

MEDICARE SECONDARY PAYER REPORTING AGREEMENT

This Medicare Secondary Payer Reporting Agreement (“Agreement”) is entered into as of July 1, 2010 (“Effective Date”) between State Compensation Insurance Fund (“State Fund”) and the Department of Personnel Administration (“DPA”), on its own behalf and on behalf of the legally uninsured Departments of the State of California (the “Departments”). State Fund, DPA and the Departments may be referred to herein individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, State Fund and DPA are parties to that certain Master Agreement for Worker’s Compensation Claims for the period of July 1, 2009 through June 30, 2014, including various attachments (the “Master Agreement”);

WHEREAS, the Master Agreement does not provide for the performance of services by State Fund in connection with the mandatory reporting of Medicare secondary payer data under applicable federal law;

WHEREAS, DPA and the Departments wish to retain State Fund to perform the MQR Services (as hereinafter defined), and State Fund wishes to perform the MQR Services, under the terms and conditions of this Agreement;

WHEREAS, the MQR Services to be provided by State Fund under this Agreement are of a highly specialized and urgent nature, given the imminent Medicare secondary payer reporting requirements being imposed by federal law; and

WHEREAS, the Parties further hereby acknowledge and agree that this Agreement is an interagency agreement, and that each Party has the necessary power and authority to enter into and perform this Agreement under applicable California law.

AGREEMENT

In consideration of the foregoing and the mutual promises in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions

The following terms used in this Agreement shall have the following meanings:

1.1 “Agreement” when used herein means this Medicare Secondary Payer Reporting Agreement and any schedules or attachments hereto, as may be amended or otherwise modified by the further written agreement of the Parties.

1.2 “CMS” when used herein collectively means the federal Centers for Medicare & Medicaid Services, and its contractors, agents and successor agencies, including where applicable the Coordination of Benefits Contractor.

1.3 “CMS Data Use Agreement” when used herein means the respective data use or comparable agreement entered into between CMS and any of the Parties under CMS guidelines or related federal rules.

1.4 “Indemnified Contractor” is defined in Section 6.6 hereof.

1.5 “Interest” is defined in Section 12.13 hereof.

1.6 “MQR Services” is defined in Section 3.1 hereof.

1.7 “person” when used herein means any individual, partnership, corporation, company, limited liability company, fiduciary, firm, joint venture, trust, unincorporated association, governmental authority or other person or entity.

1.8 “Subcontractor” is defined in Section 10 hereof.

1.9 “Term” is defined in Section 9 hereof.

2. General Obligations

2.1 The Parties agree that commencing as of the Effective Date and continuing for the period of the Term, State Fund, DPA and the Departments will collaborate under the following terms and conditions for purposes of effectuating the mandatory reporting of Medicare Secondary Payer (“MQR”) data to CMS as required by Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 and any rules or regulations or guidance issued thereunder (collectively and as the same may be amended or superseded or supplemented from time to time, “MMSEA”).

2.2 The Parties agree and acknowledge that notwithstanding any contrary provision of this Agreement or any conduct of the Parties, DPA is and shall be the sole Responsible Reporting Entity (“RRE”), for itself or the relevant Department (as the case may be), under or pursuant to the MMSEA and related laws, and neither State Fund or any affiliate shall be an RRE or similar entity to any extent at any time, whether by virtue of this Agreement or the performance of the MQR Services or otherwise. For the avoidance of doubt, the foregoing shall survive any termination or expiration of this Agreement.

3. State Fund Responsibilities

3.1 State Fund will act as the reporting agent on behalf of the DPA or the relevant Department for the reporting of the required MQR data to CMS under the MMSEA during the Term and will perform related and ancillary services to the extent

expressly provided herein (collectively “MQR Services”), subject to the other provisions of this Agreement.

3.2 This Agreement is the sole agreement of the Parties governing the MQR Services and the corresponding respective obligations of DPA and the Departments as expressly and specifically set forth herein. In the event of any conflict between the terms of this Agreement and the Master Agreement or any other agreement between State Fund and any of the other Parties, this Agreement shall prevail.

3.3 In the event that (a) any provision of MMSEA or other applicable laws governing the subject matter of this Agreement are modified or changed or interpreted during the Term of this Agreement, or (b) a conflict exists between applicable federal and state privacy laws, in a manner that would impose substantial additional burdens or liabilities on State Fund, then the Parties will be required to negotiate in good faith modifications to this Agreement to fairly alleviate such burdens or liabilities. The Parties further agree to consult with each other at least once per year during the Term and as otherwise requested by any of the Parties in order to discuss and evaluate the status of the foregoing and to negotiate any such modifications. In the event that notwithstanding such negotiations the Parties are unable to reach a mutually acceptable agreement on any required modifications under this Section 3.3, then notwithstanding any contrary provision hereof and in addition to its other rights, State Fund shall have the unilateral right and option to terminate this Agreement by at least one (1) year prior written notice to DPA (which notice shall be deemed received on its own behalf and on behalf of all relevant Departments).

3.4 State Fund will exercise its best efforts at all times during the Term to ensure that the reporting and disclosure of the required MQR data to CMS under the MMSEA is done accurately, timely and in accordance with (i) the rules and guidelines established by CMS (including such data in the form required or permitted by CMS) and (ii) the relevant CMS Data Use Agreements, subject to any reasonably required cooperation by DPA or any Department.

