is used to communicate to the widest possible community and is not intended to discourage others from using alternatives. IOA respectfully acknowledges that many practitioners use alternative forms of this word.

adequately state that people who use the office agree to abide by expressed confidentiality principles or where statutes dealing with alternative dispute resolution or mediation are applicable to ombudsman communications.

STANDARDS OF PRACTICE

INDEPENDENCE

1.1 The Ombudsman Office and the Ombudsman are independent from other organizational entities.

The director of the Ombudsman Office should report directly to the highest level of the organization (such as board of directors, CEO, agency head, etc.) in a manner independent of ordinary line and staff functions.

The director of the Ombudsman Office should have terms of employment that indicate that his or her stature in the organization is not subordinate to senior officials.

The Ombudsman should be able to function independently from control, limitation, or interference imposed by any official in the entity.

The Ombudsman should be protected from retaliation (such as of elimination of the office or the Ombudsman, or reduction of the Ombudsman budget or other resources) by any person who may be the subject of a complaint or inquiry.

The Ombudsman should have a set and renewable term, or should be removable only for neglect of duty, misconduct, or medical incapacity, and only by means of a fair process and procedure.

The Ombudsman should obtain assurance from the organization at the outset, and apart from any particular dispute, of access to outside legal counsel at his or her own discretion.

The expense of outside counsel should be covered by the organization and included in the overall budget for the Ombudsman Office. The Ombudsman should have an understanding with the organization that the Ombudsman is not required to inform the organization when it communicates with or accesses outside counsel.

The purpose of outside legal counsel should be to enhance the Ombudsman's ability to practice according to the Standards of Practice. The Ombudsman should consider how outside counsel may assist in a variety of situations, including when the entity and the Ombudsman need to strategize how best to handle a discovery request made of the Ombudsman, or when the Ombudsman and the entity could benefit from consultation with outside counsel regarding how best to establish and operate the office so as to ensure the integrity of function, and to protect the Ombudsman.

1.2 The Ombudsman holds no other position within the organization which might compromise independence.

See Sections 2.3 and 2.4.

1.3 The Ombudsman exercises sole discretion over whether or how to act regarding an individual's concern, a trend or concerns of multiple individuals over time. The Ombudsman may also initiate action on a concern identified through the Ombudsman's direct observation.

The Ombudsman should bring to the attention of the appropriate office those policies, programs, procedures or practices which may be problematic for the organization or which negatively affect people's health, safety or rights.

The Ombudsman should issue periodic reports summarizing activities, problem areas identified, and recommendations for systemic change. Ombudsman Office materials (websites, brochures, etc.) should state that all such reporting is conducted in a manner that protects the identity of individuals and does not place the organization on notice.

1.4 The Ombudsman has access to all information and all individuals in the organization, as permitted by law.

1.5 The Ombudsman has authority to select Ombudsman Office staff and manage Ombudsman Office budget and operations.

The Ombudsman Office must be provided with sufficient resources to operate an independent and effective program. These resources include adequate space, equipment, staffing, staff development, and the production and distribution of informational materials.

The independence of the Ombudsman Office may be supported by having the selection and evaluation of the Ombudsman, as well as the establishment of an appropriate level of funding, be determined by or in consultation with committees representative of various institutional constituencies.

NEUTRALITY AND IMPARTIALITY

2.1 The Ombudsman is neutral, impartial, and unaligned.

See Section 1.2.

2.2 The Ombudsman strives for impartiality, fairness and objectivity in the treatment of people and the consideration of issues. The Ombudsman advocates for fair and equitably administered processes and does not advocate on behalf of any individual within the organization.

All members of the specified community served by the Ombudsman may voluntarily seek services from the Ombudsman Office and will be treated with respect and dignity. The Ombudsman should assure access impartially, including to people with disabilities, people who

need language interpreters, or people whose work hours require flexibility in scheduling appointment times.

The organization should assure that all specified members of the organization have the right to consult with the Ombudsman, and retaliation for exercising that right will not be tolerated.

