

**Master Agreement**

**for**

**Workers' Compensation Claims Administration  
between State Compensation Insurance Fund and  
the California Department of Human Resources**

**for the**

**Period of July 1, 2014 Through June 30, 2019**

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## EXHIBIT A

This INTERAGENCY MASTER SERVICES AGREEMENT ("Agreement") is entered into as of July 1, 2014 ("Effective Date") between State Compensation Insurance Fund ("State Fund") and the California Department of Human Resources ("CalHR"), on its own behalf and on behalf of the legally uninsured Departments of the State of California ("Departments"). State Fund, CalHR, and Departments may be referred to herein individually as "Party" or collectively as "Parties".

### **1. MISSION**

- 1.1 This Agreement will enable the legally uninsured Departments of the State of California in partnership with State Fund and CalHR to provide all benefits to which an injured employee is lawfully entitled in a prompt, objective, impartial, courteous, and ethical manner.
- 1.2 This Agreement will support the goals of restoring each injured employee to a useful place in the community, while making the best use of taxpayer money. This will be accomplished by encouraging Departments to return an injured employee to work whenever feasible.
- 1.3 This Agreement will help protect the public interest by accomplishing the Services outlined through adherence to workers' compensation law; establishment and implementation of measurable performance standards for State Fund, Departments, and CALHR; the implementation of effective cost containment programs and the recognition by all Parties of their duty to utilize fiscal restraint in benefit delivery and the administration of this Agreement.

### **2. MEMORANDUM OF UNDERSTANDING**

- 2.1 State Fund will administer the claims for Departments pursuant to California Insurance Code Section 11871.
- 2.2 State Fund and CalHR will work together to develop guidelines for the administration of claims and the return to work of employees. These guidelines will govern the interactions between State Fund and Departments, define roles, and set minimum expectations for both State Fund and Departments.
- 2.3 State Fund will maintain staffing levels and internal programs to adequately administer benefits and defend Departments' interests in their workers' compensation claims. Departments shall fully fund the State Fund staff and programs dedicated to this Agreement. State Fund's insured claims and legal operations will serve as a model, but will not determine ultimate staffing needs in the unique environment of the Services provided through this Agreement. It is specifically agreed that the commitments made by State Fund under the Agreement are contingent upon Departments maintaining full funding for the costs incurred by State Fund to provide the Services enumerated in this Agreement.
- 2.4 State Fund, CalHR, and Departments agree that this is an Interagency Agreement to provide workers' compensation claims administration and legal representation services to all Departments that are covered by this Agreement. Specifically, it is not a workers' compensation insurance policy contract.
- 2.5 Service Fees and reimbursement of Expenditures will be in compliance with Sections 11774-11776 and 11871 of the California Insurance Code which specify the appropriate use of State Fund's assets and prohibit State Fund from using its assets to subsidize activities under this Agreement. This Agreement is specifically intended to be in compliance with the State of

California's "Full Cost Recovery Policy" contained in the State Administrative Manual (SAM) – Chapter 8752 and incorporated as part of this Agreement. Service Fees will be evaluated and adjusted annually to reflect the projected costs for each new fiscal year covered under this Agreement.

- 2.6 The Parties recognize that circumstances within the State government may impact funding and/or staffing for the Services under this Agreement. Should such circumstances arise, State Fund will provide CalHR with a written evaluation of the impact on the Services. If the ability of State Fund to meet the terms of the Agreement is negatively affected, the evaluation will specifically address the areas that will be affected. The Parties recognize the necessity of protecting and preserving the core functions of benefit delivery and legal defense of the economic exposures to the State of California, specifically the Departments. Under no circumstances shall this be construed as a basis for shifting the liability for benefit delivery costs, benefit costs, or penalties from the State of California (Departments) to State Fund.
- 2.7 Parties recognize that this Agreement has been established based on current workers' compensation Laws, and if the Laws substantially or materially change, the Parties agree to meet and review the Agreement to amend as needed. Any legislatively mandated programs that impact this Agreement will be incorporated by amendment, and the cost of implementation will be allocated proportionally to all participating Departments in accordance with Exhibit B.

### **3. DEFINITIONS; INTERPRETATION**

Unless otherwise defined in this Agreement, capitalized terms used herein have the meanings set forth in Schedule 1. Other capitalized terms used herein are defined where they are used and have the meanings there indicated. Those terms, acronyms and phrases utilized in the information technology industry, the insurance and financial industry, or other pertinent business context shall be interpreted in accordance with their generally understood meaning in such industry or business context.

### **4. INCORPORATION; ORDER OF PRECEDENCE**

- A Incorporation of Schedules, Exhibits, and Side Letters: All references to this Agreement shall include all Schedules, Exhibits, and Side Letters which are referenced in the Agreement.
- B In the event of a conflict or inconsistency between the terms in this Exhibit A and any other exhibit, schedule, or side letter, the terms of this Exhibit A shall govern unless the conflicting or inconsistent terms of the applicable schedule, exhibit, or side letter expressly states that it is intended to override this Exhibit A.

### **5. SIDE LETTER AGREEMENTS**

#### **5.1 Amendments**

The terms and conditions of this Agreement may be amended or modified by a "side letter" agreement. All side letters must be approved by CalHR.

#### **5.2 Special Services**

- A Departments may enter into a "side letter" agreement with State Fund to provide additional services not enumerated in the Agreement ("Special Services"). All costs for

Special Services must be specified in the side letter and paid for directly by the requesting Department.

- B CalHR may enter into a "side letter" agreement with State Fund to provide Special Services. Special Services requested by CalHR will be limited to those which impact more than one Department. Costs for Special Services requested by CalHR will be allocated proportionally to the participating Departments.

## **6. TERM, TERMINATION, AND RENEWAL**

### **6.1 Agreement Term**

The term of this Agreement (the "Term") shall begin on the Effective Date and shall expire at the end of June 30, 2019.

### **6.2 Annual Re-Opener**

The Agreement shall be re-opened annually for price adjustment and necessary amendments to reflect business needs and/or changes in Law.

### **6.3 Renewal**

The Parties agree to begin negotiations on a subsequent agreement or renewal of this Agreement no later than one (1) year prior to the expiration of this Agreement. The negotiations must be completed within six (6) months. This time frame may be extended by mutual agreement.

### **6.4 Termination**

The Agreement may be terminated for convenience by State Fund or CalHR by giving the other Party one (1) year prior written notice with agreement to facilitate a smooth transition. The termination notice shall be sent by certified mail to the last known address of the other Party.

### **6.5 Entering and Withdrawing by Individual Departments**

- A CalHR holds the unilateral right to permit a Department, not already a participant in this Agreement, to enter the Agreement. If a new Department seeks to participate under the Agreement, CalHR and State Fund will perform a risk assessment to assure that any Department entering this Agreement understands and is able to meet its fiscal responsibility under this Agreement. An appropriate Service Fee and an initial Working Capital Account will be negotiated between State Fund and CalHR which will apply to the new Department.
- B CalHR will, upon any Department's breach of any of its financial obligations under this Agreement, provide that Department sixty (60) calendar days notice of automatic withdrawal from the Agreement, specifying the reason for the automatic withdrawal. The Department shall have thirty (30) calendar days from the notice to cure the breach or demonstrate a substantial effort to cure the breach. If the Department does not correct the breach within the second thirty (30) day period, the Department will be automatically withdrawn from the Agreement. The Department will have the option to apply for a policy of insurance with State Fund.

