

**ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VIRGINIA 22201**

CONTRACT AWARD COVERPAGE

TO: Helmsman Management Services, LLC	DATE ISSUED:	April 29, 2020
2530 Sever Road, Suite 200	CONTRACT NO:	19-147-RFP
Lawrenceville, GA 30093	CONTRACT TITLE:	Third Party Administration and Related Services

THIS IS A NOTICE OF AWARD OF CONTRACT AND NOT AN ORDER. NO WORK IS AUTHORIZED UNTIL THE VENDOR RECEIVES A VALID COUNTY PURCHASE ORDER ENCUMBERING CONTRACT FUNDS.

The contract documents consist of the terms and conditions of AGREEMENT No. 19-147-RFP including any attachments or amendments thereto.

EFFECTIVE DATE: April 29, 2020

EXPIRES: April 30, 2021

RENEWALS: THIS IS THE FIRST (1ST) YEAR AWARD NOTICE OF A POSSIBLE FIVE (5) YEAR CONTRACT.

COMMODITY CODE(S): 95327

LIVING WAGE: N

ATTACHMENTS:

AGREEMENT No. 19-147-RFP

EMPLOYEES NOT TO BENEFIT:

NO COUNTY EMPLOYEE SHALL RECEIVE ANY SHARE OR BENEFIT OF THIS CONTRACT NOT AVAILABLE TO THE GENERAL PUBLIC.

VENDOR CONTACT: Adrian Marshall

VENDOR TEL. NO.:

(470) 539-5895

EMAIL ADDRESS: Adrian.Marshall@Helmsmantpa.com

COUNTY CONTACT: Teresa Elkins

COUNTY TEL. NO.:

(703) 228-4421

(Risk Management, Human Resources Department)

COUNTY CONTACT EMAIL: telkins@arlingtonva.us

PURCHASING DIVISION AUTHORIZATION

Cynthia Davis **Title: Assistant Purchasing Agent** **Date: April 29, 2020**

**ARLINGTON COUNTY, VIRGINIA
OFFICE OF THE PURCHASING AGENT
2100 CLARENDON BOULEVARD, SUITE 500
ARLINGTON, VA 22201**

AGREEMENT NO. 19-147-RFP

THIS AGREEMENT is made, on the date of execution by the County, between Helmsman Management Services, LLC, 2530 Sever Road, Suite 200, Lawrenceville, GA 30093 ("Contractor") a Massachusetts corporation authorized to do business in the Commonwealth of Virginia, and the County Board of Arlington County, Virginia. The County and the Contractor, for the consideration hereinafter specified, agree as follows:

1. CONTRACT DOCUMENTS

The "Contract Documents" consist of:

- This Agreement
- Exhibit A – Scope of Work
- Exhibit B – Contract Pricing
- Exhibit C – Business Associate Agreement
- Exhibit D – County Nondisclosure and Data Security Agreement (Contractor)
- Exhibit E – Insurance Checklist

Where the terms and provisions of this Agreement vary from the terms and provisions of the other Contract Documents, the terms and provisions of this Agreement will prevail over the other Contract Documents, and the remaining Contract Documents will be complementary to each other. If there are any conflicts, the most stringent terms or provisions will prevail.

The Contract Documents set forth the entire agreement between the County and the Contractor. The County and the Contractor agree that no representative or agent of either party has made any representation or promise with respect to the parties' agreement that is not contained in the Contract Documents. The Contract Documents may be referred to below as the "Contract" or the "Agreement".

2. SCOPE OF WORK

The Contractor agrees to perform the services described in the Contract Documents (the "Work"). As detailed in the "Scope of Work" (Attachment A), the primary purpose of the Work is Third Party Claims Administration and Related Third-Party Subrogation Case Management. It will be the Contractor's responsibility, at its sole cost, to provide the specific services set forth in the Contract Documents and sufficient services to fulfill the purposes of the Work. Nothing in the Contract Documents limits the Contractor's responsibility to manage the details and execution of the Work.

3. PROJECT OFFICER

The performance of the Contractor is subject to the review and approval of the County Project Officer, who will be appointed by the Director of the Arlington County department or agency requesting the Work under this Contract.

4. CONTRACT TERM

Time is of the essence. The Work will commence on the date of the execution of the Agreement by the County and must be completed no later than April 30, 2021 ("Initial Contract Term"), subject to any modifications provided in the Contract Documents. Upon satisfactory performance by the Contractor the County may, through issuance of a unilateral Notice of Award, authorize continuation of the Agreement under the same contract prices for not more than four (4) additional 12-month periods, from May 1, 2021 to April 30, 2025 (each a "Subsequent Contract Term"). The Initial Contract Term and any Subsequent Contract Term(s) are together the "Contract Term".

5. CONTRACT AMOUNT

The County will pay the Contractor in accordance with the terms of the Payment section below and of Exhibit B for the Contractor's completion of the Work as required by the Contract Documents. The Contractor will complete the Work for the total amount specified in this section ("Contract Amount").

The County will not compensate the Contractor for any goods or services beyond those included in Exhibit A unless those additional goods or services are covered by a fully executed amendment to this Contract. Additional services will be billed at the rates set forth in Attachment B unless otherwise agreed by the parties in writing.

6. CONTRACT PRICE ADJUSTMENTS

The Contract Amount/unit price(s) will remain firm until April 30, 2021 ("Price Adjustment Date"). To request a price adjustment, the Contractor or the County must submit a written request to the other party not less than 60 days before the Price Adjustment Date. Adjustments to the Contract Amount/unit price(s) will not exceed the percentage of change in the U.S. Department of Labor Consumer Price Index, All Items, Unadjusted, Urban Areas ("CPI-U") for the 12-month period ending in April of each year of the Contract.

Any Contract Amount/unit price(s) that result from this provision will become effective the day after the Price Adjustment Date and will be binding for 12 months. The new Price Adjustment Date will be 12 months after the price adjustment.

If the Contractor and the County have not agreed on a requested adjustment by 30 days before the Price Adjustment Date, the County may terminate the Contract, whether or not the County has previously elected to extend the Contract's term.

7. PAYMENT

At the conclusion of each month, the Contractor shall provide to the County an invoice and a report on the per claim payments made under \$25,000.00 on behalf of the County for the previous month grouped by claim type, and listing the claim line i.e. medical, indemnity, expense, of the payment. For claim payments of \$25,000.00 and greater, the Contractor shall immediately invoice the County for electronic payment before the payment can be released.

The number of the County Purchase Order by which shipments have been made or services have been performed must appear on all invoices.

8. REIMBURSABLE TRAVEL-RELATED EXPENSES

The County will not reimburse the Contractor for travel-related expenses for employees located within the greater Baltimore-Washington Metropolitan Area, as defined by the United States Office of

Management and Budget. For employees located outside this area, the County will reimburse for pre-approved travel-related expenses, documented with receipts, as follows:

Meals: The County will reimburse at the U.S. General Services Administration's ("GSA") per diem rates for the destination, current for the date of travel, with the first and last days of travel counted at 75% of the per diem rate.

Lodging: The County will reimburse for actual lodging costs at a reasonably priced commercial facility in the immediate area of where the Work is performed, up to the GSA's daily rates for the destination, current for the date of travel. Receipts for lodging must be itemized. Only room and tax charges will be reimbursed; no reimbursement will be made for additional expenses, including but not limited to, room service, laundry, telephone and in-room movies. If the Contractor or its employee shares a room with another person who is not connected with the performance of the Work, including a spouse, the County will reimburse for only the cost of a single room.

The applicable GSA per diem rates can be obtained at <http://www.gsa.gov/portal/content/104877>.

Transportation:

General

Reservations must be made in advance whenever possible to take advantage of all available discounts.

Ground Transportation

Use of public transportation is encouraged. The County will reimburse for the business use of personal or company vehicles, if allowed, at the GSA's mileage rates current at the time of travel. The Contractor's request for reimbursement may not include any personal use of the vehicle.

The County may approve reimbursement for rental of vehicles or use of taxicabs if the Contractor can demonstrate that to be the most economical option. Any reimbursement will cover only those rental charges, insurance and/or fuel fees allocable to work on the Contract and will not cover the purchase of liability insurance and/or collision/comprehensive insurance if the Contractor's or the employee's existing insurance coverage provides such protection.

Air Travel

The County will reimburse for air travel at the lowest available fare, typically economy. Tickets must be purchased at least seven days in advance, unless otherwise approved by the County.

Time limit: The County will not honor requests for travel reimbursement that are submitted more than 60 days after completion of the travel.

Non-reimbursable Expenses: The County will never reimburse for the following expenses:

1. Alcoholic beverages
2. Personal phone calls
3. Entertainment (e.g. pay TV, movies, night clubs, health clubs, theaters, bowling)
4. Personal expenses (e.g. laundry, valet, haircuts)
5. Personal travel insurance (e.g. life, medical, or property insurance) for airfare or rental cars
6. Auto repairs, maintenance and insurance costs for personal vehicles

9. * PAYMENT OF SUBCONTRACTORS

The Contractor is obligated to take one of the two following actions within seven days after receipt of payment by the County for work performed by any subcontractor under this Contract:

- a. Pay the subcontractor for the proportionate share of the total payment received from the County attributable to the work performed by the subcontractor under this Contract; or
- b. Notify the County and the subcontractor, in writing, of the Contractor's intention to withhold all or a part of the subcontractor's payment, with the reason for nonpayment.

The Contractor is obligated to pay interest to the subcontractor on all amounts owed by the Contractor to the subcontractor that remain unpaid after seven days following receipt by the Contractor of payment from the County for work performed by the subcontractor under this Contract, except for amounts withheld as allowed in subsection b., above. Unless otherwise provided under the terms of this Contract, interest will accrue at the rate of 1% per month.