3.5 State Fund will develop and establish required written protocols and policies that are necessary to implement the required MQR Services under the MMSEA including the following as soon as practicable (all of which, for the avoidance of doubt, shall be deemed part of the “MQR Services” hereunder):

(1) Collection, segregation and maintenance of MQR data, appropriate protocols for collection and maintenance and disclosure of health insurance claim numbers (“HICNs”) or social security numbers (“SSNs”) and related information, and any required database field mapping.

(2) Information feed protocols, including build, testing and implementation of claim input and query file processes.

(3) Compliance with CMS monthly and quarterly file submission deadlines and other requirements, including updating reports for new or changed claim information.

(4) Reporting of claimant settlements, judgments, awards, or other payments.

(5) Processing of and response to any Coordination of Benefits Contractor (“COBC”) response files and other requests or demands or communications received from CMS, including from the COBC or Medicare Secondary Payments Recovery Contractor, including CMS audit requests and including disposition, error and compliance codes.

(6) Notification and handling of requests or demands or communications from claimants or other third persons in connection with MQR reporting.

(7) Interaction with the applicable COBC Electronic Interchange Representative or other CMS personnel.

(8) Establishment and implementation of required privacy and other safeguards to protect the confidentiality of the MQR data and prevent the unauthorized access, use or disclosure of MQR data, including data provided by CMS.

(9) Retention of MQR data files.

All of the foregoing protocols and policies shall be in writing. Such protocols and policies shall be provided to DPA. State Fund shall maintain and update such protocols and policies as necessary.

4. **DPA and Departmental Responsibilities**

4.1 DPA (on its own behalf and on behalf of any relevant Departments) shall designate State Fund as the reporting agent for MQR reporting purposes under the MMSEA.

4.2 DPA (on its own behalf and on behalf of any relevant Departments) shall register with CMS as the RRE and enter into all required CMS Data Use Agreements with CMS and all other obligations required by law.

4.3 DPA and the relevant Departments shall fully and promptly cooperate with State Fund and its representatives at all times in connection with the collection and processing of the MQR data, the reporting and disclosure to CMS of such data and any other required information, and the handling of any responses or requests or demands or other communications in connection with the MQR data or reporting, whether from CMS or claimants or other third persons, and any other relevant matter under this Agreement.

5. **Joint Responsibilities.** State Fund and DPA will work to ensure the coordination of ongoing internal contacts and communications between State Fund and DPA and Departmental representatives with regard to all MQR Services.

6. **Indemnification**

To the fullest extent not prohibited by applicable law, and notwithstanding any contrary provision of this Agreement, DPA and the Departments (collectively “Indemnitor”) agree to fully indemnify, hold harmless and defend (collectively “indemnification” or “indemnify”) State Fund and its directors, officers, managers, and employees (collectively “State Fund Persons”), from and against any and all claims, actions, demands, damages, liabilities, obligations, losses, settlements, judgments, fines, penalties, charges, costs and expenses, including without limitation reasonable attorney’s fees and costs (collectively, “Claims”) arising out of, relating to or in connection with the MQR Services (including but not limited to (a) the collection, reporting or disclosure of Medicare Secondary Payer data pursuant to the terms and conditions of this Agreement, and (b) all development, testing and preparation related to the MQR Services (whether prior to or on or after the date of this Agreement)), whether or not any Claim arises or results from the negligence of State Fund or any other State Fund Person; provided however that the following shall be excluded from Indemnitor’s obligation to indemnify and hold harmless and defend:

- (1) Indemnitor shall not be responsible for any Claims to the extent caused by or resulting from acts or omissions constituting bad faith, willful misfeasance, gross negligence or reckless disregard of duties or obligations under this Agreement by State Fund Persons;
- (2) In no event will Indemnitor be liable for punitive, incidental, consequential, exemplary, or special damages of any kind, even if advised of the possibility of such damages (collectively “Other Damages”), provided however that for these purposes and the avoidance of doubt, the Parties acknowledge and agree that (i) any penalties, fines, charges or other costs or liabilities of any kind or nature imposed under or pursuant to MMSEA or any federal or state privacy or similar laws arising out of, relating to or in connection with any of the MQR Services, and (ii) any third party Claim asserted against State Fund and not of the type delineated in subsection (1), in each case shall be considered direct damages included in Indemnification hereunder and not any form of Other Damages.

6.1 “Claims” for purposes hereof shall include, but are not limited to, Claims against State Fund by Indemnified Contractors to the extent (a) State Fund is contractually or legally obligated to indemnify the Indemnified Contractor against such Claims, and (b) such Claims arise out of, relate to or are in connection with any of the MQR Services.

6.2 Each affected State Fund Person shall promptly notify the Indemnitor of any Claim following actual knowledge of such Claim, provided however that the failure to give such notice shall not relieve the Indemnitor of its obligations hereunder except only to the extent that the Indemnitor is actually and materially prejudiced by such failure. For purposes hereof notice received by DPA shall be deemed received on its own behalf and on behalf of all relevant Departments as Indemnitor. In the event that any third person Claim is brought, the Indemnitor shall have the right to control the defense of such action with counsel of its choice, provided however that (a) State Fund and any other State Fund Person shall have the right to fully participate with its own counsel at its own expense; (b) the State Fund Person shall not settle or compromise or otherwise dispose of any Claim without the prior written consent of Indemnitor, which shall not be unreasonably withheld or delayed; and (c) the Indemnitor shall not settle or compromise or otherwise dispose of any Claim unless such settlement or compromise or disposition either (i) includes a full and final release and discharge from all Claims for all relevant State Fund Persons, or (ii) does not materially and adversely affect any State Fund Person or Persons not being fully released and discharged thereunder.