- C A Department may make a request to CalHR to withdraw from the Agreement for the purpose of self-administration of its workers' compensation claims. Such a request must be submitted in writing to CalHR and State Fund one (1) year in advance of the proposed implementation date, and include a detailed description of the Department's implementation plan. A Department authorized to self-administer its own claims must take over adjustment of its entire caseload from State Fund.
- D A Department may withdraw from the Agreement for the purpose of obtaining a policy of insurance from State Fund. If the Department obtains a policy for insurance from State Fund that does not cover claims (whether currently pending or not) which are otherwise subject to administration by State Fund under the Agreement, then the Department shall elect to either self-administer such claims or to remain a Party to this Agreement for continued administration of such claims by State Fund.
- E If a Department withdraws from the Agreement, that Department shall be responsible for all Service Fees and Expenditures through the effective date of its withdrawal and all costs related to the withdrawal, including transfer of claims records and related information.

## 6.6 Return of Records

### A General:

(1) Upon termination, expiration, or withdrawal, all Claim Files, including litigation files pertaining to the relevant Department(s) ("Records") will be returned to CalHR or CalHR's designee, or destroyed.

(2) Records will be returned or destroyed as soon as practical on a mutually agreeable timeline.

(3) State Fund shall have no further obligation to furnish Services to the relevant Department(s) upon return or destruction of Records.

(4) Notwithstanding any provision to the contrary, State Fund retains the right to preserve copies of any materials, including Records, it deems necessary for business, legal, or regulatory purposes.

B Costs: All costs incurred in the return or destruction of Records for the relevant Department(s) shall be paid by CalHR and/or Departments in accordance with Exhibit B.

C Method of Transfer or Destruction: The Records will be returned or destroyed via mutually agreeable methods.

## 7. SERVICES

The following sections cover the Services to be provided by State Fund, and the responsibilities of CalHR and Departments that will enable State Fund to provide Services of the level and quality the Parties desire.

### 7.1 Claims Management Services

#### A In General:



- (1) State Fund shall adjust Departments' workers' compensation claim files in accordance with the California Labor Code, any other applicable Laws, and State Fund's internal guidelines.
- (2) State Fund shall make the workers' compensation liability decisions in regards to claims adjusted under this Agreement. This authority shall not extend to California Labor Code Section 132a issues, Serious and Willful misconduct, or liability of the Department for civil issues that may arise from the same facts as the workers' compensation claim.
- (3) State Fund shall maintain electronic and paper files according to State Fund internal guidelines.
- (4) State Fund shall establish a new claim within one (1) business day of receipt of employer's first report of injury submitted electronically using the electronic first report of injury system provided by State Fund.
- (5) When a Department has identified a new claim as disputed with respect to industrial causation, State Fund will contact the RTWC to discuss the claim at case make up. The Adjuster or Assistant Claims Manager (ACM) will contact the RTWC with an explanation if the decision is made to accept the claim.
- (6) State Fund shall establish a case summary or case plan on all open, un-finalized claims.
- (7) State Fund will provide the RTWC with copies of all benefit notices sent to the injured employee or their representative.
- (8) All statutory forms necessary for the reporting of claims and administering the State's Return-to-Work Program will be available electronically.
- (9) State Fund shall provide courtesy notice to Departments whenever outstanding liens on an individual case total more than \$10,000. State Fund will notify the Department within five days whenever an individual lien settles for more than \$10,000.
- (10) State Fund Adjusters shall be available to prepare a claims summary and meet with a Department's representative on a case within a reasonable time period. The location of the meeting will be mutually agreed upon.
- (11) State Fund will provide staff contact information (e-mail, phone, and fax) and caseload assignment. When there is a change in Adjuster caseload assignment, State Fund shall notify the affected Department of the change and provide the new staff name(s) and contact information as soon as reasonably possibly, but no later than ten (10) days after the effective date of the change. This does not apply when cases are temporarily reassigned.
- (12) State Fund shall provide CalHR with the results of any audits performed on claims handling covered by this Agreement that have been completed by the Department of Industrial Relations (DIR), Bureau of State Audits, State Controller's Office (SCO) or Department of Finance (DOF).
- (13) Individual Adjuster caseload size shall be determined by State Fund management, and reported to CalHR on a quarterly basis.

- (14) State Fund will ensure that their claims personnel will be trained and have legally required claims certifications.
- (15) State Fund Adjusters will refer any claim(s) where fraudulent activity is suspected to State Fund's Special Investigations Unit (SIU). State Fund's SIU is responsible for the referral of cases to legal authorities, when appropriate.
- (16) Departments will have electronic access to State Fund provided safety materials.
- (17) Direct safety services, industrial hygiene services, and ergonomic evaluations may be available for an additional fee.
- (18) Departments shall establish, implement, and maintain uniform written policies for injury prevention, reporting of injuries when they occur, maintaining contact with injured employees, and returning injured employees to work per SAM Sections 2580 through 2581.2.
- (19) Departments shall provide to State Fund all pertinent information relevant to the adjustment of a workers' compensation claim promptly. This information may include relevant information regarding: California Public Employees' Retirement System, personnel files, adverse actions, and performance issues.
- (20) Departments shall comply with the applicable sections of the California Government Code, California Labor Code, California Code of Regulations, SAM and Executive Order D-48-85, regarding returning employees to work and shall actively seek employment opportunities for injured employees who have become disabled.
- (21) Departments shall ensure that the "Employer's Report of Occupational Injury or Illness" is completed and submitted to State Fund no later than the statutory timeframe from the employer's date of knowledge of injury, illness, or death. Departments are responsible for notifying the California Division of Occupational Safety and Health as required by law.
- (22) Departments shall ensure that the injured employee is provided with an "Employee's Claim for Workers' Compensation Benefits" form (SCIF e3301) within one (1) working day of the employer receiving notice of injury, illness, or death. The completed SCIF e3301 shall be routed to State Fund within one (1) working day of receipt from the injured employee or his/her representative.
- (23) The RTWC may schedule strategy meetings with State Fund once per quarter.
- (24) The RTWC may contact State Fund to review their claim files. A review of the Department's file(s) may also be performed by a CalHR representative. The timing and location of the review will be mutually agreed upon.
- (25) Departments shall notify State Fund and CalHR of the name(s) of the RTWC(s) and their area of responsibility. Each Department shall have at least one RTWC who is the key contact with State Fund on claim files related to the Department. When there is a change in the RTWC assignment, the Department shall notify State Fund of the name and contact information for the RTWC assigned.
- (26) At the request of the State Fund Adjuster or attorney, the RTWC shall attend case planning meetings, mandatory settlement conferences (MSC), and trials. If the

RTWC cannot attend a case planning meeting out of town, alternatives to travel will be considered, such as conference calls or teleconferencing.

(27) Departments are responsible for conveying information to State Fund regarding return to work, including but not limited to when an injured worker returns to work or the Department offers to return the injured worker to work, so that appropriate benefits can be provided.

(28) Departments shall ensure that their RTWCs are properly trained in the areas of workers' compensation, disability management, etc. The RTWC shall take the Return-to-Work Training class given by CalHR, and/or an accredited or CalHR approved equivalent training program, within twelve (12) months of their appointment. Each year thereafter, the RTWCs shall take at least sixteen (16) hours of additional training (this can include the quarterly CalHR forums or other seminars).

(29) Departments shall report any suspected fraudulent activity to State Fund.

(30) CalHR will notify Departments of any changes to this Agreement.

(31) CalHR, State Fund, and Departments shall attend monthly management level meetings. The purpose of these meetings is to facilitate greater performance and accountability under this Agreement. At these meetings the Parties will review performance results, work to resolve issues presented by this Agreement and the claims administration process, keep the Parties informed about the program and any changes thereto, and foster mutual accountability through improved communication. CalHR will schedule and facilitate the monthly management level meetings.

(32) CalHR, in cooperation with State Fund and Departments, shall provide ongoing training programs for all RTWCs. Additional classes may be set up outside this Agreement and separate fees may be charged for attendance of these classes.