2.3 The Ombudsman is a designated neutral reporting to the highest possible level of the organization and operating independently of ordinary line and staff structures. The Ombudsman should not report to nor be structurally affiliated with any compliance function of the organization.

The Ombudsman should have direct access to the board of directors (or other oversight body as appropriate). See Sections 1.1 and 1.2.

While the Ombudsman should be an internal position, it should not report to, nor have the appearance of reporting to, any compliance office or function of the organization.

The Charter or Terms of Reference for the Ombudsman Office should state specifically that the Ombudsman does not serve as an agent of notice for the organization.

2.4 The Ombudsman serves in no additional role within the organization which would compromise the Ombudsman's neutrality. The Ombudsman should not be aligned with any formal or informal associations within the organization in a way that might create actual or perceived conflicts of interest for the Ombudsman. The Ombudsman should have no personal interest or stake in, and incur no gain or loss from, the outcome of an issue.

See Sections 1.2, 4.4, and 4.5.

Except in the administrative capacity as manager of the Ombudsman Office, the Ombudsman should not participate in formal management functions or serve in any other role that poses an actual conflict of interest or creates the perception of one. For example, an Ombudsman ought not conduct formal investigations; serve in a position or role that is designated by the organization as a place to receive notice on behalf of the organization; serve as a voting member on a search committee (other than for Ombudsman staff); handle formal appeals of management actions; keep case records on behalf of the organization; or be charged in any way to make, change, enforce or set aside a law, rule or management decision.

If possible, the Ombudsman should hold only one position in the organization.

If the Ombudsman does hold another role within the organization, the different roles should be structured so that they are as separate and distinct as possible. The Ombudsman should not provide Ombudsman services to people whom the Ombudsman -- in the other role -- serves, manages, reports to, teaches, advises, or evaluates, in order to avoid partiality or perceptions of conflict of interest. The Ombudsman should provide Ombudsman services in a location that is different from the location in which the Ombudsman, in the other role, works, teaches, counsels, etc., to clarify the distinctions between roles, and to assure confidentiality and off-the-record

informality of the Ombudsman communications. The Ombudsman's support staff (people who take messages or receive visitors, for example) for the Ombudsman role should be separate and distinct from the support staff in any other role. The Ombudsman should continually call attention to the role in which he or she is acting at any given time, and repeatedly educate members of the organization about the principles in the Ombudsman Office's Charter. The Ombudsman should attempt to provide alternatives for people and situations in which the Ombudsman cannot serve as Ombudsman due to actual or perceived conflicts of interest.

2.5 The Ombudsman has a responsibility to consider the legitimate concerns and interests of all individuals affected by the matter under consideration.

2.6 The Ombudsman helps develop a range of responsible options to resolve problems and facilitate discussion to identify the best options.

An Ombudsman should help the visitor explore and assess an appropriate range of options, from the very informal to the most formal. Formal options may include ways to put management on notice of an issue, referrals to rights-based elements of the organization's conflict resolution system, or the provision of information about the possibility of seeking external resources or assistance. The Ombudsman should never provide legal advice.

When the Ombudsman works with the visitor to address issues that may involve formal alternatives (under laws, policies, rules, or regulations), the Ombudsman should make clear to the visitor that an informal approach does not automatically exclude the visitor's later participation in more formal options, but that the visitor should keep in mind possible time limits and their potential impact on the visitor's formal options. See Section 4.4.

The impartiality of the Ombudsman Office may be supported by consultation with various organizational constituencies regarding the Ombudsman Office's effectiveness.

CONFIDENTIALITY

3.1 The Ombudsman holds all communications with those seeking assistance in strict confidence and takes all reasonable steps to safeguard confidentiality, including the following:

The Ombudsman does not reveal, and must not be required to reveal, the identity of any individual contacting the Ombudsman Office, nor does the Ombudsman reveal information provided in confidence that could lead to the identification of any individual contacting the Ombudsman Office, without that individual's express permission, given in the course of informal discussions with the Ombudsman; the Ombudsman takes specific action related to an individual's issue only with the individual's express permission and only to the extent permitted, and even then at the sole discretion of the Ombudsman, unless such action can be taken in a way that safeguards the identity of the individual contacting the Ombudsman Office. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm, and where there is no other reasonable option. Whether this risk exists is a determination to be made by the Ombudsman.