The Contractor must include in each of its subcontracts, if any are permitted, a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this section may not be construed to be an obligation of the County. A Contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

10. NO WAIVER OF RIGHTS

The County's approval or acceptance of or payment for any goods or services under this Contract will not waive any rights or causes of action arising out of the Contract.

11. * NON-APPROPRIATION

All payments by the County to the Contractor pursuant to this Contract are subject to the availability of an annual appropriation for this purpose by the County Board of Arlington County, Virginia ("Board"). In the event that the Board does not appropriate funds for the goods or services provided under this Contract, the County will terminate the Contract, without termination charge or other liability to the County, on the last day of the fiscal year or when the previous appropriation has been spent, whichever event occurs first.

12. ESTIMATED QUANTITIES/NON-EXCLUSIVITY OF CONTRACTOR

This Contract does not obligate the County to purchase a specific quantity of items or services during the Contract Term. Any quantities that are included in the Contract Documents are the present expectations of the County for the period of the Contract; and the County is under no obligation to buy that or any amount as a result of having provided this estimate or of having had any normal or otherwise measurable requirement in the past. The County may require more goods and/or services than the estimated annual quantities, and any such additional quantities will not give rise to any claim for compensation other than at the unit prices and/or rates in the Contract.

The County does not guarantee that the Contractor will be the exclusive provider of the goods or services covered by this Contract. The items or services covered by this Contract may be or become

available under other County contract(s), and the County may determine that it is in its best interest to procure the items or services through those contract(s).

13. * COUNTY PURCHASE ORDER REQUIREMENT

County purchases are authorized only if the County issues a Purchase Order in advance of the transaction, indicating that the ordering County agency has sufficient funds available to pay for the purchase. If the Contractor provides goods or services without a signed County Purchase Order, it does so at its own risk and expense. The County will not be liable for payment for any purchases made by its employees that are not authorized by the County Purchasing Agent.

14. REPLACEMENT OF PERSONNEL AND SUBCONTRACTORS

The County has the right reasonably to reject staff or subcontractors whom the Contractor assigns to the project. The Contractor must then provide replacement staff or subcontractors satisfactory to the County in a timely manner and at no additional cost to the County. The day-to-day supervision and control of the Contractor's and its subcontractors' employees is the sole responsibility of the Contractor.

The Contractor may not replace key personnel or subcontractors identified in its proposal, including the approved Project Manager, without the County's written approval. The Contractor must submit any request to remove or replace key personnel or subcontractors to the County Project Officer at least 15 calendar days in advance of the proposed action. The request must contain a detailed justification, including identification of the proposed replacement and his or her qualifications.

If the approved Project Manager must be absent for an extended period, the Contractor must provide an interim Project Manager, subject to the County's written approval.

If the approved Project Manager resigns or is terminated by the Contractor, the Contractor will replace the Project Manager with an individual with similar qualifications and experience, subject to the County's written approval.

15. * EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

During the performance of its work pursuant to this Contract:

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability or on any other basis prohibited by state law. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation will be deemed sufficient for meeting the requirements of this section.
- C. The Contractor will state in all solicitations or advertisements for employees that it places or causes to be placed that such Contractor is an Equal Opportunity Employer.
- D. The Contractor will comply with the provisions of the Americans with Disabilities Act of 1990 ("ADA"), which prohibits discrimination against individuals with disabilities in employment and mandates that disabled individuals be provided access to publicly and privately provided services and activities.

- E. The Contractor must include the provisions of the foregoing paragraphs in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

16. * EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

In accordance with §2.2-4311.1 of the Code of Virginia, as amended, the Contractor must not during the performance of this Contract knowingly employ an unauthorized alien, as that term is defined in the federal Immigration Reform and Control Act of 1986.

17. * DRUG-FREE WORKPLACE TO BE MAINTAINED BY CONTRACTOR

During the performance of this Contract, the Contractor must: (i) provide a drug-free workplace for its employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violating such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of more than \$10,000.00 relating to this Contract so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "workplace" means the site(s) for the performance of the work required by this Contract.

18. TERMINATION

The County may terminate this Contract at any time as follows: (1) for cause, if, as determined by the County, the Contractor is in breach or default or has failed to perform the Work satisfactorily; or (2) for the convenience of the County.

Upon receipt of a notice of termination, the Contractor must not place any further orders or subcontracts for materials, services or facilities; must terminate all vendors and subcontracts, except as are necessary for the completion of any portion of the Work that the County did not terminate; and must immediately deliver all documents related to the terminated Work to the County.

Any purchases that the Contractor makes after the notice of termination will be the sole responsibility of the Contractor, unless the County has approved the purchases in writing as necessary for completion of any portion of the Work that the County did not terminate.

If any court of competent jurisdiction finds a termination for cause by the County to be improper, then the termination will be deemed a termination for convenience.

A. TERMINATION FOR CAUSE, INCLUDING BREACH AND DEFAULT; CURE

- 1. Termination for Unsatisfactory Performance. If the County determines that the Contractor has failed to perform satisfactorily, then the County will give the Contractor written notice of such failure(s) and the opportunity to cure them within 15 days or any other period specified by the County ("Cure Period"). If the Contractor fails to cure within the Cure Period, the County may terminate the Contract for failure to provide satisfactory performance by providing written notice with a termination date. The Contractor must submit any request for termination costs, with all supporting documentation, to the County

Project Officer within 30 days after the expiration of the Cure Period. The County may accept or reject the request for termination costs, in whole or in part, and may notify the Contractor of its decision within a reasonable time.

In the event of termination by the County for failure to perform satisfactorily, the Contractor must continue to provide its services as previously scheduled through the termination date, and the County must continue to pay all fees and charges incurred through the termination date.

2. Termination for Breach or Default. If the County terminates the Contract for default or breach of any Contract provision or condition, then the termination will be immediate after notice of termination to the Contractor (unless the County provides for an opportunity to cure), and the Contractor will not be permitted to seek termination costs.

Upon any termination pursuant to this section, the Contractor will be liable to the County for costs that the County must expend to complete the Work, including costs resulting from any related delays and from unsatisfactory or non-compliant work performed by the Contractor or its subcontractors. The County will deduct such costs from any amount due to the Contractor; or if the County does not owe the Contractor, the Contractor must promptly pay the costs within 15 days of a demand by the County. This section does not limit the County's recovery of any other damages to which it is entitled by law.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt the notice of the termination.

B. TERMINATION FOR THE CONVENIENCE OF THE COUNTY

The County may terminate this Contract in whole or in part whenever the Purchasing Agent determines that termination is in the County's best interest. The County will give the Contractor at least 15 days' notice in writing. The notice must specify the extent to which the Contract is terminated and the effective termination date. The Contractor will be entitled to termination costs, plus any other reasonable amounts that the parties might negotiate; but no amount will be allowed for anticipatory profits.

Except as otherwise directed by the County, the Contractor must stop work on the date of receipt of the notice of the termination.

19. **INDEMNIFICATION (Note: Virginia law does not permit the County to indemnify others; cross indemnity provisions are not acceptable to the County)**

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless and indemnify the County and all of its elected and appointed officials, officers, current and former employees, agents, departments, agencies, boards and commissions (collectively the "County Indemnitees") from and against any and all claims made by third parties for any and all losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability, demands or exposure resulting from, arising out of or in any way connected with the Contractor's acts or omissions, including the acts or omissions of its employees and/or subcontractors, in performance or nonperformance of the Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the

County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

20. INTELLECTUAL PROPERTY INDEMNIFICATION

The Contractor warrants and guarantees that in providing services under this Contract neither the Contractor nor any subcontractor is infringing on the intellectual property rights (including, but not limited to, copyright, patent, mask and trademark) of third parties.

If the Contractor or any of its employees or subcontractors uses any design, device, work or material that is covered by patent or copyright, it is understood that the Contract Amount includes all royalties, licensing fees, and any other costs arising from such use in connection with the Work under this Contract.

The Contractor covenants for itself, its employees and its subcontractors to save, defend, hold harmless, and indemnify the County Indemnitees, as defined above, from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorneys' fees), charges, liability or exposure for infringement of or on account of any trademark, copyright, patented or unpatented invention, process or article manufactured or used in the performance of this Contract. This duty to save, defend, hold harmless and indemnify will survive the termination of this Contract. If the Contractor fails or refuses to fulfill its obligations contained in this section, the Contractor must reimburse the County for any and all resulting payments and expenses, including reasonable attorneys' fees. The Contractor must pay such expenses upon demand by the County, and failure to do so may result in the County withholding such amounts from any payments to the Contractor under this Contract.

21. DATA SECURITY AND PROTECTION

The Contractor will hold County Information, as defined below, in the strictest confidence and will comply with all applicable County security and network resources policies, as well as all local, state and federal laws and regulatory requirements concerning data privacy and security. The Contractor must develop, implement, maintain, continually monitor and use appropriate administrative, technical and physical security measures to control access to and to preserve the confidentiality, privacy, integrity and availability of all electronically maintained or transmitted information received from or created or maintained on behalf of the County. For purposes of this provision, and as more fully described in this Contract and in the County's Non-Disclosure and Data Security Agreement (NDA), "County Information" includes, but is not limited to, electronic information; documents; data; images; financial records; personally identifiable information; personal health information (PHI); personnel, educational, voting, registration, tax and assessment records; information related to public safety; County networked resources; and County databases, software and security measures that are created, maintained, transmitted or accessed to perform the Work under this Contract.