6.3 To facilitate the payment of any Claim for Indemnification hereunder:

(1) Any Claims under this Section 6 that are specific to a Department shall be billed directly to that Department for payment by such Department in full within thirty-five (35) calendar days of the receipt of such billing from State Fund, and otherwise in the same manner as the MQR Maintenance Fees pursuant to Section 7 hereof.

(2) Any Claims under this Section 6 that are not specific to a particular Department shall be billed to all of the Departments on a pro rata basis, for payment in full by such Departments within thirty-five (35) calendar days of the receipt of such billing from State Fund, and otherwise in the same manner as the MQR Maintenance Fees pursuant to Section 7 hereof.

Notwithstanding the foregoing to the contrary, any allocation of Claims under the foregoing provisions of this Section 6.3 shall not limit or relieve or have any other effect on the Indemnification rights of State Fund or the Indemnification obligations of DPA or any other Indemnitor under this Section 6 generally, and in the event that the subject Claim is not paid in full to State Fund within the designated thirty-five (35) calendar day period, DPA and any other Indemnitor shall remain fully liable therefor.

6.4 All amounts subject to Indemnification hereunder in addition shall bear Interest from the 35th day following the date of State Fund's transmission of the Claim to the SCO to the date of payment, as further provided by Section 12.13 of this Agreement.

6.5 For the avoidance of doubt, the foregoing obligations to indemnify, hold harmless and defend any Claims of State Fund thereunder (a) shall survive any

termination or expiration of this Agreement and (b) are in addition to and shall not affect any other obligations or undertakings of DPA or the relevant Department or Departments under this Agreement or any other agreement between or among the Parties or their respective affiliates.

6.6 For purposes hereof, "Indemnified Contractor" means any independent contractor or Subcontractor which State Fund is or may be required to directly or indirectly indemnify with respect to any of the MQR Services. The intent of the parties is that the Indemnitor shall indemnify State Fund to the extent that State Fund shall be contractually or legally obligated to indemnify the Indemnified Contractor.

7. MQR Fees

7.1 In consideration for the MQR Services hereunder, the relevant Departments shall pay to State Fund all of the maintenance fees set forth in and under the terms of Schedule A attached hereto and made a part hereof ("Maintenance Fees"), within the time period and in the manner provided by Schedule A of this Agreement, including all Interest. Such Fees shall be separate from and in addition to Claim for Indemnification and any service or other fees or reimbursements of any nature payable to State Fund under the Master Agreement or any other agreement between any of the Parties.

7.2 The relevant Departments also shall pay the total Development Costs incurred by State Fund hereunder within thirty (30) calendar days of the receipt of an invoice for such Costs from State Fund, including all Interest, as defined and in accordance with and in the manner provided by Schedule A of this Agreement.

7.3 The Maintenance Fees and the Development Costs shall be collectively referred to as the "MQR Fees".

7.4 Invoices for the MQR Fees shall be contained in the service fee invoices under the Master Agreement, provided for the avoidance of doubt that the MQR Fees shall be payable without regard to any claim or setoff under the Master Agreement. Invoices shall be issued substantially in the form attached hereto as Schedule B to this Agreement and made a part hereof, subject to any reasonable revisions to such form made by State Fund from time to time. Invoices may be issued electronically by State Fund.

7.5 In the event of any delay or failure in payment to State Fund under this Agreement, including but not limited to any Claims for Indemnification, DPA shall promptly take all steps necessary to obtain the prompt funding and payment of all such amounts by the California Department of Finance ("DOF") (collectively "DOF Obligations").

8. **Protection of Confidential Information**

Subject in each case to the other obligations of the Parties (a) under this Agreement, or (b) under any written protocols or procedures established by the Parties hereunder, or (c) under the MMSEA:

8.1 **State Fund**

(1) **Acceptable Use and Disclosure:** State Fund shall not use or further disclose confidential data other than as permitted or required by this Agreement or the Master Agreement and shall refer any persons not included under this Agreement or the Master Agreement to the system owner to request access to the confidential data. State Fund agrees that the information obtained will be kept in the strictest confidence provided that such information may be made available (a) to its own employees and independent contractors and agents and any Subcontractors operating under State Fund supervision on a “need to know” basis, (b) to other governmental agencies, universities and research organizations solely on a de-identified basis for statistical research or study, and (c) as otherwise required by applicable law. “Need to know” is based on those authorized employees and contractors and Subcontractors who need information to perform their duties in connection with the uses of the information authorized by this Agreement or the Master Agreement. Furthermore, confidential data may not be re-disclosed or reused without the express permission of the owner except as permitted or required by applicable law. Notwithstanding any of the foregoing or Section 8.4 of this Agreement to the contrary, State Fund shall be entitled to make all reporting and disclosures under MMSEA to CMS or as otherwise required by MMSEA (including but not limited to the disclosure of SSNs and HICNs), in the form required or permitted by CMS.

(2) **Security Incidents:** Upon discovering a security incident, including one which has or may have resulted in the compromise of confidential data, State Fund will report it promptly by telephone and in writing in accordance with its incident reporting procedures. Notification must be sent to the DPA and the Departments whose information was compromised. If State Fund is responsible for the incident, State Fund will be responsible for handling the mandatory notification to all individuals whose information was compromised. State policy governing the reporting of security incidents is the State Administrative Manual (SAM) Section 5350.