The Ombudsman publicizes the confidential nature of Ombudsman work.

The Ombudsman Office should be situated in an appropriate location to protect the privacy of visitors to the office.

When an individual gives the Ombudsman permission to reveal his or her identity, disclose information, or act on his or her concerns, such permission must be given at the time that the Ombudsman is engaged in the informal conflict resolution process, not as part of a formal process.

The Ombudsman Office Charter for each organization should specify what types of events rise to the level of “imminent risk of serious harm.” The Ombudsman may negotiate with the organization to be exempt, based on Ombudsman confidentiality, from some mandates that require reporting by other employees. Best practice is to interpret “imminent risk of serious harm” as narrowly as possible – for example, imminent risk to human life.

3.2 Communications between the Ombudsman and others (made while the Ombudsman is serving in that capacity) are considered privileged. The privilege belongs to the Ombudsman and the Ombudsman Office, rather than to any party to an issue. Others cannot waive this privilege.

The confidentiality privilege is critical to making the Ombudsman Office a place where people can raise any issue, including an alleged violation of statute, regulation, rule, policy, or ethical standard.

IOA asserts that communications made to the Ombudsman do not constitute “notice” to the organization. No one, including the employing entity, should consider the Ombudsman Office to be agent of notice (that is, an office that receives formal notice on behalf of the organization) and no one, including the entity, should seek information about communications to the Ombudsman Office.

The nature and role of confidentiality should be explained to the visitor, who should understand that the Ombudsman claims the privilege for the office and that it is not the visitor’s privilege to waive. Whenever possible, this information should be communicated prior to discussing the concerns brought by the visitor.

Visitors should understand that as a condition for accepting and benefiting from the Ombudsman Office services, they have the obligation to support the Ombudsman claim of privilege and not to attempt to breach this claim.

The Ombudsman should emphasize in office materials and with the management of the organization:

- that the ability to have confidential communications that do not constitute “notice” to the organization is essential to the effective functioning of an Ombudsman Office and distinguishes the Ombudsman from formal reporting channels;

- that it is the “off-the-record” aspects of the office that lead people who use the Ombudsman to do so before taking any official or formal action;
- that the Ombudsman Office enables people to come forward with an issue when they might otherwise be afraid to do so or when they fear retaliation from managers or peers;
- that only by offering the security of confidentiality can the Ombudsman facilitate organizational responsibility and accountability, which are at the heart of provisions contained in the U.S. Sentencing Guidelines and the Sarbanes-Oxley Act that call for mechanisms of confidential reporting and/or guidance;
- that where issues cannot be confidentially raised, they may not be raised at all, thereby depriving the organization of an opportunity to address issues and rectify misconduct that has not yet surfaced through other channels.

3.3 The Ombudsman does not testify in any formal process inside the organization and resists testifying in any formal process outside of the organization regarding a visitor’s contact with or confidential information communicated to the Ombudsman, even if given permission or requested to do so. The Ombudsman may, however, provide general, non-confidential information about the Ombudsman Office or the Ombudsman profession.

The IOA Board has asked the IOA Standing Committee on Professional Ethics, Standards, and Best Practices to review the language and interpretation of 3.3. Please look for updates in the near future.

See Section 4 on informality.

3.4 If the Ombudsman pursues an issue systemically (e.g., provides feedback on trends, issues, policies and practices) the Ombudsman does so in a way that safeguards the identity of individuals.

Ombudsman materials should state that any Ombudsman reporting of trends, or communication of recommendations for systemic change, is done in a manner that protects the identity of individuals.

3.5 The Ombudsman keeps no records containing identifying information on behalf of the organization.

3.6 The Ombudsman maintains information (e.g., notes, phone messages, appointment calendars) in a secure location and manner, protected from inspection by others (including management), and has a consistent and standard practice for the destruction of such information.