- (a) **County's Non-Disclosure and Data Security Agreement.** The Contractor and its Designees (Contractor Designees shall include, but shall not be limited to, all Contractor-controlled agents or subcontractors working on-site at County facilities or otherwise performing any work under this Contract) must sign the NDA (Attachment C) before performing any work or obtaining or permitting access to County networked resources, application systems or databases. The Contractor will make copies of the signed NDAs available to the County Project Officer upon request.
- (b) **Use of Data.** The Contractor will ensure against any unauthorized use, distribution or disclosure of or access to County Information and County networked resources by itself or

its Designees. Use of County Information other than as specifically outlined in the Contract Documents is strictly prohibited. The Contractor will be solely responsible for any unauthorized use, reuse, distribution, transmission, manipulation, copying, modification, access to or disclosure of County Information and for any non-compliance with this provision by itself or by its Designees.

- (c) **Data Protection.** The Contractor will protect the County's Information according to standards established by the National Institute of Standards and Technology, including 201 CMR 17.00, Standards for the Protection of Personal Information of Residents of the Commonwealth and the Payment Card Industry Data Security Standard (PCI DSS), as applicable, and no less rigorously than it protects its own data and proprietary or confidential information. The Contractor must provide to the County a copy of its data security policy and procedures for securing County Information and a copy of its disaster recovery plan(s). If requested by the County, the Contractor must also provide annually the results of an internal Information Security Risk Assessment provided by an outside firm.
- (d) **Security Requirements.** The Contractor must maintain the most up-to-date anti-virus programs, industry-accepted firewalls and other protections on its systems and networking equipment. The Contractor certifies that all systems and networking equipment that support, interact with or store County Information meet the above standards and industry best practices for physical, network and system security requirements. Printers, copiers or fax machines that store County Data into hard drives must provide data-at-rest encryption. The County's Chief Information Security Officer or designee must approve any deviation from these standards. The downloading of County information onto laptops, other portable storage media or services such as personal e-mail, Dropbox etc. is prohibited without the written authorization of the County's Chief Information Security Officer or designee.
- (e) **Conclusion of Contract.** Within 30 days after the termination, cancellation, expiration or other conclusion of the Contract, the Contractor must, at no cost to the County, return all County Information to the County in a format defined by the County Project Officer. The County may request that the Information be destroyed. The Contractor is responsible for ensuring the return and/or destruction of all Information that is in the possession of its subcontractors or agents. The Contractor must certify completion of this task in writing to the County Project Officer.
- (f) **Notification of Security Incidents.** The Contractor must notify the County Chief Information Officer and County Project Officer within 24 hours of the discovery of any unintended access to or use or disclosure of County Information.
- (g) **Subcontractors.** If subcontractors are permitted under this Contract, the requirements of this entire section must be incorporated into any agreement between the Contractor and the subcontractor. If the subcontractor will have access to County Information, each subcontractor must provide to the Contractor a copy of its data security policy and procedures for securing County Information and a copy of its disaster recovery plan(s).

22. *** ETHICS IN PUBLIC CONTRACTING**

This Contract incorporates by reference Article 9 of the Arlington County Purchasing Resolution, as well as all state and federal laws related to ethics, conflicts of interest or bribery, including the State and Local Government Conflict of Interests Act (Code of Virginia § 2.2-3100 et seq.), the Virginia

Governmental Frauds Act (Code of Virginia § 18.2-498.1 et seq.) and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia, as amended (§ 18.2-438 et seq.). The Contractor certifies that its proposal was made without collusion or fraud; that it has not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor; and that it has not conferred on any public employee having official responsibility for this procurement any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

23. * COUNTY EMPLOYEES

No Arlington County employee may share in any part of this Contract or receive any benefit from the Contract that is not available to the general public.

24. FORCE MAJEURE

Neither party will be held responsible for failure to perform the duties and responsibilities imposed by this Contract if such failure is due to a fire, riot, rebellion, natural disaster, war, act of terrorism or act of God that is beyond the control of the party and that makes performance impossible or illegal, unless otherwise specified in the Contract.

25. * AUTHORITY TO TRANSACT BUSINESS

The Contractor must, pursuant to Code of Virginia § 2.2-4311.2, be and remain authorized to transact business in the Commonwealth of Virginia during the entire term of this Contract. Otherwise, the Contract is voidable at the sole option of and with no expense to the County.

26. * RELATION TO COUNTY

The Contractor is an independent contractor, and neither the Contractor nor its employees or subcontractors will be considered employees, servants or agents of the County. The County will not be responsible for any negligence or other wrongdoing by the Contractor or its employees, servants or agents. The County will not withhold payments to the Contractor for any federal or state unemployment taxes, federal or state income taxes or Social Security tax or for any other benefits. The County will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation.

27. ANTITRUST

The Contractor conveys, sells, assigns and transfers to the County all rights, title and interest in and to all causes of action under state or federal antitrust laws that the Contractor may have relating to this Contract.

28. REPORT STANDARDS

The Contractor must submit all written reports required by this Contract for advance review in a format approved by the Project Officer. Reports must be accurate and grammatically correct and should not contain spelling errors. The Contractor will bear the cost of correcting grammatical or spelling errors and inaccurate report data and of other revisions that are required to bring the report(s) into compliance with this section.

Whenever possible, proposals must comply with the following guidelines:

- printed double-sided on at least 30% recycled-content and/or tree-free paper
- recyclable and/or easily removable covers or binders made from recycled materials (proposals with glued bindings that meet all other requirements are acceptable)
- avoid use of plastic covers or dividers

- avoid unnecessary attachments or documents or superfluous use of paper (e.g. separate title sheets or chapter dividers)

29. AUDIT

The Contractor must provide to the County the complete findings and all components of an independent certified public accountant's audit of its finances and program operation within two months after the close of Contractor's fiscal year. If a management letter was not prepared with the audit, the Contractor must so certify in writing as part of the audit report to the County. The Contractor must allow the County to review its records as the County deems necessary for audit purposes within 15 calendar days of the County's receipt of the findings. All accounts of the Contractor are subject to audit.

The Contractor must retain all books, records and other documents related to this Contract for at least five years after the final payment and must allow the County or its authorized agents to examine the documents during this period and during the Contract Term. The Contractor must provide any requested documents to the County for examination within 15 days of the request, at the Contractor's expense. Should the County's examination reveal any overcharging by the Contractor, the Contractor must, within 30 days of County's request, reimburse the County for the overcharges and for the reasonable costs of the County's examination, including, but not limited to, the services of external audit firm and attorney's fees; or the County may deduct the overcharges and examination costs from any amount that the County owes to the Contractor. If the Contractor wishes to destroy or dispose of any records related to this Contract (including confidential records to which the County does not have ready access) within five years after the final payment, the Contractor must give the County at least 30 days' notice and must not dispose of the documents if the County objects.

30. ASSIGNMENT

The Contractor may not assign, transfer, convey or otherwise dispose of any award or any of its rights, obligations or interests under this Contract without the prior written consent of the County.

31. AMENDMENTS

This Contract may not be modified except by written amendment executed by persons duly authorized to bind the Contractor and the County.

32. * ARLINGTON COUNTY PURCHASING RESOLUTION AND COUNTY POLICIES

Nothing in this Contract waives any provision of the Arlington County Purchasing Resolution, which is incorporated herein by reference, or any applicable County policy.

33. * DISPUTE RESOLUTION

All disputes arising under this Agreement or concerning its interpretation, whether involving law or fact and including but not limited to claims for additional work, compensation or time, and all claims for alleged breach of contract must be submitted in writing to the Project Officer as soon as the basis for the claim arises. In accordance with the Arlington County Purchasing Resolution, claims denied by the Project Officer may be submitted to the County Manager in writing no later than 60 days after the final payment. The time limit for a final written decision by the County Manager is 30 days. Procedures concerning contractual claims, disputes, administrative appeals and protests are contained in the Arlington County Purchasing Resolution. The Contractor must continue to work as scheduled pending a decision of the Project Officer, County Manager, County Board or a court of law.

34. * APPLICABLE LAW, FORUM, VENUE AND JURISDICTION

This Contract is governed in all respects by the laws of the Commonwealth of Virginia; and the jurisdiction, forum and venue for any litigation concerning the Contract or the Work is in the Circuit Court for Arlington County, Virginia, and in no other court.

35. ARBITRATION

No claim arising under or related to this Contract may be subject to arbitration.

36. NONEXCLUSIVITY OF REMEDIES

All remedies available to the County under this Contract are cumulative, and no remedy will be exclusive of any other at law or in equity.

37. NO WAIVER

The failure to exercise a right provided for in this Contract will not be a subsequent waiver of the same right or of any other right.

38. SEVERABILITY

The sections, paragraphs, clauses, sentences, and phrases of this Contract are severable; and if any section, paragraph, clause, sentence or phrase of this Contract is declared invalid by a court of competent jurisdiction, the rest of the Contract will remain in effect.

39. ATTORNEY'S FEES

The County is entitled to attorney's fees and costs that it incurs to enforce any provision of this Contract.

40. SURVIVAL OF TERMS

In addition to any statement that a specific term or paragraph survives the expiration or termination of this Contract, the following sections also survive: INDEMNIFICATION; INTELLECTUAL PROPERTY INDEMNIFICATION; RELATION TO COUNTY; DISPUTE RESOLUTION; APPLICABLE LAW AND JURISDICTION; ATTORNEY'S FEES, AND DATA SECURITY AND PROTECTION.

41. HEADINGS

The section headings in this Contract are inserted only for convenience and do not affect the substance of the Contract or limit the sections' scope.