(33) State Fund will provide CalHR with reports and information necessary for the administration of the State's workers' compensation program. In addition, State Fund and CalHR will work to improve the delivery of information to Departments with the intent of improving outcomes in the State's workers' compensation program.

#### B Investigations:

(1) State Fund has the authority to assign an investigator to complete an investigation on a claim, which may be performed by a Subcontractor.

(2) State Fund or the vendor shall notify the RTWC when an investigator is assigned. Notification shall not delay commencement of the investigation.

(3) The RTWC and other Department Personnel shall cooperate with State Fund's claims and/or fraud investigations.

(4) The RTWC or appropriate Department Personnel may review an investigative report with the approval of State Fund's Legal Department. The investigation shall be reviewed at a State Fund office. The RTWC may not make any copies of the document. State Fund may refuse the review of a report if State Fund believes there is a conflict of interest in a particular case.

(5) The RTWC may request State Fund assign an investigator to complete an investigation on a claim. In the event that State Fund determines there exists a compelling reason to deny ordering an investigation, State Fund will provide discussion and consultation to the requesting Department outlining the merits of the determination. The final decision regarding whether or not to order an investigation rests with State Fund.

C Industrial Disability Leave; Labor Code Section 4800; Labor Code Section 4800.5:

(1) State Fund shall notify Departments of periods of disability for Industrial Disability Leave (IDL), LC 4800, and LC 4800.5 as appropriate, including the three (3) day waiting period. State Fund will provide temporary disability benefit payments as appropriate at the end of IDL, LC 4800, or LC 4800.5 upon notice of the ending date from the Department.

(2) Departments will determine if the injured employee is eligible for IDL, Enhanced Industrial Disability Leave (EIDL) or LC 4800/4800.5 time in lieu of temporary disability. Departments will ensure timely payment of these benefits upon receipt of notification of periods of disability by State Fund.

(3) Departments are responsible for tracking the eligible time period, including the waiting period.

D Medical Management:

(1) State Fund will utilize available medical networks to ensure maximum medical cost containment.

(2) State Fund will provide medical reports to a RTWC unless prohibited by State and/or Federal law or withheld with reason by State Fund. It is the Department's responsibility to maintain the confidentiality of all supplied reports.

(3) State Fund will ensure that there is a Medical Provider Network (MPN) available for Departments.

(4) Departments will utilize the MPN provided and refer injured workers to an MPN doctor unless the injured worker has a pre-designation form on file prior to the date of injury.

E Finalization:

(1) State Fund will review and evaluate claims for settlement, complete a "Proposed Finalization for State Cases" form, and submit the form to the RTWC with supporting documentation as requested by the Department. State Fund shall not enter into a Stipulation with Request for Award (Stip) or Compromise and Release (C&R) on a claim without obtaining prior approval from the RTWC or other appropriate Department Personnel, unless settlement is within the State Fund authority established under Section E(2) or Section E(3) below.

(2) Individual Departments may establish settlement authority for State Fund by mutual agreement with State Fund. Any such agreements must be approved by CalHR prior to taking affect.

(3) CalHR may elect to establish settlement authority for State Fund by providing the specific parameters to State Fund in writing. State Fund will still be required to provide the “Proposed Finalization for State Cases” form with supporting documentation to the RTWC, but any settlement that falls within the settlement authority established by CalHR would not require prior approval from the RTWC or other Department Personnel.

(4) Departments will provide an appropriate reply in writing to State Fund’s request for authority.

(5) If authority is not granted, then the RTWC or another Department Personnel who has the authority to authorize settlement must personally appear at the MSC or Trial. Failure to appear shall constitute authorization to stipulate to the Disability Evaluation Unit (DEU) rating.

F Electronic Access:

(1) CalHR’s Workers’ Compensation Program shall have twenty four (24) hour Internet access to all Departments’ claim information.

(2) Upon request, Departments shall have twenty four (24) hour Internet access to their own Department’s claim(s) information. The information shall include: electronic reporting, claims summary or case plan, payments and estimates, claims and finalization status, and assigned Adjuster contact.

(3) Electronic access shall allow Departments to customize reports or run summaries, which include, but are not limited to the following:

(a) Loss Analysis report

(b) Inventory report – Opened/Closed, Disability/Non-disability or Litigated

(c) Costs by fiscal year

(4) Upon request, Departments may receive monthly and/or bi-monthly billing data files (encrypted in transit and storage) via the Internet.

(5) State Fund will establish a security process that Departments will adhere to in order to receive electronic access.

## 7.2 Litigation Services

A Workers’ Compensation Defense:

(1) State Fund Legal will provide support to State Fund claims calendar year goals in all key performance areas and will represent Departments in all actions before the California Workers’ Compensation Appeals Board, and the civil courts upon appeal or review of a WCAB decision/order, in accordance with State Fund internal guidelines.

(2) State Fund will represent Departments in California Labor Code Section 132a (discrimination actions), California Labor Code Sections 4550-4557 (serious and willful misconduct claims), litigation under California Labor Code Section 5813 (Workers’ Compensation Appeals Board sanctions), applicable Board Rules, and litigation in which an actual conflict of interest exists unless the Department provides written notice

to State Fund of the Department's election of legal representation of their own choosing, at the Department's expense.

(3) State Fund will represent Departments in litigated out-of-state cases, unless the Department provides written notice to State Fund of the Department's election of legal representation of their own choosing, at the Department's expense. In the event that State Fund does represent a Department in a claim that arises in another state, State Fund, at the Department's expense, may do all things necessary for the adjustment, litigation and disposition of out-of-state claims for the injured employee of a Department under this Agreement including, but not limited to, the selection of Subcontractors qualified to litigate, adjust and dispose of claims in the other jurisdiction.

(4) Individual attorney caseload size shall be determined by State Fund management.

(5) Departments may contact State Fund and schedule a time to review their legal files. A review of the Department's legal files must be done by either the Department's staff counsel or an attorney hired by the Department and acting as an agent for the Department. The timing and location of the review will be mutually agreed upon.

(6) State Fund attorneys will work with Departments' attorneys and litigation staff in Departments' best interests when issues involve litigation in multiple forums (e.g., Workers' Compensation Appeals Board, Municipal, Superior, or Federal Court). Unless one of the exceptions above applies, control of workers' compensation litigation will remain under State Fund's Legal Department. State Fund attorneys will cooperate with the Department attorneys and litigation staff and receive cooperation from the Department attorneys and litigation staff. Cooperation will be consistent with sound legal practices in representing Departments' best interests.

(7) State Fund shall provide a deposition transcript to the RTWC, upon request, when appropriate under the Law.

(8) Departments shall notice State Fund of the Department's address of record. State Fund will notice the Workers' Compensation Appeals Board of the name and the address of record.

(9) State Fund shall provide Departments with copies of all reports of hearings and petitions.

(10) State Fund legal staff shall be available to meet with a Department's representative on a case and provide a report on the matter within a reasonable time period. The location of the meeting will be mutually agreed upon.

(11) State Fund's Appellate Unit will review all cases in which there is a request for a Writ of Review. The Appellate Unit will determine whether the case should be appealed further. This determination will be made within twenty-eight (28) calendar days of State Fund's receipt of the decision after reconsideration.

(12) The Department will be notified at the time a case is referred to State Fund's Appellate Unit. The Department may submit written comments concerning the case to State Fund's Appellate Unit by delivering those comments to State Fund's Appellate Unit within ten (10) working days of receipt of the notice.

(13) The Appellate Unit will issue its determination by the thirtieth (30<sup>th</sup>) calendar day from State Fund's receipt of the decision after reconsideration. The RTWC may discuss the Appellate Unit's determination with the local State Fund attorney or supervising attorney/assistant chief counsel if he/she disagrees with the Appellate Unit's determination. CalHR and the Department shall be copied on all cases in which a Writ of Mandate or Writ of Review is filed.