The Ombudsman record-keeping systems and/or database should be independent of the organization’s technology system, with access allowed only to Ombudsman Office personnel. The Ombudsman Office should also be secure to protect private information and records. The office should develop and implement processes and procedures to regularly purge information that could identify individual visitors to the office. Records such as phone bills, which may indicate with whom the office has communicated, should be made available only to the

Ombudsman Office staff. The Ombudsman should take all reasonable steps to protect the confidentiality of any temporary notes or documents, such as locking file drawers and offices, and exercising extreme vigilance if any notes are carried from one place to another.

3.7 The Ombudsman prepares any data and/or reports in a manner that protects confidentiality.

3.8 Communications made to the Ombudsman are not notice to the organization. The Ombudsman neither acts as agent for, nor accepts notice on behalf of, the organization and shall not serve in a position or role that is designated by the organization as a place to receive notice on behalf of the organization. However, the Ombudsman may refer individuals to the appropriate place where formal notice can be made.

Except in the administrative capacity as manager of the Ombudsman Office, the Ombudsman is never an agent of notice (that is, an officer who receives notice for the organization), and communications to the Ombudsman Office never constitute notice to the organization.

If a visitor wishes to make a record, or put the organization “on notice,” the Ombudsman can provide information about how to do so.

Best practice is for the organization to receive allegations of wrongdoing directly from a complainant or witness, and not indirectly through the Ombudsman.

If the visitor is reluctant to make a formal report to the organization, the Ombudsman can work with the visitor to address the reasons the visitor resists reporting, or to work with the organization to make formal reporting channels more accessible.

If the visitor gives the Ombudsman permission to discuss a concern with a manager, and if the concern may involve some allegation of wrongdoing, the Ombudsman should pass on information only in general terms (without specifying names, dates, or events). If the Ombudsman does pass on allegations of wrongdoing, the Ombudsman should emphasize the he or she has not confirmed the accuracy of the allegations. It is not appropriate for the organization to take any adverse action on the basis of information reported informally through the Ombudsman. The Ombudsman may coach the manager on how to make reporting channels more accessible or how to gather information himself or herself.

An ombudsman may place the organization on “notice” when the ombudsman evaluates the circumstances and specifically elects to place the organization on notice by identifying an appropriate point of contact within the organization and communicating to that point of contact specific information which the ombudsman expressly intends to share for the purpose of placing the organization on notice of a specific concern or specific situation. If an ombudsman makes such an intentional notice communication, confidentiality is waived only with regard to the specific communication made with the point of contact for purposes of the notice communication. It is the conversation between the ombudsman and the appropriate point of contact within the organization that constitutes notice and not the conversation between the ombudsman and the visitor. Thus, under no circumstances, is the original communication to the ombudsman part of the notice communication.

All ombudsman offices should have a well-defined and generally available procedure detailing the limited circumstances and the processes under which the ombudsman may provide notice. If the ombudsman elects to place the organization on notice under the conditions above, the ombudsman should follow the protocol of the particular ombudsman office regarding this unusual action. The protocols should include specific steps so that is clear that the ombudsman made an intentional decision to make a notice disclosure.

INFORMALITY AND OTHER STANDARDS

4.1 The Ombudsman functions on an informal basis by such means as: listening, providing and receiving information, identifying and reframing issues, developing a range of responsible options, and – with permission and at Ombudsman discretion – engaging in informal third-party intervention. When possible, the Ombudsman helps people develop new ways to solve problems themselves.

The Ombudsman should work with the organization to encourage it to provide its constituents with a variety of effective formal (rights-based) and informal (confidential and interest-based) options for surfacing and resolving concerns. All options should be well established and clearly and regularly communicated to the entire organization.

As the visitor may wish to consult with additional resources and services, such as the employee assistance program, human resources, or the benefits office, the Ombudsman should describe resources that might be appropriate to the visitor's presenting circumstances. See Section 2.6

The Ombudsman may consider issues, perceptions, interpretations, information, and concerns about inappropriate acts, omissions, or improprieties presented by individuals or groups.