42. AMBIGUITIES

The parties and their counsel have participated fully in the drafting of this Agreement; and any rule that ambiguities are to be resolved against the drafting party does not apply. The language in this Agreement is to be interpreted as to its plain meaning and not strictly for or against any party.

43. NOTICES

Unless otherwise provided in writing, all legal notices and other communications required by this Contract are deemed to have been given when either (a) delivered in person; (b) delivered by an agent, such as a delivery service; or (c) deposited in the United States mail, postage prepaid, certified or registered and addressed as follows:

Contact Information for the Contractor:

Adrian Marshall, Senior Account Executive

2530 Sever Road, Suite 200

Lawrenceville, GA 30093

Contact Information for Arlington County

Human Resources Department:

Teresa Elkins, Risk Manager

2100 Clarendon Boulevard, Suite 511

Arlington, Virginia 22201

AND

Contact Information for Arlington County

(Legal Authorization):

Office of the Purchasing Agent

2100 Clarendon Boulevard, Suite 500

Arlington, Virginia 22201

Attn: Cynthia Davis, Assistant Purchasing Agent

Email: cdavis@arlingtonva.us

44. ARLINGTON COUNTY BUSINESS LICENSES

The Contractor must comply with the provisions of Chapter 11 ("Licenses") of the Arlington County Code, if applicable. For information on the provisions of that Chapter and its applicability to this Contract, the Contractor must contact the Arlington County Business License Division, Office of the Commissioner of the Revenue, 2100 Clarendon Blvd., Suite 200, Arlington, Virginia, 22201, telephone number (703) 228-3060.

45. * NON-DISCRIMINATION NOTICE

Arlington County does not discriminate against faith-based organizations.

46. HIPAA COMPLIANCE

If applicable, the Contractor must comply with the privacy, security and electronic transaction components of the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"). Pursuant to 45 C.F.R. §164.502(e) and §164.504(e), the Contractor is designated a Business Associate for purposes of this Contract and must execute the attached Arlington County Business Associate Agreement (Exhibit C) if applicable. Pursuant to 45 C.F.R. § 164.308(b)(1) and the Health Information Technology for Economic and Clinic Health Act ("HITECH"), § 13401, the Contractor must also enter into an agreement with any subcontractors that, in a form approved by the County, requires the subcontractor to protect PHI to the same extent as the Arlington County Business Associate Agreement. The Contractor must ensure that its subcontractors notify the Contractor immediately of any breaches in security regarding PHI. Software and platforms used in performance of this Contract must be HIPAA compliant.

The Contractor takes full responsibility for HIPAA compliance, for any failure to execute the appropriate agreements with its subcontractors and for any failure of its subcontractors to comply with the existing or future regulations of HIPAA and/or HITECH. The Contractor will indemnify the County for any and all losses, fines, damages, liability, exposure or costs that arise from any failure to comply with this paragraph.

47. ADA COMPLIANCE

The Contractor is solely responsible for its compliance with the ADA and must defend and hold the County harmless from any expense or liability arising from the Contractor's non-compliance. The Contractor also must respond promptly to and cooperate fully with all inquiries from the U.S. Department of Labor.

The Contractor's responsibilities related to ADA compliance include, but are not limited to, the following:

- a. Access to Programs, Services and Facilities: The Contractor must ensure that its programs, services and facilities are accessible to persons with disabilities. If a particular facility or program is not accessible, the Contractor must provide equivalent services in an accessible alternate location or manner.
- b. Effective Communication: Upon request, the Contractor, must provide appropriate communication aids and services so that qualified persons with disabilities can participate equally in the Contractor's programs, services and activities. Communication aids and services can include, but are not limited to, qualified sign language interpreters, Braille documents and other means of facilitating communications with people who have speech, hearing or vision impairments.
- c. Modifications to Policies and Procedures: The Contractor must modify its policies and procedures as necessary to ensure that people with disabilities have an equal opportunity to enjoy the Contractor's programs, services and activities. For example, individuals' service animals must be allowed in the Contractor's offices or facilities, even if pets are generally prohibited.
- d. No Extra Charges: The Contractor may not charge a person with a disability or any group of individuals with disabilities to cover the cost of providing aids or services or of reasonable modifications to policies and procedures.

48. INSURANCE REQUIREMENTS

Before beginning work under the Contract or any extension, the Contractor must provide to the County Purchasing Agent a Certificate of Insurance indicating that the Contractor has in force at a minimum the coverage below. The Contractor must maintain this coverage until the completion of the Contract or as otherwise stated in the Contract Documents. All required insurance coverage must be acquired from insurers that are authorized to do business in the Commonwealth of Virginia, with a rating of "A-" or better and a financial size of "Class VII" or better in the latest edition of the A.M. Best Co. Guides.

- a. Workers Compensation - Virginia statutory workers compensation (W/C) coverage, including Virginia benefits and employer's liability with limits of \$100,000/100,000/500,000. The County will not accept W/C coverage issued by the Injured Worker's Insurance Fund, Towson, MD.
- b. Commercial General Liability - \$1,000,000 per occurrence, with \$2,000,000 annual aggregate covering all premises and operations and including personal injury, completed operations, contractual liability, independent contractors, and products liability. The general aggregate limit must apply to this Contract. Evidence of contractual liability coverage must be typed on the certificate.

- c. Business Automobile Liability - \$1,000,000 combined single-limit (owned, non-owned and hired).
- d. Errors and Omission - \$2M occurrence \$4M aggregate
 - a. Additional Insured – The County and its officers, elected and appointed officials, employees and agents must be named as additional insureds on all policies except workers compensation and automotive and professional liability; and the additional insured endorsement must be typed on the certificate.
 - b. Cancellation - If there is a material change or reduction in or cancellation of any of the above coverages during the Contract Term, the Contractor must notify the Purchasing Agent immediately and must, with no lapse in coverage, obtain replacement coverage that is consistent with the terms of this Contract. Not having the required insurance throughout the Contract Term is grounds for termination of the Contract.
 - c. Claims-Made Coverage - Any “claims made” policy must remain in force, or the Contractor must obtain an extended reporting endorsement, until the applicable statute of limitations for any claims has expired.
 - d. Contract Identification - All insurance certificates must state this Contract's number and title.

The Contractor must disclose to the County the amount of any deductible or self-insurance component of any of the required policies. With the County’s approval, the Contractor may satisfy its obligations under this section by self-insurance for all or any part of the insurance required, provided that the Contractor can demonstrate sufficient financial capacity. In order to do so, the Contractor must provide the County with its most recent actuarial report and a copy of its self-insurance resolution.

The County may request additional information to determine if the Contractor has the financial capacity to meet its obligations under a deductible and may require a lower deductible; that funds equal to the deductible be placed in escrow; a certificate of self-insurance; collateral; or another mechanism to guarantee the amount of the deductible and ensure protection for the County.

The County’s acceptance or approval of any insurance will not relieve the Contractor from any liability or obligation imposed by the Contract Documents.

The Contractor is responsible for the Work and for all materials, tools, equipment, appliances and property used in connection with the Work. The Contractor assumes all risks for direct and indirect damage or injury to the property used or persons employed in connection with the Work and for of all damage or injury to any person or property, wherever located, resulting from any action, omission, commission or operation under the Contract or in connection in any way whatsoever with the Work. The Contractor’s insurance shall be the primary non-contributory insurance for any work performed under this Contract.

The Contractor is as fully responsible to the County for the acts and omissions of its subcontractors and of persons employed by them as it is for acts and omissions of persons whom the Contractor employs directly.

WITNESS these signatures:

THE COUNTY BOARD OF ARLINGTON
COUNTY, VIRGINIA

HELMSMAN MANAGEMENT SERVICES, LLC

AUTHORIZED
SIGNATURE: Cynthia Davis

AUTHORIZED
SIGNATURE: Peter J Clas

NAME: CYNTHIA DAVIS
TITLE: ASSISTANT PURCHASING AGENT

NAME AND
TITLE: Peter J. Clas Vice President

DATE: April 29, 2020

DATE: 4/22/2020

EXHIBIT A
SCOPE OF SERVICES

The Contractor will provide claims management and related services for Worker's Compensation, First Party Property, Auto Physical Damage, and Automobile and General Liability claims.

A. Worker's Compensation

The Contractor will provide the following services for Worker's Compensation:

1. Claims investigation and recommended resolution including, but not limited to:
 - a. Compliance with regulatory requirements and filings.
 - b. Payment of medical bills and lost wage benefits.
 - a. Subrogation evaluation and follow-up. Based upon the results of the investigation of the claim, the Contractor must recognize and investigate subrogation, contribution and coordination of benefits possibilities, including (where needed) preservation of needed evidence and the use of experts to provide a basis for recovery. The Contractor shall not incur any expense for pursuit of a third party, and must not put any third party on notice without the County's prior approval. The Contractor shall not charge the County for recovery efforts, unless if applicable, the claim is assigned with the approval of the County to a subrogation specialty claims unit.
 - c. Surveillance and *sub rosa* investigations, when appropriate and approved by the County.
2. The Contractor shall review and respond to all workers' compensation claims within 24 hours of submission, including contact and authorizations to providers, follow-up with the claimant, contact with the reporting supervisor, and notification to the County Workers Compensation Claims Administrator.
3. The Contractor shall electronically send an acknowledgement of the claim to the County within 24 hours of submission via a copy of the first report of injury.
4. Within 24 hours upon receipt of the first report of injury, the Contractor must create an electronic claim file in the claims information system and assign it the proper location code number.
5. The Contractor must establish a minimum reserve within 5 business days. Reserves shall be reviewed at 30 days, 60 days, 90 days, and at least every 90 days thereafter. The Contractor must document the file notes and status reports, as required, to reflect reserves were reviewed. Levels for reserve increases will be approved by the County. The Contractor must submit a reserve worksheet for any reserve increase/decrease that exceeds that examiner's reserve authority. The Contractor shall ensure the reserve takes into consideration probable payments related to the loss, allocated expenses and all factors necessary to determine the estimated amount the County will be required to pay.
6. The Contractor must complete a three-point contact within 24 hours from first report of injury. The Contractor must document files with attempts made by phone. The Contractor must send call cards/letters via U.S. mail to the injured worker if no phone contact is made in two attempts on successive days.
7. The Contractor must report all bodily injury claims to the Index Bureau as soon as possible upon receipt of the first report of injury, and re-index every six months thereafter until the case is closed.