The Department of Personnel Administration contact for such notification is as follows:

Department of Personnel Administration
Workers’ Compensation Unit, Manager
1515 S Street, North Building, Suite 400
Sacramento, CA 95811

(916) 445-9792

The State Fund contact for such notification is as follows:

State Contract Services Manager
2450 Venture Oaks Way, Suite 500
Sacramento, CA 95833
(916) 567-7557

(3) Privacy Laws: State Fund will comply with all otherwise applicable federal and state privacy laws in connection with its performance hereunder, including but not limited to the terms and conditions of any applicable CMS Data Use Agreement, subject in all cases to Section 8.4 hereof.

8.2 Departments

(1) Acceptable Use and Disclosure: The Departments shall not use or further disclose confidential data other than as permitted or required by this Agreement or the Master Agreement and shall refer any persons not included under this Agreement or the Master Agreement to the system owner to request access to the confidential data. The Departments agree that the information obtained will be kept in the strictest confidence provided that such information may be made available to (a) its own employees and independent contractors operating under Department supervision on a “need to know” basis, (b) to other governmental agencies, universities and research organizations solely on an de-identified and aggregated basis for statistical research or study, and (c) as otherwise required by applicable law. “Need to know” is based on those authorized employees and contractors who need information to perform their duties in connection with the uses of the information authorized by this Agreement or the Master Agreement. Furthermore, confidential data may not be re-disclosed or reused without the express permission of the owner except as permitted or required by applicable law.

(2) Security Incidents: Upon discovering a security incident, including one which has or may have resulted in the compromise of confidential data, the Department will report it promptly by telephone and in writing in accordance with its incident reporting procedures. Notification must be sent to the DPA and State Fund. The Department responsible for the incident will be responsible for handling the mandatory notification to all individuals whose information was compromised. State policy governing the reporting of security incidents is the State Administrative Manual (SAM) Section 5350.

The DPA contact for such notification is as follows:

Department of Personnel Administration
Workers’ Compensation Unit, Manager
1515 S Street, North Building, Suite 400

Sacramento, CA 95811
(916) 445-9792

The State Fund contact for such notification is as follows:

State Contract Services Manager
2450 Venture Oaks Way, Suite 500
Sacramento, CA 95833
(916) 567-7557

(3) Privacy Laws: The participating Departments will comply with all otherwise applicable federal and state privacy laws in connection with its performance hereunder, including but not limited to the terms and conditions of any applicable CMS Data Use Agreement, subject in all cases to Section 8.4 hereof.

8.3 DPA

(1) Acceptable Use and Disclosure: DPA shall not use or further disclose confidential data other than as permitted or required by this Agreement or the Master Agreement and shall refer any persons not included under this Agreement or the Master Agreement to the system owner to request access to the confidential data. DPA agrees that the information obtained will be kept in the strictest confidence provided that such information may be made available to (a) its own employees and independent contractors operating under DPA supervision on a “need to know” basis, (b) to other governmental agencies, universities and research organizations solely on an de-identified and aggregated basis for statistical research or study, and (c) as otherwise required by applicable law. “Need to know” is based on those authorized employees and contractors who need information to perform their duties in connection with the uses of the information authorized by this Agreement or the Master Agreement. Furthermore, confidential data may not be re-disclosed or reused without the express permission of the owner except as permitted or required by applicable law.

(2) Security Incidents: Upon discovering a security incident, including one which has or may have resulted in the compromise of confidential data, DPA will report it promptly by telephone and in writing in accordance with its incident reporting procedures. Notification must be sent to State Fund. DPA will be responsible for handling the mandatory notification to all individuals whose information was compromised. State policy governing the reporting of security incidents is the State Administrative Manual (SAM) Section 5350.

The State Fund contact for such notification is as follows:

State Contract Services Manager
2450 Venture Oaks Way, Suite 500
Sacramento, CA 95833
(916) 567-7557

(3) Privacy Laws: DPA will comply with all otherwise applicable federal and state privacy laws in connection with its performance hereunder, including but not limited to the terms and conditions of any applicable CMS Data Use Agreement, subject in all cases to Section 8.4 hereof.

8.4 Conflicting Privacy Laws. In the event that any otherwise applicable federal and state privacy or similar laws may be or become in conflict, the Parties shall exercise their respective best efforts in good faith to contractually reconcile the same and modify this Agreement in order that the relevant Party or Parties are not in breach of either this Agreement or their legal duties under such laws; provided that in the event of an irreconcilable conflict, (a) the applicable provisions of the MMSEA (including but not limited to all CMS rules and guidance) and related federal laws, and (b) the terms and conditions of any applicable CMS Data Use Agreement, including but not limited to the required or permitted form of CMS data reporting or disclosure, shall be controlling.

8.5 “Confidential data”. For purposes hereof “confidential data” shall mean all data subject to the terms of any applicable CMS Data Use Agreement and all additional data (if any) exchanged between State Fund and CMS for MQR reporting purposes in accordance with the MMSEA (including but not limited to all CMS rules and guidance).

9. Term and Termination

9.1 Term. This Agreement shall commence on the Effective Date and shall terminate on June 30, 2014, unless earlier terminated hereunder (“Term”). No Party shall have the right to renew or extend this Agreement other than by the subsequent mutual written consent of the Parties to be granted or withheld in their respective sole discretion. The performance or acceptance of performance following the termination or expiration of this Agreement shall not be construed as a renewal or extension or waiver hereof; but as a separate transaction terminable at will by either Party without cause.

9.2 Termination Rights - In General. The Parties acknowledge and agree that the termination rights set forth in this Section 9 and in Section 3.3 hereof are not subject to or limited by Section 7 of Exhibit C (Interagency Agreement) relating to disputes. All termination rights set forth in this Agreement shall be cumulative and no specific termination right shall limit or affect any other termination right of any Party hereunder.