(14) State Fund will notify the RTWC ten (10) working days in advance of the date of a hearing unless less notice is given by the Workers' Compensation Appeals Board. When State Fund receives less than ten (10) working days' notice, the attorney will notify the RTWC within one (1) working day of State Fund's attorney's notice.

(15) State Fund shall notify the RTWC that a hearing date has been rescheduled or canceled.

(16) The Department shall identify which individual is authorized to represent the Department with regard to any proceedings before the Workers' Compensation Appeals Board. This authority must include the ability to negotiate settlements. Departments shall have a person available with settlement authority for all conferences and hearings. The authority must meet the requirements of the California Labor Code and Workers' Compensation Appeals Board Rules. The person designated by the Department need not be present at the conference or hearing if the State Fund attorney can obtain immediate authority by telephone.

(17) Departments are responsible for the preservation of all evidence in the Department's possession. Departments should have written procedures on securing such evidence.

(18) Departments are responsible for making witnesses and other relevant parties available for interviews and testimony when requested to do so by State Fund.

#### B Subrogation:

(1) State Fund Legal will provide support to the Claims Subrogation Unit.

(2) State Fund is authorized to perform all acts on behalf of Departments set forth in California Insurance Code § 11871. State Fund shall notify the Department when it decides to pursue third party subrogation recovery. State Fund will provide the Department with notice of subrogation closure.

(3) Nothing in this Section shall compel State Fund to pursue any action against a third person, on behalf of a Department, if in the opinion of State Fund such action is not cost effective or is not in the best interest of the State of California as an employer.

(4) In the event that State Fund does represent a Department in a claim that arises in another state, State Fund, at the Department's expense, may do all things necessary for the adjustment, litigation and disposition of out-of-state claims for the injured employee of a Department including, but not limited to, the selection of Subcontractors qualified to litigate, adjust and dispose of claims in the other jurisdiction.

(5) No Department shall subrogate against another State agency, department, or facility.

(6) Departments are responsible for the preservation of all evidence in the Department's possession. Departments should have written procedures on securing such evidence.

(7) Departments are responsible for making witnesses and other relevant parties available for interviews and testimony when requested to do so by State Fund.

(8) CalHR shall work with State Fund to ensure that subrogation activities are pursued in the most appropriate situations and not in instances when the potential benefit to one Department is outweighed by the potential negative impact to another Department, or the State of California in general.

### 7.3 Medicare Quarterly Reporting Services

#### A State Fund Responsibilities:

(1) State Fund will act as the reporting agent on behalf of CalHR and Departments 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.

(2) In the event that (a) any provision of MMSEA or other applicable Laws governing MQR 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, then notwithstanding any contrary provision hereof and in addition to its other rights, State Fund shall have the unilateral right and option to terminate MQR Services by at least twelve (12) months prior written notice to CalHR (which notice shall be deemed received on its own behalf and on behalf of all Departments).

(3) 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 CalHR or any Department.

#### B CalHR and Department Responsibilities:

(1) CalHR is and shall be the sole RRE for itself and Departments 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.

(2) CalHR (on its own behalf and on behalf of Departments) shall designate State Fund as the reporting agent for MQR reporting purposes under the MMSEA.



(3) CalHR (on its own behalf and on behalf of 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) CalHR and Departments shall fully and promptly cooperate with State Fund Personnel 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.

## **8. SERVICE LEVELS & QUALITY ASSURANCE**

A Both State Fund and Departments impact the results of the workers' compensation program. Partnership and accountability by all Parties are essential to success. State Fund, CalHR, and Departments will actively work to reduce and limit mistakes and errors by early identification of cases with complex or sensitive issues, and as reasonable, reporting of case problems as they arise. While State Fund does not accept economic liability for errors that may occur in the course of adjusting and legal handling of cases under this Agreement, accountability for purposes of recognizing mistakes and amending procedures so as to reasonably prevent repetition and limit expense to Departments is a recognized goal of this Agreement. Annually, State Fund will identify calendar year goals in the following key performance areas:

- (1) Benefit Delivery
- (2) New Case Make Up
- (3) Inventory Control
- (4) Return to Work
- (5) Communications

B State Fund will share key outcome results in quarterly reviews with CalHR and Departments. The reviews will include discussion, strategizing, and action planning focused on the key outcomes, which may include:

- (1) Speed of reporting claims and first contact with injured worker
- (2) Inventory closure rates and speed
- (3) Length of total disability
- (4) Medical management
- (5) Finalization rates and speed
- (6) Customer satisfaction (injured worker)
- (7) Partner satisfaction (Departments and State Fund)

C In July, 2015, State Fund and CalHR will formalize a list of key performance metrics to review quarterly as part of the monthly management level meetings. Key performance metrics

should include practices that result in enhanced and/or more cost effective methods of administering the program.

D Customer (injured worker) and partner (Departments) satisfaction surveys may be developed by State Fund and/or CalHR.

## 9. PROTECTION OF CONFIDENTIAL AND PRIVATE INFORMATION

### 9.1 Minimum Security Requirements

- A General Computing Environment: CalHR and Departments shall comply with all of State Fund's requirements in relation to the security of the State Fund Facilities, including the State Fund computing environment. CalHR and Department Personnel shall execute all documents generally required by State Fund for access to State Fund's computing environment or other restricted access areas. CalHR and Departments agree that any and all security measures may be changed from time-to-time, and further agree to abide by the then-current security measures, as they are provided to CalHR.
- B System Access: CalHR and Departments represent and warrant to State Fund that they shall not alter any hardware or software security residing on State Fund's hardware or systems, including allowing non-read only access. CalHR and Departments further represent and warrant to State Fund that they shall not allow unauthorized traffic to pass into State Fund's networks. If CalHR or Departments do allow unauthorized traffic to pass into State Fund's networks, State Fund may immediately terminate such access in addition to any other remedies that State Fund may have under this Agreement.
- C Network Connections: CalHR and Departments agree to allow State Fund to perform network assessments of any CalHR or Department connections to State Fund's networks on a schedule reasonably required by State Fund. In the event a network connection is created between the Parties, Departments agree to maintain an alert status regarding all vulnerabilities and security patches or corrective actions by subscribing to an industry-recognized service, such as CERT or CIAC. CalHR understands that should a State Fund assessment reveal inappropriate or inadequate security based on State Fund's requirements for security, State Fund may, in addition to other remedies it may have under this Agreement, remove CalHR and Department access to the State Fund network until CalHR and Departments satisfactorily comply with the applicable security requirements.
- D Electronic Authentication:
  - (1) Shall align with the standards set out by the national Institute of Standards and Technology (SP 800-63-1).
  - (2) Shall occur both at registration/issuance of access rights and at the system user's attempted access.
  - (3) Shall utilize multifactor (two-level/token minimum) user authentication.
- E Encryption: Confidential and Personal Information shall be encrypted in transit and at rest.