Ombudsman functions include informal third-party intervention, such as shuttle diplomacy, facilitating communication, and informal mediation, which is voluntary and may or may not produce a written agreement.

Any documents or written agreements resulting from informal processes should not be maintained by or within the Ombudsman Office.

The Ombudsman uses a flexible approach with regard to concerns brought to the Ombudsman Office; options are tailored to individual circumstances.

4.2 The Ombudsman as an informal and off-the-record resource pursues resolution of concerns and looks into procedural irregularities and/or broader systemic problems when appropriate.

4.3 The Ombudsman does not make binding decisions, mandate policies, or formally adjudicate issues for the organization.

The Ombudsman should not participate in formal management functions. See Section 2.4.

4.4 The Ombudsman supplements, but does not replace, any formal channels. Use of the Ombudsman Office is voluntary, and is not a required step in any grievance process or organizational policy.

For most entities, it is the combination of informal services and formal grievance procedures, embodied in a conflict management system, that provides the appropriate range of options to allow for early identification and resolution of potential legal issues or concerns. The Ombudsman should give visitors information about the entity's formal procedures and remedies whenever appropriate. While a visitor may choose to explore informal options for a wide variety of reasons, the Ombudsman should remind the visitor to keep in mind possible time limits and their potential impact on the visitor's formal options. See Section 2.6.

The Ombudsman Charter or Terms of Reference should define the role, if any, of the Ombudsman in relation to employees and issues covered by collective bargaining agreements (CBAs). This role definition should also, where possible, be incorporated in CBAs, and should include a statement that although the CBA permits the Ombudsman to function in these defined ways, the Ombudsman nevertheless retains the authority to decline to be involved. (See Section 1.3.) The union and management may also enter into an ad hoc agreement permitting an Ombudsman to handle an issue.

4.5 The Ombudsman does not participate in any formal investigative or adjudicative procedures. Formal investigations should be conducted by others. When a formal investigation is requested, the Ombudsman refers individuals to the appropriate offices or individual

The Ombudsman may be requested or required to speak with public officials, in a private or public setting, about the functions of the Ombudsman Office, or about trends published in a written report. If so, the Ombudsman should still observe the confidentiality standards as stated in 3.1 and 3.3.

4.6 The Ombudsman identifies trends, issues and concerns about policies and procedures, including potential future issues and concerns, without breaching confidentiality or anonymity, and provides recommendations for responsibly addressing them.

The Ombudsman should be particularly careful to maintain neutrality when making recommendations for system change.

4.7 The Ombudsman acts in accordance with the IOA Code of Ethics and Standards of Practice, keeps professionally current by pursuing continuing education, and provides opportunities for staff to pursue professional training.

4.8 The Ombudsman endeavors to be worthy of the trust placed in the Ombudsman Office.

¹See www.ombudsassociation.org/standards/
October 13, 2009

**MODEL STANDARDS OF CONDUCT
FOR MEDIATORS**

AMERICAN ARBITRATION ASSOCIATION
(ADOPTED SEPTEMBER 8, 2005)

AMERICAN BAR ASSOCIATION
(APPROVED BY THE ABA HOUSE OF DELEGATES AUGUST 9, 2005)

ASSOCIATION FOR CONFLICT RESOLUTION
(ADOPTED AUGUST 22, 2005)

SEPTEMBER 2005

The Model Standards of Conduct for Mediators 2005

The Model Standards of Conduct for Mediators was prepared in 1994 by the American Arbitration Association, the American Bar Association's Section of Dispute Resolution, and the Association for Conflict Resolution¹. A joint committee consisting of representatives from the same successor organizations revised the Model Standards in 2005.² Both the original 1994 version and the 2005 revision have been approved by each participating organization.³

Preamble

Mediation is used to resolve a broad range of conflicts within a variety of settings. These Standards are designed to serve as fundamental ethical guidelines for persons mediating in all practice contexts. They serve three primary goals: to guide the conduct of mediators; to inform the mediating parties; and to promote public confidence in mediation as a process for resolving disputes.