9.3 Termination for Cause by State Fund. State Fund may unilaterally terminate this Agreement for cause (a) by providing at least ninety (90) days prior written notice to DPA (which notice shall be deemed received on its own behalf and on behalf of all relevant Departments) in the event of any failure to timely pay any of the MQR Fees, including but not limited to any Development Costs or Maintenance

Fees or Interest, or (b) as separately provided by Section 3.3 hereof (no agreement on required modifications).

9.4 Termination for Cause; Individual Departments. Notwithstanding Section 9.3 hereof, if State Fund elects to terminate this Agreement for cause and that cause relates solely to a specific Department or Departments, the termination will only affect those Departments. Without limiting the foregoing, State Fund will provide at least ninety (90) days prior written notice of termination to DPA and the specific Department(s) in the event of any failure to timely pay any of the MQR Fees.

9.5 Budget Contingency Clause.

(1) The Parties acknowledge and agree that the duty of the State of California ("State") to issue payment on the invoices under this Agreement shall not arise unless and until there is a duly enacted State budget that provides the legally required spending authority to pay said invoices. Failure by the State to pay invoices during periods of time when there is no State budget shall not constitute a breach of this Agreement and provides no grounds for immediate termination by State Fund, provided however that (i) any deferred payments shall bear Interest as provided by Section 12.13 hereof, and (ii) if such period or periods exceed ninety (90) days in the aggregate within any twelve (12) month period during the Term, then notwithstanding any contrary provision hereof and without limiting its other rights and remedies, then State Fund may immediately terminate this Agreement for cause by written notice to DPA (which notice shall be deemed received on its own behalf and on behalf of all relevant Departments).

(2) It is mutually agreed that if the State Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds to the relevant Department or Departments for the payment of its or their respective obligations hereunder, (i) then such Department or Departments shall have the option to terminate this Agreement with respect to such Department or Departments by written notice to State Fund with no liability occurring to the State as a result of such termination, and (ii) in this event, as of the effective date of such termination, this Agreement shall be of no further force and effect with respect to such Department or Departments, and such Department or Departments shall have no liability to pay any funds whatsoever to State Fund or to furnish any other considerations under this Agreement, and State Fund shall not be obligated to perform any provisions of this Agreement for such Department or Departments; provided however that (i) such Department or Departments shall be responsible for payment of all amounts owed to State Fund up to the effective date of termination, including all Interest; (ii) the provisions of Section 9.9 hereof (including but not limited to the respective rights and obligations of the Parties set forth in Section 6 hereof (Indemnification)) shall not terminate and shall survive and remain in full force and effect; and (iii) DPA shall perform its DOF Obligations as provided in Section 7.5 hereof.

(3) If funding for any fiscal year is materially reduced or deleted by the State Budget Act for the relevant Department or Departments with respect to the payment of its or their respective obligations hereunder, (i) then such Department or Departments shall have the option to terminate this Agreement with respect to such Department or Departments by written notice to State Fund with no liability occurring to the State as a result of such termination, or (ii) to offer an agreement amendment to State Fund to reflect the reduced amount, which amendment may be accepted or rejected by State Fund in its sole discretion; provided however that (i) such Department or Departments shall be responsible for payment of all amounts owed to State Fund up to the effective date of termination, including all Interest; (ii) the provisions of Section 9.9 hereof (including but not limited to the respective rights and obligations of the Parties set forth in Section 6 hereof (Indemnification)) shall not terminate and shall survive and remain in full force and effect; and (iii) DPA shall perform its DOF Obligations as provided in Section 7.5 hereof.

9.6 Termination for Convenience by State Fund. State Fund in addition may unilaterally terminate this Agreement for convenience and without cause in its sole discretion by providing at least one (1) year prior written notice to DPA (which notice shall be deemed received on its own behalf and on behalf of all relevant Departments).

9.7 Other Termination. Without limiting and subject to the foregoing termination rights of State Fund, either Party may terminate this Agreement upon written notice to the other Party or Parties if (a) the other Party materially breaches any material term or condition of this Agreement and fails to fully cure such breach within ninety (90) days following written notice specifying such breach, provided however that such right to cure shall not be applicable to a series of the same or similar or related breaches. If the material breach relates to a specific Department or Departments, the termination will only affect those Departments as further provided in Section 9.4 hereof.

9.8 RRE Status. If a specific Department or Departments are terminated from this Agreement, DPA will cease to act as RRE for those Departments as of the termination date for such Department or Departments under this Agreement. The individual Department or Departments thereupon shall assume RRE duties for itself as of that date and outside of this Agreement.

9.9 Effects of Termination. Upon the expiration or earlier termination of this Agreement ("Termination Date"), all of the respective rights and obligations of the Parties hereunder shall terminate; provided however that (i) Section 2.2 hereof (identification of RRE), Section 3.2 hereof (conflict between agreements), Section 6 (Indemnification), Section 7 hereof (MQR Fees) to the extent of all unpaid payment obligations of DPA or the Departments accrued prior to or as of the Termination Date, plus Interest, Section 8 hereof (Protection of Confidential Information), this Section 9 (Term and Termination), Section 11 (Errors and Omissions), and Section 1 (Definitions) and Section 12 (In General), and (ii) any claim or cause of action for

breach or violation of this Agreement existing as of the date of termination or expiration; each shall not terminate and shall survive and remain in full force and effect. No Party shall be liable to the other for damages of any kind solely as a result of the expiration or termination of this Agreement in accordance with its terms.