## 9.2 Confidential Information

- A General: CalHR, Departments, and State Fund each acknowledge that they may be furnished with, receive, or otherwise have access to information of or concerning the other Party that such Party considers to be confidential, a trade secret, or otherwise restricted. As used in this Agreement, “Confidential Information” shall mean all information, in any form, furnished or made available directly or indirectly by one Party to the other that is marked confidential, restricted, or with a similar designation. In the case of State Fund, Confidential Information also shall include, whether or not designated “Confidential Information,” (a) State Fund’s independent intellectual property (IP); (b) developed IP; (c) the specifications, designs, documents, correspondence, software, documentation, data and other materials and work products produced in the course of performing the Services; (d) all information concerning the operations, affairs and businesses of State Fund, the financial affairs of State Fund, and the relations of State Fund with its customers, employees and suppliers (including customer lists, customer information, account information and consumer markets); (e) software provided to, by, or through State Fund; (f) State Fund data; and (g) other information or data stored on magnetic media or otherwise, or communicated orally, and obtained, received, transmitted, processed, stored, archived, or maintained pursuant to this Agreement (collectively, the “State Fund Confidential Information”).
- B Responsibilities:
- (1) CalHR, Departments, and State Fund shall each (a) hold Confidential Information received from the other Party in confidence and, except as by the express, prior, written approval of the disclosing Party in each instance, which approval may be withheld or granted by the disclosing Party in its sole discretion, not provide, disseminate, sell, assign, lease, transfer or otherwise dispose of, disclose to or make available any Confidential Information of the disclosing Party to any third party, and (b) use at least the same degree of care as it employs to avoid unauthorized disclosure of its own information, but in any event no less than commercially reasonable efforts, to prevent disclosing to third parties the Confidential Information of the other Party.
  - (2) CalHR and Departments may disclose State Fund Confidential Information to its Personnel to the extent necessary for performance of the Agreement, and State Fund may disclose such information to its Personnel to the extent necessary for performance of this Agreement.
  - (3) A Party may disclose Confidential Information of the other Party as required to satisfy any legal requirement of a competent government body provided that, immediately upon receiving any such request and to the extent that it may legally do so, such Party advises the other Party of the request and prior to making such disclosure in order that the other Party may interpose an objection to such disclosure, take action to assure confidential handling of the Confidential Information, or take such other action as it deems appropriate to protect the Confidential Information.
  - (4) CalHR, Departments, and State Fund shall use Confidential Information only for the purpose of meeting its obligations or exercising its rights under this Agreement, and shall not, without limitation, use any Confidential Information as otherwise prohibited by this Agreement.
  - (5) As requested by CalHR, Departments, or State Fund during the Term and upon expiration of, termination of, or withdrawal from this Agreement and completion of

Party's obligations under this Agreement shall return or destroy, as CalHR, Departments, or State Fund may direct, all material in any medium that contains, refers to, or relates to Confidential Information, and retain no copies.

(6) CalHR, Departments, and State Fund shall cause their Personnel to comply with these confidentiality provisions.

(7) In the event of any possession, use, disclosure or loss of, or inability to account for, any Confidential Information of the disclosing Party other than as permitted by this Agreement, the receiving Party promptly shall (a) notify the disclosing Party upon becoming aware thereof; (b) promptly provide to the disclosing Party all known details and take such actions as may be necessary or reasonably requested by the disclosing Party to pursue its legal rights and remedies and to minimize the possession, use, disclosure or loss; and (c) cooperate in all reasonable respects with the disclosing Party to minimize the violation and any damage resulting there from.

(8) If CalHR or Departments are notified, or are otherwise aware, that particular State Fund Confidential Information may be within State Fund attorney-client or work-product privileges of State Fund, then regardless of any applicable exclusions, (a) shall not disclose such State Fund Confidential Information or take any other action that would result in waiver of such privileges and (b) shall instruct all Personnel who may have access to such communications to maintain privileged material as strictly confidential and otherwise protect State Fund privileges. Communications to and from State Fund's Legal Department shall be deemed to contain privileged material unless State Fund otherwise states.

(9) The Parties' obligations respecting Confidential Information shall survive any expiration of, withdrawal from, or termination of this Agreement.

C No Implied Rights: Each Party's Confidential Information shall remain the property of that Party. Nothing contained in this article shall be construed as obligating a Party to disclose its Confidential Information to the other Party, or as granting to or conferring on a Party, expressly or impliedly, any rights or license to the Confidential Information of the other Party, and any such obligation or grant shall only be as expressly provided by other provisions of this Agreement.

### **9.3 Personal Information and Privacy Requirements**

A State Fund, CalHR, and Department Responsibilities:

(1) State Fund, CalHR, and Departments shall not use or disclose any Personal Information it receives for any purpose other than carrying out the terms of this Agreement or as required by Law.

(2) State Fund, CalHR, and Departments, shall implement and maintain safeguards for the Personal Information it receives consistent with the requirements of Section 9.1 and all applicable Laws, including Privacy Laws, in order to (a) ensure the security and confidentiality of the Personal Information; (b) protect against anticipated threats or hazards to the security or integrity of such Personal Information; (c) protect against unauthorized access to or disclosure or use of such Personal Information; and (d) protect against accidental or unlawful destruction or accidental loss or alteration of such Personal Information.

(3) State Fund, CalHR, and Departments, shall (a) limit access to and possession of Personal Information only to those Personnel whose responsibilities under this Agreement reasonably require such access or possession; and (b) take appropriate action to cause such Personnel to be advised of the terms of this Section and cause Personnel to attend training with respect to their handling of Personal Information.

B Personal Information Security Occurrences:

(1) In the event of any (a) security incident or security threat involving any Personal Information, (b) breach of any Privacy Law or other applicable Law regarding Personal Information, (c) complaints from any individuals, organizations, or regulatory authorities with respect to the breach or alleged breach of any Privacy Law or other applicable Law regarding Personal Information, (d) circumvention of the safeguards required pursuant to this Section, or (e) reasonable expectation that an identified system deficiency could result in any of the foregoing (each, a "Personal Information Security Occurrence"), then in addition to any other applicable requirements of this article, the Party suspecting or suffering such Personal Information Security Occurrence shall within twenty-four (24) hours after learning of such Personal Information Security Occurrence, notify each affected Party (i.e. State Fund, CalHR, and the affected Department must all be notified) of the Personal Information Security Occurrence and provide each affected Party with all known details relating to such Personal Information Security Occurrence. Notices regarding Personal Information Security Occurrences must be made by telephone and via email to the following Party contacts:

(a) CalHR:

California Department of Human Resources  
Manager, Workers' Compensation Unit  
1515 S Street, North Building, Suite 400  
Sacramento, CA 95811  
(916) 445-9792  
Email: workcomp@calhr.ca.gov

(b) State Fund:

State Fund Privacy Office  
1010 Vaquero Circle, Building A  
Vacaville, CA 95688  
(707) 624-4586  
Email: Privacyoffice@scif.com

(c) Affected Department's Program Manager.

(2) The Party responsible for the Personal Information Security Occurrence shall do the following:

(a) promptly investigate and perform a detailed root cause analysis to determine the scope of the systems and data that have been compromised (or potentially compromised) and the cause of such Personal Information Security Occurrence, and promptly furnish the details of such investigation and results of such root cause analysis to the affected Parties;

(b) take any steps necessary to preserve critical evidence regarding the Personal Information Security Occurrence;

(c) provide the affected Parties with a remediation plan (acceptable to the affected Parties) to address the Personal Information Security Occurrence and prevent the recurrence of such Personal Information Security Occurrence;

(d) assist and cooperate fully with the investigation of the Personal Information Security Occurrence, by (i) providing the affected Parties with access to any Personnel to the extent such Personnel have knowledge of any activities giving rise to or information related to the Personal Information Security Occurrence; (ii) cooperate with affected Parties in any litigation or other formal action relating to the Personal Information Security Occurrence; and (iii) cooperate with law enforcement or regulatory officials (as requested by the affected Parties) in connection with any investigations or government actions relating to such Personal Information Security Occurrence.

(3) The Party responsible for the Personal Information Security Occurrence shall be responsible for sending required notifications and providing any remediation.

(4) CalHR and affected Departments shall be responsible for all costs associated with the Personal Information Security Occurrence, including:

(a) fines, penalties, interest, and other amounts required to be paid under any Law or by any court or governmental or regulatory authority, or incurred to satisfy an order or directive of a court or governmental or regulatory authority;

(b) expenses, liabilities, assessments and all other costs (including reasonable attorney's fees and disbursements) incurred;

(c) expenses incurred in responding to a Personal Information Security Occurrence, including expenses for forensic experts and consultants typically engaged in data breach responses; and

(d) costs of preparation and mailing of notification letters, credit monitoring services, toll-free information services for affected individuals, identity theft insurance, reimbursement for credit freezes, fraud resolution services, identity restoration services, and any similar services that corporate entities that maintain or store Personal Information make available to impacted individuals in the event of a breach of such information.