8. The Contractor must limit each adjuster to handling no more than 140 Lost Time/ Indemnity Workers Compensation claims, 250 Medical Only Workers Compensation claims and limit Nurse Case Managers to handling no more than 70 claims.
9. The Contractor must enter payments, reserve revisions, and file closings into the information system within 2 business days of receiving information that requires action.
10. The Contractor shall perform medical bill reviews and measure all Return on Investment (ROI) of such.
11. The Contractor shall be required to coordinate with, and cooperate with the County's preferred vendors on its medical panels in providing workers' compensation related services. The County reserves the right to approve all vendors and medical providers, and the Contractor shall not have exclusive rights for the provision of these or any other vendors' or medical providers' services related to managing the County's workers' compensation claims.
12. The Contractor shall provide consultation for use in the initial and periodic revision of the County's medical panels in the geographic area where the County's employees reside, concluding with a formal, written recommendation being provided to the County. The Contractor shall consistently reinforce that County employees need to use the County's medical panels and shall promptly provide the medical panels to claimants.
13. The Contractor shall provide nurse case management services available both onsite at claimant medical appointments and telephonically. Further, the Contractor shall perform utilization review and other managed care services and Return on Investment (ROI) of such. The County may require the Contractor to provide medical triage on all first reports of injury noting which injury requires medical treatment and the need for continuing Nurse Case Management (NCM) services, as determined in the County's discretion.
14. On behalf of the County, the Contractor shall complete all reporting and compliance requirements with the Medicare, Medicaid and (State Children's Health Insurance Program (SCHIP) Extension Act of 2007 (MMSEA) Section 111, Medicare Secondary Payer Mandatory Reporting, and any other reporting and compliance requirements required by law.
15. On behalf of the County, the Contractor shall track and complete all of the Occupational Safety & Health Administration (OSHA) and Virginia Occupational Safety & Health (VOSH) reporting requirements, including but not limited to, the OSHA 300 and #300A reports and electronic reporting to OSHA, as required by OSHA and VOSH.
16. The Contractor shall provide the County with claim reports canned and custom, as requested by the County.
17. The Contractor shall provide the County with yearly historical comparisons of data (Yearly Stewardship) annually.
18. The Contractor shall assign the County an account manager with the following responsibilities:
 - a. Attend in-person claim reviews of County selected files.
 - b. Act as service provider representative on any claim issues or problems.

- c. Act as liaison between the insurer, adjusters, field staff, medical management providers, medical network, the risk management information system department and Arlington County.
19. The Contractor will perform claim reviews and provide status reports to the County on all claims files, using Attachment A - Claim Review Form. The Contractor shall provide the County with formal status reports on:
- a. any file reserved at \$10,000 or more;
 - b. any reserve increase of \$10,000 or more; and
 - c. any file open for a period over six months.

The Contractor shall from time to time provide interim reports or information on specific files, as requested by the County.

20. In the event of an emergency as determined by the County, the Contractor shall provide an on-call adjuster who is available 24 hours per day, 365 days per year.
21. The Contractor shall not possess any settlement authority with respect to claims arising from any of the County's lines of insurance that it administers under this scope of services. However, on request by the County and for any settlement recommendation by the Contractor, the Contractor shall provide a case synopsis, recommendation for settlement and rationale, along with the current financials of indemnity reserve/payments/total incurred, medical reserved/payments/total incurred, and expense reserve/payment/total incurred, and how the present-day value of future expenses/benefits for settlement was determined, including Medicare Set Aside amounts, if applicable.
22. The Contractor shall provide a claim closure rate over 100% per month.
23. The Contractor shall provide measures of historical/current performance. Upon request, and at least annually through the stewardship or as often as requested, key performance indicator results shall be provided to the County, along with analysis and any action plans to achieve desired results. These indicators shall include but not limited to elements related to:
- a. Cost reductions from network savings, bill review, clinical review etc.
 - b. Efficiencies in case/ medical management
 - c. Effectiveness in managing claims
 - d. Closure rates
 - e. Others to be defined, at the County's discretion
24. The Contractor shall identify, and report claims to the County and the excess workers' compensation carrier that have met the trigger point for reporting to the excess workers' compensation carrier. In addition, the following types of claims must be reported immediately to the excess carrier:

- a. Fatalities
 - b. Paraplegics and quadriplegics
 - c. Serious burns (2nd or 3rd degree burns involving 25% or more of the body)
 - d. Brain injury
 - e. Spinal cord injury
 - f. Amputation of a major extremity
 - g. Any occurrence which results in a serious injury to two (2) or more employees
25. Before receiving direct indemnity payments from the Contractor, the injured permanent employee remains on the County payroll for up to 720 hours of "disability leave," or the Continuation of Pay (COP), and then may elect to use his or her personal leave to maintain a full paycheck and continue health insurance and other benefits. The Contractor must be able to capture these County payments via their information system as salary in lieu of compensation benefits by type of indemnity payment and be able to view, sort, or run real-time reports of such.
26. The Contractor shall provide a toll-free telephone number, email, fax number and web-ex claims reporting service.
27. The Contractor must be responsible for all fines, penalties and interest arising directly or indirectly out of or caused in whole or in part by any act or omission of the Contractor or its subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable; excepting those acts or omissions arising out of the sole negligence of the County. If the costs are required to be tracked by the Commonwealth of Virginia, Division of Workers Compensation as allocated expenses, the Contractor must issue a separate refund check to the County. If the costs are not required to be tracked as allocated expenses, the Contractor must pay the expenses directly.
28. File Documentation Requirements

The Contractor shall clearly explain in the file notes the basis for initial reserves, reserve revisions and payments. The Contractor must document their contact with the County to discuss the reserves before the Contractor establishes them in the system.

- a. The Contractor must establish specific direction on the investigation and handling of all indemnity claims within 2 business days of receipt of the first report of injury and clearly reflect this in the file. The Contractor's extent of the direction must be based upon the seriousness or complexity of the case at hand.
- b. The Contractor must complete an initial claim status report on all indemnity claims involving disability payments within 14 business days of receipt of the first report of injury.

- c. The Contractor must complete updated claim status reports and place in all indemnity claim files at 45, 75, and 105 calendar days, and every 90 calendar days thereafter from the receipt of the first report of injury. The Contractor must prepare a summary to include all information that relates to the direction and value of the claim, as well as further work to be done and a target day for completion.
- d. The Contractor must clearly document all phone conversations, discussions, and meetings held on the claim in each file.
- e. The Contractor must clearly evidence the diary schedule in the file.
- f. The Contractor must establish a diary system so that each claim is reviewed at least every 60 days, or more often as needed. The Contractor must document notes to reflect the file was reviewed.

29. Investigation Requirements

- a. Within 24 hours of receipt of the first report of injury, the Contractor must make contact with the County's reporting supervisor on all indemnity claims to verify work status and determine if there are any issues involving compensability.
- b. The Contractor's adjuster must obtain recorded or written statements on all questionable indemnity claims from anyone who may have knowledge of the injury, including the claimant, witnesses, and supervisor unless the file reflects a reasonable explanation for a delay in obtaining the statement. The Contractor must discuss the claim with the County before any questionable indemnity claim is accepted. The Contractor must provide a credibility assessment of the interviewee.
- c. The Contractor must contact the medical facility within 24 hours of the claimant's initial office visit and prior to making the initial indemnity payment to establish the extent of injury, length of disability, and causal relationship of the injury to the job or alleged work-related incident.
- d. The Contractor must obtain a medical report within 10 business days of the first day of lost time and as often as needed thereafter to justify continuing indemnity payments. The Contractor must contact the medical facility within 24 hours of all medical appointments to verify all continuing indemnity payments and progress report and notes sought.
- e. The Contractor must make contact with the injured employee and employer within 24 hours of receipt of the first report of injury to establish the medical treatment plan and timely return to work. The Contractor must maintain ongoing contact with the injured employee and continue through the life of the claim. The Contractor must make all NCM notes a part of the adjuster's file.
- f. Where the length of disability or medical restrictions are questioned, after

approval from the County, the Contractor must conduct a field activity check and surveillance on the injured employee to determine if there is any work capability.

Where a medical diagnosis or evaluation is questioned, after receiving prior approval from the County and based on the injury of the claimant, the Contractor must schedule an independent medical examination with a physician. The Contractor must provide to that physician any relevant medical and job information that will assist the physician in making an objective evaluation as well as any questions that need to be addressed on the claimant's medical condition, if applicable. The Contractor must provide the County and any excess insurer with a copy of the physician's consultative report.