Mediation is a process in which an impartial third party facilitates communication and negotiation and promotes voluntary decision making by the parties to the dispute.

Mediation serves various purposes, including providing the opportunity for parties to define and clarify issues, understand different perspectives, identify interests, explore and assess possible solutions, and reach mutually satisfactory agreements, when desired.

Note on Construction

These Standards are to be read and construed in their entirety. There is no priority significance attached to the sequence in which the Standards appear.

¹ The Association for Conflict Resolution is a merged organization of the Academy of Family Mediators, the Conflict Resolution Education Network and the Society of Professionals in Dispute Resolution (SPIDR). SPIDR was the third participating organization in the development of the 1994 Standards.

² Reporter's Notes, which are not part of these Standards and therefore have not been specifically approved by any of the organizations, provide commentary regarding these revisions.

³ The 2005 version to the Model Standards were approved by the American Bar Association's House of Delegates on August 9, 2005, the Board of the Association of Conflict Resolution on August 22, 2005 and the Executive Committee of the American Arbitration Association on September 8, 2005.

The use of the term “shall” in a Standard indicates that the mediator must follow the practice described. The use of the term “should” indicates that the practice described in the standard is highly desirable, but not required, and is to be departed from only for very strong reasons and requires careful use of judgment and discretion.

The use of the term “mediator” is understood to be inclusive so that it applies to co-mediator models.

These Standards do not include specific temporal parameters when referencing a mediation, and therefore, do not define the exact beginning or ending of a mediation.

Various aspects of a mediation, including some matters covered by these Standards, may also be affected by applicable law, court rules, regulations, other applicable professional rules, mediation rules to which the parties have agreed and other agreements of the parties. These sources may create conflicts with, and may take precedence over, these Standards. However, a mediator should make every effort to comply with the spirit and intent of these Standards in resolving such conflicts. This effort should include honoring all remaining Standards not in conflict with these other sources.

These Standards, unless and until adopted by a court or other regulatory authority do not have the force of law. Nonetheless, the fact that these Standards have been adopted by the respective sponsoring entities, should alert mediators to the fact that the Standards might be viewed as establishing a standard of care for mediators.

STANDARD I. SELF-DETERMINATION

- A. A mediator shall conduct a mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome. Parties may exercise self-determination at any stage of a mediation, including mediator selection, process design, participation in or withdrawal from the process, and outcomes.
 - 1. Although party self-determination for process design is a fundamental principle of mediation practice, a mediator may need to balance such party self-determination with a mediator’s duty to conduct a quality process in accordance with these Standards.
 - 2. A mediator cannot personally ensure that each party has made free and informed choices to reach particular decisions, but, where

appropriate, a mediator should make the parties aware of the importance of consulting other professionals to help them make informed choices.

- B. A mediator shall not undermine party self-determination by any party for reasons such as higher settlement rates, egos, increased fees, or outside pressures from court personnel, program administrators, provider organizations, the media or others.

STANDARD II. IMPARTIALITY

- A. A mediator shall decline a mediation if the mediator cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice.
- B. A mediator shall conduct a mediation in an impartial manner and avoid conduct that gives the appearance of partiality.
 - 1. A mediator should not act with partiality or prejudice based on any participant's personal characteristics, background, values and beliefs, or performance at a mediation, or any other reason.
 - 2. A mediator should neither give nor accept a gift, favor, loan or other item of value that raises a question as to the mediator's actual or perceived impartiality.
 - 3. A mediator may accept or give de minimis gifts or incidental items or services that are provided to facilitate a mediation or respect cultural norms so long as such practices do not raise questions as to a mediator's actual or perceived impartiality.
- C. If at any time a mediator is unable to conduct a mediation in an impartial manner, the mediator shall withdraw.

STANDARD III. CONFLICTS OF INTEREST

- A. A mediator shall avoid a conflict of interest or the appearance of a conflict of interest during and after a mediation. A conflict of interest can arise from involvement by a mediator with the subject matter of the dispute or from any relationship between a mediator and any mediation participant, whether past or present, personal or professional, that reasonably raises a question of a mediator's impartiality.