(5) In the event that State Fund incurs any costs as a result of a Personal Information Security Occurrence, Departments shall be billed in accordance with Exhibit B through the Service Fees.

## 10. AUDITS

- A General: This Agreement shall be subject to examination and audit pursuant to provisions in SAM Chapter 20000. For audits performed on behalf of an individual Department or group of Departments, that Department or group of Departments will be responsible for funding the audit. All audits must be authorized and coordinated by CalHR.

- B Determining direct and indirect costs: CalHR or State Fund may request an examination by the SCO of State Fund's costs incurred in providing Services under this Agreement. These costs shall include both direct and indirect costs as defined in the SAM (Section 8752). Once a request has been made and funding secured, CalHR and State Fund shall jointly arrange for the examination by the SCO.
- C The parties agree that the California Department of Finance may request that the California Department of Technology (CDT) conduct a one-time evaluation of those portions of State Fund's information technology project portfolio and project-oversight processes that are related to this Agreement.

The parties further agree that before the evaluation occurs they shall meet and confer to agree on the scope of the evaluation, the procedures, and the processes to which parties will adhere, and to ensure that State Fund records that are trade secrets or otherwise not subject to disclosure pursuant to the California Public Records Act ("Restricted Information") do not become subject to disclosure pursuant to that Act as the result of the evaluation. The evaluation shall be for the purpose of determining the appropriateness of all direct and indirect information technology costs associated with this Agreement. State Fund shall have the right to review any reports prior to their publication and redact any materials and information that are exempt from public review pursuant to the exemptions found in the California Public Records Act and associated case law. Any Restricted Information provided to CalHR or CDT for the purpose of the evaluation shall be treated as confidential information. Any Restricted Information State Fund provides to CDT or CalHR for the purpose of the evaluation must be returned or destroyed when the evaluation is concluded. Access to Restricted Information shall be limited to those individuals with a need to know the contents of the Restricted Information for the purpose of the evaluation. Under no circumstances shall CDT or CalHR produce any Restricted Information pursuant to a California Public Records Act request, unless legally required to release such information. If CDT or CalHR is required by law or legal process to disclose any Restricted Information, State Fund shall be given prior written notice of the disclosure so that it may, in its sole discretion, seek to block or minimize the disclosure. CalHR and the Departments shall be responsible for all billings incurred from the CDT through the operation of this provision. The CDT shall not bill in excess of \$10,000 for the evaluation conducted pursuant to this provision.

## **11. LIMITATION OF LIABILITY AND INDEMNIFICATION**

### **11.1 Limitation of Liability**

Errors and Omissions: State Fund shall not be held liable for any errors and omissions in the performance of this Agreement. The Parties understand that these are costs of doing business for the State which is legally uninsured.

### **11.2 Indemnification**

- A To the fullest extent not prohibited by applicable Law, and notwithstanding any contrary provision of this Agreement, CalHR and Departments (collectively "Indemnitor") agree to fully indemnify, hold harmless and defend (collectively "Indemnification" or "Indemnify") State Fund and its Personnel, 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, "Claim") arising out of, relating to, or in connection with the Services of

this Agreement, whether or not any Claim arises or results from the negligence of State Fund or any State Fund Personnel.

- B Claims, for purposes hereof shall include, but are not limited to, Claims against State Fund by an indemnified Subcontractor to the extent (a) State Fund is contractually or legally obligated to indemnify the indemnified Subcontractor against such Claims, and (b) such Claims arise out of, relate to, or are in connection with any of the Services.
- C State Fund 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 CalHR shall be deemed received on its own behalf and on behalf of all relevant Departments as Indemnitor. In the event that any third party 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 State Fund Personnel shall have the right to fully participate with its own counsel at its own expense; (b) State Fund and its Personnel 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 State Fund and all relevant State Fund Personnel, or (ii) does not materially and adversely affect State Fund or any State Fund Personnel not being fully released and discharged there under.
- D To facilitate the payment of any Claim for Indemnification hereunder Departments shall be billed in accordance with Exhibit B either as an Expenditure or through the Service Fees.
- E For the avoidance of doubt, the foregoing obligations to Indemnify, hold harmless and defend any Claims against State Fund hereunder (a) shall survive any termination of, expiration of, or withdrawal from this Agreement and (b) are in addition to and shall not affect any other obligations or undertakings of CalHR or the relevant Departments under this Agreement or any other agreement between or among the Parties or their respective affiliates.

## 12. DISPUTE RESOLUTION

It is the intent of State Fund and CalHR that disputes be resolved at the lowest possible level. Most issues should be resolved by the State Fund Adjuster and the RTWC. In the event that such resolution can not be achieved informally between the Parties, the following process will be used when a dispute arises from and is limited to the terms and conditions of this Agreement.

### 12.1 Department Complaint Process

- A First Level: Regardless of the nature of the complaint, the Department will bring the complaint to the attention of the ACM and provide the ACM with any available documentation necessary to address the complaint. Either Party may request a meeting to discuss the issue.
- B Second Level: If the Parties are unable to resolve the dispute at the first level of review, then the issue shall be elevated to the Claims Manager in the State Fund office. The



Workers' Compensation Manager at CalHR, the affected Department's Director, and the State Fund's State Contract Services' Claims Operations Manager shall be copied on all disputes submitted at this level.

- C Third Level: If no resolution is achieved at the second level of review, the issue will be elevated to State Fund's State Contract Services Manager, the Workers' Compensation Manager at CalHR, and the Department Director for resolution.

## **12.2 State Fund Complaint Process**

- A First Level: Regardless of the nature of the complaint, the ACM will bring the complaint to the attention of the RTWC's supervisor and provide the supervisor with any available documentation necessary to address the complaint. Either Party may request a meeting to discuss the issue.
- B Second Level: If the Parties are unable to resolve the dispute at the first level of review, then the Claims Manager will bring the complaint to the attention of the appropriate management level within the Department. The Workers' Compensation Manager at CalHR, the affected Department's Director, and State Fund's State Contract Services Claims Operations Manger shall be copied on all disputes submitted at this level.
- C Third Level: If no resolution is achieved at the second level of review, the issue will be elevated to the affected Department's Director, the Workers' Compensation Manager at CalHR, and State Fund's State Contract Services Manager for resolution.

## **12.3 Failure to Comply with Request for Information**

- A In the event that a Department refuses to comply with or fails to respond to a State Fund second request for information deemed by State Fund to be material to an objective determination of acceptance or denial of liability, State Fund will notify CalHR of the Department's non-compliance with the request, provided this shall not apply where the Department provides State Fund with documentation that the information is being withheld as part of a privileged, criminal law enforcement investigation or is otherwise privileged by California law. Such documentation shall be available for CalHR review upon request.
- B Upon notification to CalHR by State Fund that a Department has refused to comply with or failed to respond to a second request for information deemed by State Fund to be material to an objective determination of acceptance or denial of liability, CalHR will investigate as needed, and the Director of CalHR will provide written direction to the Director of the Department with a copy to the State Contract Services Program Manager at State Fund.

## **13. GENERAL PROVISIONS**

### **13.1 Engagement of Subcontractors**

State Fund, in its sole discretion, may engage one or more subcontractor entities to perform Services under this Agreement ("Subcontractors"). If State Fund engages any Subcontractors, such engagement shall be pursuant to State Fund corporate policies.