- g. The Contractor must review all medical bills received for causal relationship to the accident/work-related injury.
- h. The Contractor must clearly explain the basis for initial reserves, pre-authorized reserve revisions and pre-approved payments in the file.
- i. The Contractor must establish specific direction on the investigation and handling of all indemnity claims within 2 business days of receipt of the first report of injury and clearly document the file. The extent of the direction will be based upon the seriousness or complexity of the case at hand.
- j. The Contractor must complete an initial file summary on all indemnity claims involving disability payments within 14 business days of receipt of the first report of injury.
- k. Based on the injury, the Contractor must make a recommendation for rehabilitation and/or retraining. The Contractor must discuss the recommendation with the County. If the County does not have a job available, the Contractor must initiate rehabilitation as soon as practicable and the progress must be closely monitored and controlled. The Contractor must provide the County with a copy of all rehabilitation plans.
- n. The Contractor may only use outside services for surveillance, transportation, DME services, and on-site case management where necessary, or as listed in Exhibit B, with prior approval from the County and on a limited investigation basis. The Contractor must include in the file the reason for the outside services and the approving source at the County. The Contractor must exercise direction and control on the outside vendor retained. The Contractor remains liable for all acts and omissions of its subcontractors, and its internal services personnel, whether chosen or not by the County. The County reserves the right to approve a list of outside vendors for ancillary services such as surveillance, transportation, DME, and on-site case management, and not limited to such.
- l. The Contractor must review for closing at least every 60 calendar days all "medical only" cases, except those automatically closed by the information system.

- m. The Contractor must conduct settlement evaluations based on information included in the file, as well as other criteria by which a value may be based. The evaluation shall include, but is not limited to: a written status report giving a brief description of the claim, the proposed settlement, and the rationale behind the proposed settlement. The Contractor must discuss all proposed settlements in advance with the County for concurrence. The Contractor must deliver the settlement evaluation to the County prior to claim discussion and where mediation is applicable, 30 calendar days prior to mediation.
- n. The Contractor must develop a standard settlement evaluation form for submittal to the County.

30. Reporting Requirements

- a. When a claim meets any of the following conditions, (1) reserves are at or above \$10,000, (2) the claim involves a serious injury or the presumption provisions of the Virginia Workers' Compensation Act (e.g. death, cardiac disease, cancer, back problems involving surgery, serious burns or disfigurement, paraplegia, quadriplegia, amputation, loss of sight or hearing, brain damage, or any other extreme permanent injury) and (3) the claim is litigated, the Contractor must follow the steps, as indicated below:
 - i. The Contractor must report the loss immediately to the County.
 - ii. The Contractor must complete an initial report in a County approved format and submit the report to the County, within 14 business days after the defined reporting condition is met.
 - iii. The Contractor must complete supplemental written status reports and submit the reports to the County or as requested by the County at least every 90 calendar days following the first report of injury and must include any pertinent information that could reasonably affect the ultimate value of the claim.
- b. Within 2 business days of pre-approved reserve increase of \$10,000 or more, the Contractor must send a written explanation of the increase and send the basis for the increase via email to the County in the approved reserve increase/decrease standard form established by the County and Contractor.
- c. The Contractor must report, via a County approved topical captioned format, to the County and specified excess insurers. The reports shall; comply with reporting obligations of the County. If requested by the County or the excess insurer, the Contractor must provide such insurer with necessary information on the status of related claims or losses.
- d. The Contractor shall meet in-person with the County quarterly to review selected claims as provided by the County via a claims review.

31. Communication Requirements

- a. The Contractor must maintain open, general lines of communication with the County on a continual basis. The Contractor's communication must include the Contractor pre-notifying the County and insurer, as applicable, of any pre-trial or workers' compensation hearing. The notice must include a copy of the actual trial or hearing notice if received by the Contractor. If this information is received by the County first, then a copy of the documents will be sent to the Contractor's claim examiner assigned to the claim's file.
- b. The Contractor must respond to requests made by the County within 24 to 48 hours.
- c. The Contractor's staff must conduct site visits as necessary and determined by the County to:
 - i. Educate personnel on claim handling procedures that may affect any case.
 - ii. Discuss specific cases of concern with the Risk Manager and/or County Claims Administrator.
 - iii. Resolve any problems involving the claim service program.
- d. The Contractor must advise the County of any Workers' Compensation legislative changes that may impact their management or processing of Workers' Compensation claims.
- e. The Contractor must make every effort to return phone calls from County or injured employees the same business day and no later than 24 business hours. The Contractor must respond to all other County requests within 24 to 48 hours.
- f. The Contractor must communicate to the County changes involving the dedicated or designated adjusters at least 30 days prior to the requested change and no changes will be made without the County's prior approval.

B. Auto and General Liability Claims

The Contractor will provide the following services for Auto and General Liability claims:

2. Claims investigation and recommended resolution including, but not limited to:
 - a. Initial on-site accident/incident investigation (written or recorded statements, photos and written liability evaluations).
 - b. Upon County request, vehicle damage appraisal.
 - c. Upon County request, property damage appraisal.
 - d. Subrogation evaluation and follow-up on claims. Based upon the results of the investigation of the claim, the Contractor must recognize and investigate subrogation, contribution and coordination of benefits possibilities, including (where needed) preservation of needed evidence and the use of experts to

provide a basis for recovery. The Contractor shall not incur any expense for pursuit of a third party and must not put any third party on notice without the County's prior approval. The Contractor shall not charge the County for recovery efforts, unless if applicable, the claim is assigned with the approval of the County to a subrogation specialty claims unit.

- e. Surveillance and *sub rosa* investigations, when appropriate and approved by the County.
- f. If a claim is submitted, within 24 hours of receipt of the first report of injury, the Contractor must make contact with the reporting supervisor and claimant, on all claims to discuss any issues involving liability.
- g. On all liability claims, the Contractor's adjuster must obtain recorded or written statements from anyone who may have knowledge of the facts of the incident and the injury, including the claimant, and witnesses, except for County employees unless approval is provided by the County Attorney's office. The Contractor must discuss the claim with the County Risk Management Department and/or County Attorney's office before any questionable and non-litigated liability claim is accepted or denied. The Contractor must provide a credibility assessment of the interviewee to the County.
- h. The Contractor must obtain complete medical reports for each injury claim before requesting a reserve increase or settlement authorization. The Contractor must document any unsuccessful attempts to obtain medical information in the file.
- i. Where the County or Contractor is questioning a medical evaluation, the Contractor must schedule an independent medical examination with a qualified physician, if applicable and allowed by the claimant, the Contractor must provide the physician with any relevant medical and job information known that will assist the physician in making an objective evaluation as well as any applicable questions needed to be answered by the physician based on the evaluation. The Contractor must provide the County with a copy of the physician's consultative report.
- j. The Contractor must clearly document the basis for initial reserves, preauthorized reserve revisions and pre-approved payments in the file.
- k. Any County property that sustains damage that is non-repairable its salvage value will be coordinated with the County along with the process.
- l. The Contractor may only use internal services or subcontractors where necessary and on limited investigation basis with County approval. The Contractor must document in the file the reason for the assignment and the approving source at the County. The Contractor remains liable for all acts and omissions of its subcontractor and its internal services personnel. The County reserves the right to approve a subcontractor list or select a subcontractor they would like to have to handle the services.
- m. The Contractor must pursue all pre-approved settlement, and all negotiations must be handled or managed internally by the claims person assigned to the case.
- n. The Contractor must discuss all proposed settlements in advance with the County. The Contractor must deliver to the County a written status report giving a brief description of the claim, the proposed settlement and the rationale behind the settlement prior to claim discussion.

3. Claims Processing

- a. Within 1 business day of receipt of the claim the Contractor must create files, reserve and assign the proper facility code number and enter necessary data into the information system.
- b. The Contractor must establish a minimum reserve within 5 business days. The Contractor must review reserves at 30, 60, and 90 days and every 90 days thereafter. The Contractor must document file notes to reflect reserves were reviewed. Levels for reserve increases shall be established by the County. The Contractor must submit a reserve worksheet (that will be mutually developed between Contractor and the County) and receive approval from the County for any reserve increase/decrease that exceeds that examiner's reserve authority.
- c. The Contractor must establish a diary system so that each claim is reviewed at least every 60 days, or more often as needed. The Contractor must document notes to reflect the file was reviewed.
- d. The Contractor must complete a two-point contact with the injured party and the reporting supervisor within 24 hours. The Contractor must document files with attempts made by phone. The Contractor must send call card/letters to the injured party via U.S. mail, if no phone contact is made in two attempts on successive days. The Contractor must send an email to the County giving notice that a letter has been sent.
- e. The Contractor must enter all pre-approved payments, reserve revisions and file closings into the information system.
- f. The Contractor must report and index all claims involving Bodily Injury or Property Damage injuries to the Index Bureau or Property Insurance Loss Report upon receipt of the first report of injury and index every 6 months thereafter.
- g. The Contractor must take into consideration all potential payments including expenses for the reserve.
- h. The Contractor must limit adjusters to an active case load of 140 claims (claims with multiple coverage lines shall be deemed as a single claim).
- i. The Contractor must provide a toll-free telephone number, email, fax number and web-ex claims reporting service.

4. File Documentation

- a. The Contractor must clearly explain in the file the basis for initial reserves, reserve revisions and payments. The Contractor must document their contact with the County to discuss and obtain concurrence on the reserves before the Contractor establishes them in the information system. The Contractor must submit a reserve worksheet (that will be mutually developed between Contractor and the County) and receive approval from the County for any reserve increase/decrease that exceeds that examiner's reserve authority.
- b. The Contractor must establish specific direction on the investigation and handling of all cases within 2 business days of receipt of the first report of injury and clearly evidenced in the file. The Contractor's extent of the direction shall be based upon the seriousness or complexity of the case at hand.
- c. The Contractor must complete an initial claim report on all bodily injury

and property damage cases within 14 business days of receipt of the first report of injury.