9.10 Development Costs. If State Fund unilaterally terminates this Agreement for convenience and without cause prior to June 30, 2013, State Fund will refund the development costs paid by the Departments pursuant to Schedule A(2) plus Interest from the date of initial transfer to the date of payment, as follows:

(1) If the effective date of such termination by State Fund occurs prior to June 30, 2011, State Fund will refund all of the development costs plus Interest as herein provided.

(2) If the effective date of such termination by State Fund occurs on or after June 30, 2011 and prior to June 30, 2012, State Fund will refund two-thirds (2/3) of the development costs plus Interest as herein provided.

(3) If the effective date of such termination by State Fund occurs on or after June 30, 2012 and prior to June 30, 2013, State Fund will refund one-third (1/3) of the development costs plus Interest as herein provided.

(4) If the effective date of such termination by State Fund occurs on or after June 30, 2013, no refund shall be required of any development costs.

9.11 Cumulative Remedies. Subject to Section 3.2 of this Agreement in the event of any conflict, (a) no right or remedy conferred herein is exclusive of any other right or remedy conferred herein, by any other agreement between the Parties hereto, or by law, and (b) all such remedies are cumulative of every other right or remedy conferred hereunder, pursuant to any other agreement, or at law or in equity, by statute or otherwise, and may be exercised concurrently or separately from time to time.

10. Subcontractors

10.1 Engagement of Subcontractor.

(1) State Fund may engage one or more subcontractor entities to perform its services hereunder in whole or in part during the Term (“Subcontractors”). State Fund shall promptly notify DPA in writing in the event of the engagement of any Subcontractor for the performance of any material part of its services hereunder, and provided that DPA shall not reasonably object in writing to the engagement of such Subcontractor within thirty (30) days of such notice from State Fund, which objection shall set forth the reasons for such objection, then notwithstanding the other provisions of this Agreement, State Fund thereupon may engage such Subcontractor in its sole discretion. In the event of any written reasonable objection by DPA under this

Section 10.1, State Fund shall consider such objections in good faith but shall retain the ultimate authority to engage such Subcontractor in its sole discretion.

(2) In the event that State Fund engages a Subcontractor hereunder and such Subcontractor shall fail to perform any of the obligations under this Agreement which are subcontracted pursuant to such engagement, then State Fund shall exercise all commercially reasonable steps to enforce the terms of the relevant subcontract with respect to such performance, and if necessary, to engage a substitute Subcontractor to perform such subcontracted obligations. In the event that State Fund shall take the foregoing steps, then State Fund shall not be liable for any failure to perform such subcontracted obligations or other acts or omissions of such Subcontractor.

10.2 Own Reporting. Without limiting and in addition to the foregoing rights, State Fund further may determine that it would be advantageous to use the services of a contractor to perform some or all of the functions associated with its own reporting of MQR data to CMS under the MMSEA or other services with respect to its own policyholder files or on behalf of other clients. In such event and to such extent, (1) State Fund shall have the right to subcontract such functions or services under this Agreement to the same contractor, and (2) the foregoing provisions of Section 10.1(2) shall be applicable. The Parties acknowledge that moving all or substantial portions of the reporting of the required MQR data to CMS may require adjustments to the fee structure contained in this Agreement. Should this occur, the Parties agree to confer and negotiate appropriate amendments to this Agreement in good faith pursuant to Section 3.3 hereof.

11. Errors and Omissions

State Fund, DPA and the participating Departments will actively work to reduce and limit mistakes and errors by early identification of potential problems with regard to MQR data collection and reporting. The Parties agree and acknowledge that notwithstanding any contrary provision of this Agreement and to the fullest extent not prohibited by applicable law, State Fund shall not bear any financial or legal liability or obligation of any kind for errors or omissions or for any expenditures resulting therefrom that may occur in the course of MQR data collection or reporting or the other MQR Services provided by or for State Fund under this Agreement, provided that without limiting the foregoing, the Parties further agree and acknowledge that accountability for purposes of recognizing mistakes and amending procedures so as to reasonably prevent repetition and limit expense to the Parties is a recognized goal of this Agreement. The Parties further agree and acknowledge that any such liabilities or obligations or expenditures are part of the costs of doing business for the State of California which is “legally uninsured” and as such should be borne solely by the State.

12. In General

12.1 This Agreement (including all schedules and attachments to this Agreement entered into between the Parties and referenced herein) sets forth the entire agreement and understanding of the Parties hereto in respect of the subject matter hereof, and shall be the sole and exclusive agreement concerning such subject matter. This Agreement supersedes all prior or other contemporaneous agreements, understandings, representations or communications between the Parties or between State Fund and any of the other Parties, whether oral or written or express or implied, regarding the subject matter hereof, provided however that the Master Agreement shall not be superseded and shall remain in full force and effect concerning the separate subject matter of such agreement, provided further that in the event of any conflict the terms of this Agreement shall prevail.

12.2 This Agreement may not be amended or otherwise modified except by an agreement in writing signed by the duly authorized representatives of each of the Parties and specifically referring to this Agreement and the section or sections of this Agreement to be amended or modified. No oral modification or any course of performance or usage of trade shall amend or modify or waive this Agreement at any time.

12.3 Any waiver of any provision of this Agreement must be in writing and executed by the Party waiving such provision. The waiver of a Party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

12.4 This Agreement and all matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of California.

12.5 If any provision of this Agreement shall be held by the final judgment of a court of competent jurisdiction or a final arbitration award to be invalid, illegal or otherwise unenforceable, such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties, or, if incapable of such enforcement, shall be deemed to be deleted from this Agreement, and the remainder of this Agreement shall remain in full force and effect. In such event the Parties further agree to amend and replace any invalid or illegal or unenforceable provision with a valid and legal and enforceable provision which most closely approximates the intent and economic effect of the invalid or illegal or unenforceable provision.