### **13.2 Consents and Approval**

Except where expressly provided as being in the discretion of a Party, where agreement, approval, acceptance, consent, or similar action by either Party is required under this Agreement, such action shall not be unreasonably delayed or withheld. An approval or consent given by a Party under this Agreement shall not relieve the other Party from responsibility for complying with the requirements of this Agreement, nor shall it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval or consent. Each Party shall, at the request of the other Party, perform those actions, including executing additional documents and instruments, reasonably necessary to give full effect to the terms of this Agreement.

### **13.3 Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one single Agreement between the Parties.

### **13.4 Covenant of Good Faith**

Each Party agrees that, in its respective dealings with the other Party under or in connection with this Agreement, it shall act in good faith.

### **13.5 Entire Agreement; Amendment**

This Agreement, including any schedules and exhibits referred to herein, constitutes the entire Agreement between the Parties with respect to the subject matter hereof and supersedes all prior Agreements, whether written or oral, between the Parties with respect to the subject matter contained in this Agreement. No change, waiver, or discharge hereof shall be valid unless in writing and signed by an authorized representative of the Party against which such change, waiver, or discharge is sought to be enforced.

### **13.6 Governing Law**

This Agreement and performance under it shall be governed by and construed in accordance with the Laws of the State of California without regard to its choice of law principles.

### **13.7 Survival**

Any provision of this Agreement that contemplates performance or observance subsequent to termination, expiration, or withdrawal of this Agreement shall survive termination, expiration, or withdrawal of this Agreement and continue in full force and effect.

### **13.8 Waivers**

No delay or omission by either Party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any Party of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be signed by the Party waiving its rights.

## 13.9 Notices

- A All notices, requests, consents, approvals, agreements, authorizations, acknowledgements, demands, waivers, and other communications required or permitted under this Agreement (other than routine operational communications), shall be in writing and shall be deemed given (a) when delivered by hand to the address specified below, (b) one (1) day after being given to an express courier with a reliable system for tracking delivery to the address specified below, (c) when sent by email (with a copy sent by another means specified in this Section on the same date as such email is sent), or (d) six (6) days after the day of mailing, when mailed by United States mail, registered or certified mail, return receipt requested, and postage prepaid to the address specified below:

In the case of State Fund:      Attn: Jürg Morach, Senior Vice President  
State Compensation Insurance Fund  
2275 Gateway Oaks Drive  
Sacramento, CA 95833  
Email: jcmorach@scif.com  
Telephone: (916) 924-6895

With copies to:                      Attn: Lina Yeung and Mark Loukides,  
Deputy Chief Counsel  
State Compensation Insurance Fund  
1390 Market Street, #1110  
San Francisco, CA 94103  
Email: lkyeung@scif.com,  
mloukides@scif.com

and:

In the case of CalHR:                Attn: Keith Mentzer, Program Manager  
California Department of Human  
Resources  
1515 S Street, North Building, Suite 400  
Sacramento, CA 95811  
Email: keith.mentzer@calhr.ca.gov  
Telephone: (916) 445-9792

With copies to:                      Attn: Workers' Compensation Program  
California Department of Human  
Resources  
1515 S Street, North Building, Suite 400  
Sacramento, CA 95811  
Email: workcomp@calhr.ca.gov

- B Either Party may change its contact information or designee for notification purposes by giving the other Party prior written notice of the new contact information or designee and the date upon which it shall become effective.

## Schedule 1 - Definitions

Adjuster:	A State Fund representative who determines the benefits to which an injured employee is entitled.
Applicant	The party, usually the injured worker, who establishes a case before the Workers' Compensation Appeals Board.
Claim File	A file which contains all the documents related to a specific injured employee on a specific date of injury. The file may include paper documents and electronic documents.
CMS	Collectively the Federal Centers for the Medicare & Medicaid Services, and its contractors, agents, and successor agencies, including where applicable the Coordination of Benefits Contractor.
CMS Data User Agreement	The respective data use or comparable agreement entered into between CMS and any of the Parties under CMS guidelines or related federal rules.
Department(s)	Legally uninsured departments, agencies, boards, commissions, or other subdivisions of the California State Government participating in this Agreement.
Disability Claim	Claim File in which temporary disability, permanent disability, or death benefits are due, demanded, or anticipated.
Law	All federal, state, provincial, regional, territorial, and local laws, statutes, ordinances, regulations, rules, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters, and other official releases (as supplemented, amended, or replaced from time-to-time) of or by any government, or any authority, department, or agency thereof.
MMSEA	Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 and any rules or regulations or guidance issued there under (collectively and as may be amended or superseded or supplemented from time to time).
MQR	Mandatory reporting of Medicare secondary payer.
Personal Information	Any data or information collected, maintained or provided by a Party that can be used to identify a specific individual or that is subject to protection under applicable Privacy Laws, including (1) "protected health information," as that term is defined in 45 CFR § 164.501, and (2) "nonpublic personal information," as that term is defined in the federal Gramm-Leach-Bliley Act.
Personnel	Employees, contractors, directors, officers, board members, attorneys, auditors, accountants, and properly authorized entities.

Privacy Laws	All Laws designed or intended to protect data or information that can be used to identify a specific individual, including (1) the federal Gramm-Leach-Bliley Act, the FTC regulations promulgated pursuant thereto (including 16 CFR § 313, 16 CFR § 314, 12 CFR § 332 and 12 CFR § 364), and any state privacy Laws; (2) the Health Insurance Portability and Accountability Act of 1996 (45 CFR parts 160 and 164) and regulations, and (3) other Laws related to medical records and patient privacy, financial information, confidentiality, and consumer protection, including SAM Chapters 5300 – 5399.
Return-to-Work Coordinator (RTWC)	The Department's designee, who is responsible for facilitating the early return to work of the Department's injured employees and for monitoring the administration of a Department's workers' compensation claims. Some Departments use the term Departmental Claims Coordinator (DCC) or other departmental designee to handle and/or manage return-to-work issues.
RRE	Responsible Reporting Entity.
Services	Claims management, litigation, and Medicare quarterly reporting services provided by State Fund.

**EXHIBIT B**  
**(Interagency Agreement)**

**BUDGET DETAIL AND PAYMENT PROVISIONS**

**1. SERVICE FEES**

**1.1 Definition:** Service Fees include all costs of claims administration, legal representation, contract administration, Medicare quarterly reporting and all "indirect costs" as defined by the 1998 Independent Accountant's Report produced by SCO. With the exception of 2.3 below, Service Fees will also include any costs pursuant to Labor Code Section 4650. Service Fees will be in compliance with Section 11871 of the California Insurance Code.

**1.2 Annual Estimate:**

A Service Fees will be evaluated and adjusted annually to reflect the projected costs for each new fiscal year. This annual estimate of Service Fees and projected number of claims will be developed by State Fund and submitted to CalHR annually on or about March 1. The annual Service Fees will be negotiated and agreed to by State Fund and CalHR.

B Services Fees for the 2014/2015 fiscal year will be determined in accordance with 1.2(A).

**1.3 Interim Service Fee Adjustments:**

The annual Service Fees are subject to adjustment during the fiscal year commensurate with any salary, benefit, or operational adjustments impacting State Fund's costs. Any adjustment shall be negotiated and agreed to by State Fund and CalHR prior to implementation.

**1.4 True-up:**

A **Annual:** At the conclusion of each fiscal year, State Fund shall calculate whether the Service Fees for the preceding calendar year actually cover all of State Fund's recoverable costs under the State of California's "Full Cost Recovery Policy" contained in the State Administrative Manual (SAM) – Section 8752. To the extent State Fund has not fully recovered its costs, State Fund shall include any unrecovered calendar year costs in the Service Fees for the next fiscal year. If the Service Fees paid during the preceding calendar year actually exceed what is recoverable pursuant to SAM Section 8752, State Fund shall add any credit for such excess to the Service Fees for the next fiscal year.