- d. The Contractor must complete updated claim status reports and place the updated report in any indemnity file at 45, 75, and 105 days, and every 90 calendar days thereafter from the receipt of the first report of injury. The Contractor must prepare a summary to include all information that relates to the direction and value of the case, as well as further work to be done and a target day for completion.
- e. The Contractor must clearly document all phone conversations, discussions, and meetings held on the case shall be clearly documented in each claim file.
- f. The Contractor must clearly evidence a diary schedule in each claim file and the file notes must reflect that reserves were reviewed for adequacy and accuracy each time the file is reviewed for any reason.

5. Reporting Requirements

- a. When a claim meets any of the following conditions: (1) reserves are at or above \$10,000, (2) the claim involves a serious injury (e.g. death, cardiac disease, back problems involving surgery, serious burns or disfigurement, paraplegia, quadriplegia, amputation, loss of sight or hearing, brain damage, or any other extreme permanent injury) and (3) the claim is litigated, the Contractor must follow the steps, as indicated below:
 - a. The loss shall be telephoned within 24 hours to the County.
 - b. An initial written report in a County approved format shall be completed and submitted to the County, all within 14 days after the defined reporting condition is met.
 - c. Supplemental written status reports shall be completed and submitted to the County or as requested by the County at least every 90 calendar days following the first report of injury and shall include any pertinent information that could reasonably affect the ultimate value of the claim.
- b. Within 2 business days of pre-approved reserve increase of \$10,000 or more, the Contractor must send a written explanation of the increase and the basis for it to the County In the approved reserve increase/decrease standard form established by the County and Contractor
- c. The Contractor must report, via a County approved topical captioned format, to the County and specified excess insurers. The reports shall; comply with reporting obligations of the County. If requested by the County or the excess insurer, the Contractor must provide such insurer with necessary information on the status of related claims or losses.

- d. The Contractor must be available to meet with the County quarterly to review selected claims as provided by the County.
 - e. On behalf of the County, the Contractor shall complete all reporting and compliance requirements under the Medicare, Medicaid and SCHIP Extension Act of 2007 ("MMSEA") Section 111, Medicare Secondary Payer Mandatory Reporting, and any other reporting and compliance requirements required by law.
- 6. The Contractor shall provide the County with Claim reports canned and custom, as requested by the County.
 - 7. The Contractor shall provide the County with yearly historical comparisons of data (Yearly Stewardship) annually.
 - 8. The Contractor shall assign the County an account manager with the following responsibilities:
 - a. Attend in-person claim reviews of selected files.
 - b. Act as service provider representative on any claim issues or problems.
 - c. Act as liaison between the insurer, adjusters, field staff, Medical Management providers, and Arlington County.
 - 9. Status Reports: The Contractor will perform claim reviews and provide status reports to the County on all claims files, using Attachment A - Claim Review Form. The Contractor shall provide the County with formal status reports on:
 - a. any file reserved at \$10,000 or more;
 - b. any reserve increase of \$10,000 or more; and
 - c. any file open for a period over six months.

The County may from time to time request interim reports or information on specific files.

- 10. In the event of an emergency as determined by the County, the Contractor shall provide an on-call adjuster who is available 24 hours per day, 365 days per year.
- 11. The Contractor shall not possess any settlement authority with respect to claims arising from any of the County's lines of insurance that it administers under this scope of services.
- 12. Communication
 - a. The Contractor must maintain open, general lines of communication with the County on an ongoing basis. This communication must include the Contractor pre-notifying the County of any pretrial notice or hearing, the notice must include the approach to be used and a copy of the actual trial notice if the Contractor has acquired it. If this information is received by the County first, then a copy of the documents must be sent to the Contractor's claim examiner.

- b. The Contractor must respond to requests made by the County within 24 to 48 hours.
- c. The Contractor's staff must conduct staff visits as necessary and determined by the County to:
 - i. Educate personnel on claims handling procedures that affect any case.
 - ii. Discuss specific cases of concern.
 - iii. Resolve any problems involving the claim service program.
- d. The Contractor must make every effort to return phone calls from County or claimant the same business day and no later than 24 business hours. The Contractor must respond to all other County requests within 24 to 48 hours.
- e. The Contractor must communicate changes involving the dedicated or designated adjusters to the County at least thirty (30) days prior to the change being made and no changes shall be made without the prior County's approval.

C. First Party Property and Auto Physical Damage

The Contractor will provide the following services for First Party Property and Auto Physical Damage claims as requested:

- 1. Claims investigation and resolution including, but not limited to initial on-site accident/incident investigation (written or recorded statements, photos and written liability evaluations).
- 2. Upon County request, vehicle damage appraisal.
- 3. Upon County request, Property damage appraisal.
 - f. Subrogation evaluation and follow-up on claims. Based upon the results of the investigation of the claim, the Contractor must recognize and investigate subrogation, contribution and coordination of benefits possibilities, including (where needed) preservation of needed evidence and the use of experts to provide a basis for recovery. The Contractor shall not incur any expense for pursuit of a third party and must not put any third party on notice without the County's prior approval. The Contractor shall not charge the County for recovery efforts, unless if applicable, the claim is assigned with the approval of the County to a subrogation specialty claims unit.
- 4. The Contractor shall provide the County with claim reports canned and custom, as requested by the County.
- 5. The Contractor shall provide the County with yearly historical comparisons of data (Yearly Stewardship) annually.
- 6. The Contractor shall assign the County an account manager with the following responsibilities:
 - a. Attend in-person claim reviews of selected files, preferably in person.
 - b. Act as service provider representative on any claim issues or problems.

- c. Act as liaison between the insurer, adjusters, field staff, and Arlington County.
- 7. Status Reports: The Contractor will perform claim reviews and provide status reports to the County on all claims files, using Attachment A - Claim Review Form. The Contractor shall provide the County with formal status reports on:
 - a. any file reserved at \$10,000 or more;
 - b. any reserve increase of \$10,000 or more; and
 - c. any file open for a period over six months.

The County may from time to time request interim reports or information on specific files.

- 8. In the event of an emergency as determined by the County, the Contractor shall provide an on-call adjuster who is available 24 hours per day, 365 days per year.
- 9. The Contractor shall not possess any settlement authority with respect to claims arising from any of the County's lines of insurance that it administers under this scope of services.
- 10. Any County property that sustains damage that is non-repairable its salvage value will be coordinated with the County along with the process.
- 11. The Contractor may only use internal services or subcontractors where necessary and on limited investigation basis with County approval. The Contractor must document in the file the reason for the assignment and the approving source at the County. The Contractor remains liable for all acts and omissions of its subcontractor and its internal services personnel. The County reserves the right to approve a subcontractor list or request a subcontractor they would like to have to handle the services.
- 12. The Contractor must pursue all pre-approved settlement, and all negotiations must be handled or managed internally by the claims person assigned to the case
- 13. The Contractor must discuss all proposed settlements in advance with the County. The Contractor must deliver to the County a written status report giving a brief description of the claim, the proposed settlement and the rationale behind the settlement prior to claim discussion.
- 14. Claims Processing
 - a. Within 1 business day of receipt of the claim the Contractor must create files, reserve and assign the proper facility code number and enter necessary data into the information system.
 - b. The Contractor must establish a minimum reserve within 5 business days. The Contractor must review reserves at 30, 60, and 90 days and every 90 days thereafter. The Contractor must document file notes to reflect reserves were reviewed. Levels for reserve increases shall be established by the County and a reserve worksheet will need to be submitted to the County and approval received for any reserve increase/decrease that exceeds that examiner's reserve authority.

- c. The Contractor must establish a diary system so that each case is reviewed at least every 60 days, or more often as needed. The Contractor must document notes to reflect the file was reviewed.
- d. The Contractor must complete a two-point contact with the injured party and the reporting supervisor within 24 hours. The Contractor must document files with attempts made by phone. The Contractor must send call card/letters to the injured party via U.S. mail, if no phone contact is made in two attempts on successive days. The Contractor must send an email to the County's Risk Management Department giving notice that a letter has been sent.
- e. The Contractor must enter all pre-approved payments, reserve revisions and file closings into the information system.
- f. The Contractor must take into consideration all potential payments including expenses for the reserve.
- g. The Contractor must limit adjusters to an active case load of 140 claims (claims with multiple coverage lines shall be deemed as a single claim).
- h. The Contractor must provide a toll-free telephone number, email, fax number and web-ex claims reporting service.

13. File Documentation

- a. The Contractor must clearly explain in the file the basis for initial reserves, reserve revisions and payments. The Contractor must document their contact with the County to discuss and obtain concurrence on the reserves before the Contractor establishes them in the information system. The Contractor must submit a reserve worksheet (that will be mutually developed between Contractor and the County) and receive approval from the County for any reserve increase/decrease that exceeds that examiner's reserve authority.
- b. The Contractor must establish specific direction on the investigation and handling of all cases within 2 business days of receipt of the first report of injury and clearly evidenced in the file. The Contractor's extent of the direction shall be based upon the seriousness or complexity of the case at hand.
- c. The Contractor must complete an initial claim report on property damage cases within 14 business days of receipt of the first report of accident.
- d. The Contractor must complete updated claim status reports and place in any indemnity file at 45, 75, and 105 days, and every 90 calendar days thereafter from the receipt of the first report of injury. The Contractor must prepare a summary to include all information that relates to the direction and value of the case, as well as further work to be done and a target day for completion.
- e. The Contractor must clearly document all phone conversations, discussions, and meetings held on the case shall be clearly documented in each case file.
- f. The Contractor must clearly evidence a diary schedule in each case file and the file notes must reflect reserves were reviewed for adequacy and

accuracy each time the file is reviewed for any reason.