12.6 When the context requires, the plural shall include the singular and the singular the plural. Section headings are only for convenience and are not part of this Agreement.

12.7 Subject to Section 10 hereof (Subcontractors), no Party may assign or transfer or delegate or subcontract this Agreement or any of its rights and obligations

under this Agreement, whether by operation of law or merger or otherwise, without the prior written consent of the other Parties, which shall not be unreasonably withheld. DPA may grant such consent on behalf of any Department or Departments. Any purported assignment or transfer or delegation except as expressly permitted under this Section shall be null and void. Subject to the foregoing restrictions on assignment, this Agreement shall bind and inure to the benefit of and be enforceable by each of the Parties and their respective successors and permitted assigns. There shall be no third party beneficiaries of this Agreement, other than the State Fund Persons with respect to the indemnification provisions hereunder.

12.8 The Parties and their respective legal counsel have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

12.9 State Fund shall not be liable for any failure or delay in performance hereunder to the extent prevented or hindered by acts of God, floods, earthquake, lightning, storm, other bad weather, fire, explosion or other casualties, failure of public services, embargo, labor strikes or disputes or other labor disturbances, actions of any governmental authority, or by compliance with any involuntary order of a court or government of competent jurisdiction or any offices, department, agency or committee thereof, or any other causes beyond the control of State Fund whether of the kind herein enumerated or otherwise.

12.10 Each Party represents and warrants and agrees and acknowledges that it has the full power and authority and approvals to execute and deliver this Agreement and to consummate and perform the transactions contemplated hereby, and that this Agreement when executed and delivered on its behalf shall constitute its valid and legally binding agreement and obligation in accordance with its terms. DPA further represents and warrants and agrees and acknowledges on its own behalf and on behalf of the Departments that, notwithstanding any contrary provision hereof, (a) it has all of the authority and approvals required to bind and act on behalf of each of the Departments hereunder, and (b) this Agreement complies and conforms with all applicable State of California laws (including but not limited to all regulations, rules and policies) relating to contracting or subcontracting between DPA or the relevant Department and entities such as State Fund, and this Agreement and each and all of the provisions hereof are valid and legally binding and fully enforceable in accordance with its or their terms, including for the avoidance of doubt but not limited to each and all of the provisions of Section 6 hereof (Indemnification), each and all of the provisions of Section 9 hereof (Term and Termination), and all payment obligations. Without limiting the foregoing and in addition thereto, each Party further acknowledges and agrees that as an interagency agreement, this Agreement is valid and legally binding and fully enforceable in accordance with its terms based upon the approval of this Agreement by the California Department of General Services.

12.11 State Fund and DPA each further represents, warrants and covenants that such Party shall not at any time initiate, file, institute, maintain or proceed upon, or encourage, advise, or knowingly and voluntarily assist any other person to initiate, file, institute, maintain or proceed upon, any claim (including but not limited to any demand, suit, action or other proceeding, cause of action, counterclaim, defense or other right or remedy of any nature whatsoever) which seeks to have this Agreement or any provision hereof held or declared to be invalid, illegal, unenforceable, or unilaterally modified or supplemented.

12.12 Any agreement to alter, amend, waive or terminate this Agreement shall be at the discretion of DPA and State Fund. No individual Department has the authority to agree to alter, amend, waive or terminate this Agreement, in whole or in part.

12.13 All amounts due hereunder shall be subject to an interest charge from the due date specified in the relevant section hereunder until the date of payment ("Interest"). The interest rate used will be the same as the annualized Pooled Money Investment Account ("PMIA") promulgated at the end of each fiscal year by the Director of the State of California Department of Finance.

12.14 This Agreement may be executed (including, without limitation, by facsimile signature) in one or more counterparts, with the same effect as if the parties had signed the same document. Each counterpart so executed shall be deemed to be an original, and all such counterparts shall be construed together and shall constitute one agreement.

[Signature Page to Follow]

SCHEDULE A

MQR FEES

All capitalized terms not defined in this Schedule shall have the same meanings as such terms have in the Medicare Secondary Payer Reporting Agreement (the "Agreement") of which this Schedule is a part.

1. Maintenance Fees:

The Maintenance Fee for the period 7/1/10 through 6/30/11 shall be \$201,180.

The Maintenance Fee for the period 7/1/11 through 12/31/11 shall be \$63,252.

An estimate of the Maintenance Fees for the period January 1, 2012 through June 30, 2012 and for the fiscal years ending June 30, 2013 and June 30, 2014 respectively will be developed by State Fund and submitted to DPA in the same manner and at the same time as the annual estimate of the service fees as specified in Section X. A. (Service Fees) in the Master Agreement, which Maintenance Fees shall be negotiated in good faith by the Parties.

The Maintenance Fees during the Term shall be allocated to each Department in the same proportion as the service fees for the same period and billed as herein provided, subject however to terms and conditions of Section 6 of the Agreement (Indemnification) to the extent otherwise applicable.

All Maintenance Fees shall be billed in equal monthly installments. For fiscal year 2010-2011, each Department will be billed in twelve (12) equal monthly installments for its percentage of the total Maintenance Fee. For the period July 1, 2011 through December 31, 2011, each Department will be billed in six (6) equal monthly installments for its percentage of the total Maintenance Fee. State Fund will provide each Department with a service fee invoice that itemizes the monthly Maintenance Fee for the relevant Department. Invoices are due and payable upon receipt by the Department. Each Department will schedule all bills for payment in full, subject to revision at a later date, as promptly as fiscal procedures permit but in no case later than fifteen (15) calendar days subsequent to the date of the invoice. Discrepancies will be reported promptly to State Fund and they will make the necessary adjustments on subsequent invoices.