- B. A mediator shall make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for a mediator. A mediator's actions necessary to accomplish a reasonable inquiry into potential conflicts of interest may vary based on practice context.
- C. A mediator shall disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality. After disclosure, if all parties agree, the mediator may proceed with the mediation.
- D. If a mediator learns any fact after accepting a mediation that raises a question with respect to that mediator's service creating a potential or actual conflict of interest, the mediator shall disclose it as quickly as practicable. After disclosure, if all parties agree, the mediator may proceed with the mediation.
- E. If a mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, a mediator shall withdraw from or decline to proceed with the mediation regardless of the expressed desire or agreement of the parties to the contrary.
- F. Subsequent to a mediation, a mediator shall not establish another relationship with any of the participants in any matter that would raise questions about the integrity of the mediation. When a mediator develops personal or professional relationships with parties, other individuals or organizations following a mediation in which they were involved, the mediator should consider factors such as time elapsed following the mediation, the nature of the relationships established, and services offered when determining whether the relationships might create a perceived or actual conflict of interest.

STANDARD IV. COMPETENCE

- A. A mediator shall mediate only when the mediator has the necessary competence to satisfy the reasonable expectations of the parties.
 - 1. Any person may be selected as a mediator, provided that the parties are satisfied with the mediator's competence and qualifications. Training, experience in mediation, skills, cultural understandings and other qualities are often necessary for mediator

competence. A person who offers to serve as a mediator creates the expectation that the person is competent to mediate effectively.

2. A mediator should attend educational programs and related activities to maintain and enhance the mediator's knowledge and skills related to mediation.
 3. A mediator should have available for the parties' information relevant to the mediator's training, education, experience and approach to conducting a mediation.
- B. If a mediator, during the course of a mediation determines that the mediator cannot conduct the mediation competently, the mediator shall discuss that determination with the parties as soon as is practicable and take appropriate steps to address the situation, including, but not limited to, withdrawing or requesting appropriate assistance.
- C. If a mediator's ability to conduct a mediation is impaired by drugs, alcohol, medication or otherwise, the mediator shall not conduct the mediation.

STANDARD V. CONFIDENTIALITY

- A. A mediator shall maintain the confidentiality of all information obtained by the mediator in mediation, unless otherwise agreed to by the parties or required by applicable law.
1. If the parties to a mediation agree that the mediator may disclose information obtained during the mediation, the mediator may do so.
 2. A mediator should not communicate to any non-participant information about how the parties acted in the mediation. A mediator may report, if required, whether parties appeared at a scheduled mediation and whether or not the parties reached a resolution.
 3. If a mediator participates in teaching, research or evaluation of mediation, the mediator should protect the anonymity of the parties and abide by their reasonable expectations regarding confidentiality.
- B. A mediator who meets with any persons in private session during a mediation shall not convey directly or indirectly to any other person, any information that was obtained during that private session without the consent of the disclosing person.

- C. A mediator shall promote understanding among the parties of the extent to which the parties will maintain confidentiality of information they obtain in a mediation.
- D. Depending on the circumstance of a mediation, the parties may have varying expectations regarding confidentiality that a mediator should address. The parties may make their own rules with respect to confidentiality, or the accepted practice of an individual mediator or institution may dictate a particular set of expectations.

STANDARD VI. QUALITY OF THE PROCESS

- A. A mediator shall conduct a mediation in accordance with these Standards and in a manner that promotes diligence, timeliness, safety, presence of the appropriate participants, party participation, procedural fairness, party competency and mutual respect among all participants.
 - 1. A mediator should agree to mediate only when the mediator is prepared to commit the attention essential to an effective mediation.
 - 2. A mediator should only accept cases when the mediator can satisfy the reasonable expectation of the parties concerning the timing of a mediation.
 - 3. The presence or absence of persons at a mediation depends on the agreement of the parties and the mediator. The parties and mediator may agree that others may be excluded from particular sessions or from all sessions.
 - 4. A mediator should promote honesty and candor between and among all participants, and a mediator shall not knowingly misrepresent any material fact or circumstance in the course of a mediation.
 - 5. The role of a mediator differs substantially from other professional roles. Mixing the role of a mediator and the role of another profession is problematic and thus, a mediator should distinguish between the roles. A mediator may provide information that the mediator is qualified by training or experience to provide, only if the mediator can do so consistent with these Standards.