B **Termination or Expiration of the Agreement:** Upon the termination or expiration of this Agreement, State Fund shall calculate whether the

Service Fees through the date of termination or expiration actually cover all of State Fund's recoverable costs under the State of California's "Full Cost Recovery Policy" contained in the State Administrative Manual (SAM) – Section 8752. To the extent State Fund has not fully recovered its costs, State Fund shall deliver a due on receipt invoice to each Department for its proportionate amount of State Fund's unrecovered Service Fees. Invoices will be processed electronically through the SCO. If the Service Fees actually paid during the fiscal year exceed what is recoverable pursuant to SAM Section 8752, State Fund shall remit any such excess to the Departments electronically through the SCO.

- C **Withdrawal:** If a Department withdraws, CalHR will determine the proportional share of any unrecovered costs calculated as part of the annual true-up. However, the withdrawing Department's proportional share of the unrecovered costs shall not be applied to the next fiscal year Service Fees. Once the amount due, if any, is determined, State Fund shall deliver a due on receipt invoice to the withdrawing Department. This invoice will be processed electronically through the SCO.

- 1.5 **Allocation:** The Service Fees for each fiscal year will be allocated to Departments based upon the average number of open cases from each Department's disability claim inventory for the three (3) most recent completed quarters. Each Department will be billed in twelve (12) equal monthly installments for its percentage of the total Service Fees as set forth in 4.1. CalHR reserves the right to realign the Service Fee allocation prior to each new fiscal year.

## 2. EXPENDITURES

- 2.1 **Definition:** Expenditures are all costs incurred by State Fund attributable to its Services under the Agreement that are not included in Service Fees. Expenditures shall be reimbursed to State Fund by the Departments as set forth in 4.2. Expenditures include, but are not limited to, benefits, medical bills, medical bills, settlements, penalties, LC 5813 sanctions, etc.
- 2.2 For those Expenditures that are determined to be penalties, including those prescribed by California Labor Code Sections 5814 and those included in settlement agreements, State Fund shall compile the following information: actual dollar amount of the penalty, employee name, file location by office, Department of employee, unit code (e.g., State Hospital, Correctional Facility, Division, etc.) and the basis or reason for the penalty or sanction. This information shall be made available to CalHR on a quarterly basis.
- 2.3 For California Labor Code Section 4650 "increased benefits" where an individual Department is responsible for the delay, the amount shall be billed to, and paid by, the individual Department as an Expenditure.

- 2.4 State Fund will make payments for Serious and Willful (S&W) awards and Labor Code 132a awards, subject to reimbursement by Departments, except for those portions of an award that represent lost wages and work benefits which will be paid by Departments.

### 3. WORKING CAPITAL ACCOUNT

- 3.1 **Definition:** The Working Capital Account is a money deposit/Expenditures clearing account to be used for payment of Expenditures. The amount of the Working Capital Account shall be calculated based upon 9.6 percent of Departments' annual Expenditures during the preceding calendar year, except for the Department of Corrections and Rehabilitation and the Department of Developmental Services, which shall be equal to 16.7 percent of its Expenditures during the preceding calendar year. These calculations are referred to as the Schedule.
- 3.2 **Funding:**
  - A **New Fiscal Year:** State Fund shall provide CalHR with the Schedule showing the new fiscal year Working Capital Account for each Department. Upon receipt of CalHR's approval of the Schedule, State Fund will submit the Schedule to SCO. On the thirteenth (13<sup>th</sup>) business day of July, all Departments shall deposit funds according to the Schedule with State Fund electronically through SCO.
  - B **Interim:** CalHR and State Fund may increase the Working Capital Account at any time during the fiscal year as needed upon mutual agreement.
- 3.3 **Interest-Bearing Account:** The Working Capital Account will be maintained in a separate interest-bearing account. The interest and account maintenance fees, will be credited/debited to the Departments as part of the annual True-up.
- 3.4 **Interest Charges:** If there are no funds in the Working Capital Account, an interest charge will be calculated based on any outstanding invoice for Expenditures. Interest will continue to accrue until the Working Capital Account is sufficiently funded. The interest rate charged on the Expenditures shall be calculated based on the reinvestment rate as reported to the State Fund Board of Directors, or the investment yield as reported to the National Association of Insurance Commissioners (NAIC), whichever is less. The interest charges accrued will be debited to the Departments as part of the True-up in Section 1.4 of Exhibit B.
- 3.5 **Return of Funds:** Each Department shall receive a refund of its Working Capital Account less the amount of the June Expenditures invoice and any other outstanding invoices.



## 4. INVOICING

### 4.1 Payment of Service Fees:

- A All invoices for payment of Service Fees will be paid electronically through the SCO on a monthly basis.
- B State Fund shall provide a copy of the Service Fee invoice to the Departments on a monthly basis.
- C The monthly Service Fee invoice shall be due on the third (3<sup>rd</sup>) business day of the following month.

### 4.2 Reimbursement of Expenditures:

- A State Fund will make all payments due under the Agreement, subject to reimbursement of Expenditures by Departments.
- B State Fund will provide each Department with an itemized invoice which shows the Expenditures for which reimbursement is claimed. Discrepancies will be reported promptly to State Fund. State Fund will make any necessary adjustments on subsequent invoices.
- C The itemized invoices shall include the following information:
  - (1) claim number;
  - (2) injured employee's name;
  - (3) amount paid in compensation to include check number(s) and date(s) paid;
  - (4) amount paid in medical costs to include check number(s) and date(s) paid; and
  - (5) penalty amounts.
- D Each Department will be invoiced twice a month with the exception of the June Expenditures.
  - (1) The first billing cycle will cover the period from the first (1<sup>st</sup>) of the month through the fifteenth (15<sup>th</sup>) of the month. The second billing cycle will cover the period from the sixteenth (16<sup>th</sup>) of the month through the last day of the month.
  - (2) State Fund will prepare and submit the invoice to the SCO within three (3) business days after the billing cycle ends. SCO will transfer the amount invoiced for the Department and post it to State Fund within eight (8) business days after the billing cycle ends.

(3) The exceptions to bimonthly invoicing are the June Expenditures which shall have one invoice due in its entirety on the eighth (8<sup>th</sup>) business day of July.

(4) State Fund and SCO may adjust these billing cycles as needed at the beginning of each fiscal year to accommodate SCO's schedule.

E All invoices for reimbursement of Expenditures will be paid electronically through the SCO.

#### **4.3 Late Payments:**

A State Fund will notify CalHR on a monthly basis of any payments (Expenditures, Service Fees, or Working Capital Account) that remain unpaid beyond the due date. CalHR will assist State Fund with obtaining past due payments, including those from Departments which have ceased to exist.

B Any late payment by a Department may result in an increase to that Department's Working Capital Account for the next fiscal year at the discretion of CalHR and State Fund.

4.4 The Department must be able to pay all monetary settlements that are negotiated by State Fund. The Department must notify State Fund, CalHR, and the Department of Finance (DOF) immediately if there are budgetary issues that could negatively impact State Fund's ability to successfully negotiate a settlement.

4.5 CalHR, in cooperation with the DOF, will assist State Fund and Departments in promptly resolving budgetary issues that could adversely affect the ability of the Department to meet its legal obligations under the California Labor Code.

### **5. REPORTS**

5.1 After the close of the fiscal year, State Fund will provide CalHR with detailed cost information for each Department to facilitate the production of the Annual Report of Workers' Compensation Costs.

5.2 State Fund will provide CalHR with bank statements and reconciliation reports for the Working Capital Account on a quarterly basis and/or upon request. State Fund will notify CalHR when the Working Capital Account is withdrawn below \$10,000,000. State Fund will also notify CalHR when the Working Capital Account is withdrawn at/or below \$0. CalHR and State Fund may change these amounts by mutual agreement.