Electronic transfer of the Maintenance Fee funds will be established through the SCO. Transactions under the direct transfer process will be submitted to SCO by State Fund for payment by electronic file in a format to be specified by the SCO.

The Parties recognize that the stated amount of Maintenance Fees for each referenced fiscal year is based on the projected number and type of Departments participating in

the MQR Services under the Agreement for those calendar years, estimated as of the Effective Date of the Agreement. If a new Department seeks to participate under this Agreement, DPA and State Fund will perform a risk assessment to assure that any Department entering into this Agreement understands and is able to meet the fiscal and legal responsibilities required as part of this Agreement. An appropriate increase in the Maintenance Fee will be negotiated between State Fund and DPA and charged monthly under the foregoing terms to all new Departments entering into this Agreement.

Without limiting its other rights and remedies hereunder (including its rights to terminate for breach):

(a) State Fund will notify DPA on a monthly basis of any payments hereunder that remain unpaid beyond sixty (60) days. DPA will assist State Fund with obtaining such payments (including from those Departments which have ceased to exist); and in such connection DPA shall promptly perform its DOF Obligations under the Agreement.

(b) Electronic transfer of the Maintenance Fee funds will be established through the SCO in the same fashion as the service fees.

(c) Any amount outstanding after thirty five (35) calendar days from the date of State Fund's transmission to the SCO is subject to an interest charge. The interest rate used will be the same as the annualized Pooled Money Investment Account ("PMIA") promulgated at the end of each fiscal year by the Director of the State of California Department of Finance.

(d) In the event that State Fund is directed by the SCO to delay submission of the direct transfer requests, interest will begin to accrue thirty five (35) calendar days after SCIF submits the transfer request to SCO or thirty five (35) calendar days after SCIF would have submitted the transfer request to SCO if SCO had not directed them not to submit such request.

2. Development Costs:

Total Development Costs: \$515,475.

The Development Costs shall be allocated to each Department in the same proportion as the service fee for such Department for the same period. The Development costs will be billed on the service fee invoice next following execution of the Agreement.

The Departments shall pay the total Development Costs incurred by State Fund within thirty (30) calendar days of the receipt of an invoice for such Costs from State Fund. State Fund will provide each Department with an invoice that itemizes the allocable Development Costs for the relevant Department.

Electronic transfer of the Development Costs funds will be established through the SCO. Transactions under the direct transfer process will be submitted to SCO by State Fund for payment by electronic file in a format to be specified by the SCO.

Any amount outstanding after thirty five (35) calendar days from the date of State Fund's transmission to the SCO is subject to an interest charge. The interest rate used will be the same as the annualized Pooled Money Investment Account ("PMIA") promulgated at the end of each fiscal year by the Director of the State of California Department of Finance.

In the event of any delay or failure in payment to State Fund hereunder, DPA shall promptly perform its DOF Obligations under the Agreement.

[Signature Page to Follow]

SCHEDULE B

SAMPLE INVOICE

Invoice Date:

SERVICE FEE

Agency No:
Invoice:

ATTN:
AGENCY NAME
ADDRESS
ADDRESS
ADDRESS

DO NOT PAY

	<u>FLAT MONTHLY RATE</u>	<u>TOTAL COST</u>
SERVICES RENDERED FOR	\$XXX.XX	\$XXX.XX
MEDICARE SECONDARY PAYER (MSP) FEE		XXX.XX
Payments/Adjustments		XXX.XX
Interest Charge		XX.XX
AMOUNT DUE UPON RECEIPT		----- \$XXX.XX =====

Note: As noted on the Master Agreement between the Department of Personnel Administration (DPA), and State Fund effective with July 2009 invoices, "any amount outstanding after 35 calendar days from the date of State Fund's transmission to the SCO is subject to an interest charge. The interest rate used will be the same as the annualized Pooled Money Investment Account (PMIA) promulgated at the end of each fiscal year by the Director of the Department of Finance". **PLEASE DO NOT SEND CHECK; SCO WILL PROCESS PAYMENT THROUGH DIRECT TRANSFER.**

COUNTY OF SAN FRANCISCO

The undersigned hereby certifies under penalty of perjury, that on the claim hereto attached the services therein mentioned were actually rendered and the money was actually paid as therein mentioned solely for the benefit of the State and that the within claim is in all respects true, correct and in accordance with law.

Affiant further states that he has not violated any of the provisions of Article 4 of Chapter 1 of Division 4 of Title 1 of the Government Code incurring the items of expense mentioned in the attached claim, or in any other way.

J. E. Dawe

Fiscal Officer
STATE COMPENSATION INSURANCE FUND

~~MAILING ADDRESS FOR WARRANT PAYMENTS ONLY WITH NO REFUNDANCE ADVISE AND NO COPY OF THIS BILL
(NO REFUND DUE IF LESS THAN \$1)~~

STATE COMPENSATION INSURANCE FUND
P.O. BOX 8192
Pleasanton, CA 94588-8792

BILLING INQUIRIES
Call: (916) 567-7553
Fax: (916) 567-7511

PAYMENT INQUIRIES
Call: (415) 703-7896
Fax: (415) 585-1763

FOR ADDRESS CHANGES, fax info to:
STATE CONTRACT - SACRAMENTO
Attn: Billing Specialist
Fax: (916) 567-7511