6. A mediator shall not conduct a dispute resolution procedure other than mediation but label it mediation in an effort to gain the protection of rules, statutes, or other governing authorities pertaining to mediation.
 7. A mediator may recommend, when appropriate, that parties consider resolving their dispute through arbitration, counseling, neutral evaluation or other processes.
 8. A mediator shall not undertake an additional dispute resolution role in the same matter without the consent of the parties. Before providing such service, a mediator shall inform the parties of the implications of the change in process and obtain their consent to the change. A mediator who undertakes such role assumes different duties and responsibilities that may be governed by other standards.
 9. If a mediation is being used to further criminal conduct, a mediator should take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.
 10. If a party appears to have difficulty comprehending the process, issues, or settlement options, or difficulty participating in a mediation, the mediator should explore the circumstances and potential accommodations, modifications or adjustments that would make possible the party's capacity to comprehend, participate and exercise self-determination.
- B. If a mediator is made aware of domestic abuse or violence among the parties, the mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.
- C. If a mediator believes that participant conduct, including that of the mediator, jeopardizes conducting a mediation consistent with these Standards, a mediator shall take appropriate steps including, if necessary, postponing, withdrawing from or terminating the mediation.

STANDARD VII. ADVERTISING AND SOLICITATION

- A. A mediator shall be truthful and not misleading when advertising, soliciting or otherwise communicating the mediator's qualifications, experience, services and fees.

1. A mediator should not include any promises as to outcome in communications, including business cards, stationery, or computer-based communications.
 2. A mediator should only claim to meet the mediator qualifications of a governmental entity or private organization if that entity or organization has a recognized procedure for qualifying mediators and it grants such status to the mediator.
- B. A mediator shall not solicit in a manner that gives an appearance of partiality for or against a party or otherwise undermines the integrity of the process.
- C. A mediator shall not communicate to others, in promotional materials or through other forms of communication, the names of persons served without their permission.

STANDARD VIII. FEES AND OTHER CHARGES

- A. A mediator shall provide each party or each party's representative true and complete information about mediation fees, expenses and any other actual or potential charges that may be incurred in connection with a mediation.
1. If a mediator charges fees, the mediator should develop them in light of all relevant factors, including the type and complexity of the matter, the qualifications of the mediator, the time required and the rates customary for such mediation services.
 2. A mediator's fee arrangement should be in writing unless the parties request otherwise.
- B. A mediator shall not charge fees in a manner that impairs a mediator's impartiality.
1. A mediator should not enter into a fee agreement which is contingent upon the result of the mediation or amount of the settlement.
 2. While a mediator may accept unequal fee payments from the parties, a mediator should not allow such a fee arrangement to adversely impact the mediator's ability to conduct a mediation in an impartial manner.

STANDARD IX. ADVANCEMENT OF MEDIATION PRACTICE

- A. A mediator should act in a manner that advances the practice of mediation. A mediator promotes this Standard by engaging in some or all of the following:
 - 1. Fostering diversity within the field of mediation.
 - 2. Striving to make mediation accessible to those who elect to use it, including providing services at a reduced rate or on a pro bono basis as appropriate.
 - 3. Participating in research when given the opportunity, including obtaining participant feedback when appropriate.
 - 4. Participating in outreach and education efforts to assist the public in developing an improved understanding of, and appreciation for, mediation.
 - 5. Assisting newer mediators through training, mentoring and networking.
- B. A mediator should demonstrate respect for differing points of view within the field, seek to learn from other mediators and work together with other mediators to improve the profession and better serve people in conflict.