14. Reporting Requirements

- a. When a claim meets any of the following conditions: (1) reserves are at or above \$10,000, (2) the claim exceeds the property deductible (3) the claim is litigated, the Contractor must follow the steps, as indicated below:
 - i. The loss shall be telephoned within 24 hours to the County.
 - ii. An initial written report in a County approved format shall be completed and submitted to the County, all within 14 days after the defined reporting condition is met.
 - iii. Supplemental written status reports shall be completed and submitted to the County or as requested by the County at least every 90 calendar days following the first report and shall include any pertinent information that could reasonably affect the ultimate value of the claim.
- b. Within 2 business days of pre-approved reserve increase of \$10,000 or more, the Contractor must send a written explanation of the increase and the basis for it to the County in the approved reserve increase/decrease standard form established by the County and Contractor
- c. The Contractor must report, via a County approved topical captioned format, to the County and specified excess insurers. The reports shall comply with reporting obligations of the County. If requested by the County or the excess insurer, the Contractor must provide such insurer with necessary information on the status of related claims or losses.
- d. The Contractor must be available to meet with the County quarterly to review selected claims as provided by the County.

15. Communication

- a. The Contractor must maintain open, general lines of communication with the County on an ongoing basis. This communication must include the Contractor pre-notifying the County of any pretrial notice or hearing, the notice must include the approach to be used and a copy of the actual trial notice if the Contractor has acquired it. If this information is received by the County first, then a copy of the documents must be sent to the Contractor's claim examiner.
- b. The Contractor must respond to requests made by the County within 24 to 48 hours.
- c. The Contractor's staff must conduct staff visits as necessary and determined by the County to:
 - i. Educate personnel on claims handling procedures that affect any case.
 - ii. Discuss specific cases of concern.

- iii. Resolve any problems involving the claim service program.
- d. The Contractor must return phone calls from County or claimant the same business day and no later than one (1) business day. The Contractor must respond to all other County requests within 24 to 48 hours.

The Contractor must communicate changes involving the dedicated or designated adjusters to the County at least thirty (30) days prior to the change being made. and no changes shall be made without the prior County's approval.

D. Other General Responsibilities

The Contractor must provide the following services:

1. Provide a directory of claim offices and personnel assigned to the County; and provide new copies as updates become available.
2. Identify specific claim offices and resident adjuster locations (if applicable) that will service the County. The list must identify claim manager, supervisors, and adjusters at each location along with their email addresses, fax and phone numbers.
3. Provide and identify dedicated or designated claim personnel to be assigned to the County's contract. In the event of a change in claim service personnel, the County requires advance notification and an introduction of new personnel within 30 days of such notification. The County retains the right to approve or disapprove of all personnel assigned to handle the County's claims.
4. Be available to meet with County personnel prior to program inception for introduction of dedicated or designated claim service representative(s), explanation of claim reporting instructions, and to establish communication and claim handling procedures.
5. Provide claim service procedures to be approved by the County prior to distribution to claim adjusters.
6. The Contractor will have \$0 in settlement authority and \$10,000 in reserve change authority.
7. Obtain approval by the County prior to issuing a Denial of Liability letter.
8. Develop client service agreements or instructions pursuant to the County's request for ancillary claim services to include but not limited to surveillance, Durable Medical Equipment (DME), transportation, translation, on-site nurse case management, telephonic nurse case management, and pharmacy programs. No ancillary claim service vendors will be authorized for use without prior County approval. The County reserves the right to approve the ancillary vendors the Contractor uses for the administration of the resulting contract and the right to review any agreement with ancillary providers. All staff dedicated to the County's account will be subject to any County gift policy and Virginia's State and Local Government Conflict of Interest Act. Violation of this provision may result in the removal of the Contractor's staff from the County's account. The Contractor shall provide appropriate replacement staff for any staff member removed for violation of this policy.

9. There shall be quarterly in-person claim reviews where the claims personnel handling the County's claims will attend when requested.
10. The Contractor shall assemble any statistical claims data required by the State Department of Insurance in a timely manner.
11. The Contractor shall provide loss control services. This requires a focus on prevention. The County may require the services of loss control specialists. The Contractor shall provide these services, if a request is made, using specialists either on its staff or subcontractors. These services are provided at no additional charge with hourly limits of no less than 160 hours, and include but are not limited to the following:
 - a. Each quarter, a minimum of eight (8) hours of training and professional development events annually on mutually agreed upon loss prevention topics
 - b. Feedback related to the County's liability and workers' compensation data, and how it compares to other entities.
 - c. Access to safety related research undertaken by such nationally recognized agencies as the Bureau of Labor Statistics, National Safety Council, and others.

E. Information Systems Requirements

1. The Contractor must provide and have incorporated a claims management system and software programs, available from the Contractor or an affiliate, as part of its services to the County at no additional cost. All data shall be backed up at an off-site location, and shall be maintained in a secure manner. Confidentiality shall be strictly enforced. The Contractor will specify what standard or best practices they follow for cyber security. The County will require the Contractor to provide a security certificate each year, such as the SSAE 16.
2. The Contractor must provide hourly or nightly downloads of claim system data to include payment information and adjuster or NCM notes to any risk management information system database purchased or utilized by the County, if applicable.
3. The Contractor must provide the County with real time or no greater than one-hour old claim information viewing as part of the risk management information system they provide to their clients.
4. The Contractor shall have the ability to provide a variety of monthly, quarterly, and annual electronic loss runs to the County and the County's excess carrier in a format acceptable to the excess carrier and to the County. Examples of necessary reports include but are not limited to reserve change reports, claims detail reports, on and off payroll reports, reporting lag reports, automated OSHA logs and reports, salary in lieu of compensation reports by type of indemnity payment, and open claims reports. These reports shall be available in PDF and excel format.
5. The Contractor, as needed, shall provide staff hours, at no additional cost, to convert and facilitate the transition of any outstanding files from the current TPA, including conversion of all existing data files and scanned documents to the new Contractor's claim management system. The Contractor's claims management system output shall be

in a format that can be integrated and/or interfaced with the County's payroll and accounting systems.

6. Prior to the transfer of the Contractor (take over), the Contractor shall:
 - a. Train County employees on how to use the Contractor's operational systems specifically utilizing the online claim system to access all claim information, all reports from detailed claim files, financial and online claim reporting along with any other training necessary to utilize the Contractor's resources.
 - b. Contractor's IT staff and assigned adjustors will work with the County's staff as needed to assist in data conversion.
 - c. The Contractor shall not charge the County administrative fees for training. The Contractor shall only charge administrative fees after the Contractor begins claims administration under the contract.
 - d. The Contractor shall develop a milestone timeline chart to be approved by the County on the set up and takeover data project.
7. All new files and scanned records shall always be available within one (1) business day to the County.
8. The Contractor shall provide a transition plan step by step certifying its compliance with the necessary deadlines and include providing training for all liaisons that must enter claims into the required online system.
9. Whenever a closed claim needs to be re-opened, the file shall be re-opened within one (1) working day after the Contractor receives notice from the County or when applicable, a claimant. All files shall be transitioned into the system before payments are made and comply with EDI reporting requirements for workers' compensation claims.
10. Should the Contractor selected for this contract not be selected to continue this service through the next RFP process, the Contractor, must work cooperatively with the succeeding TPA contractor to transition all claim data and associated records to the new TPA starting at a minimum of two months prior to the contract termination date.
11. The Contractor's information system provided to the County must have the capability of capturing salary in lieu of compensation benefits by type of indemnity payment (e.g. Temporary Total Disability (TTD), Temporary Partial Disability (TPD), Permanent Total Disability (PTD)) and not limited to view, sort, or run real-time reports of such.

Performance Claim Reviews and Audits

For Claim Reviews the Contractor shall provide a claims status report that will be concurred by the County and Contractor. For audits the following applies:

1. For workers' compensation claims, at minimum, the Contractor must include in the file the following documents, but not limited to:
 - a. The first report of injury, properly and completely filled out with injured body parts specified.
 - b. A completed report regarding the investigation and follow-up on prior injuries and treatments.
 - c. An accurate computation of benefits and prompt payment to claimants, including medical bills, indemnity and mileage to treatment sites.
 - d. Completed written requests for medical records and doctor's assessments.
 - e. Accurate Virginia Worker's Compensation Commission ("VWCC") forms and submissions, with cover letters.
 - f. A report that demonstrates that reserves are established and updated.
 - g. A report that demonstrates that all settlement costs are accurately determined.

2. For general liability and auto claims, at minimum, the Contractor must include in the file the following documents, but not limited to:
 - a. An incident report or Vehicle Incident Report Form, police report (if any), damage appraisal and liability and subrogation assessment.
 - b. A report regarding the investigation of incident, including statements of claimant and witnesses.
 - c. A report that demonstrates that reserves are established and updated.
 - d. A report that demonstrates that all settlement costs are accurately determined.
 - e. A report that shows that the file was closed with release and other necessary documents.
 - f. An accurate computation of benefits and prompt payment to claimants, (e.g. medical bills for bodily injury claims and property damage losses).

F. Audit Response

If more than 5 percent of the claims in an audit or review are deficient, the Contractor must present a written plan for correction to the County within 30 days after receiving the audit results. The Contractor's Plan for Correction must detail specific actions to correct the deficiencies within 90 calendar days. The County may modify the plan for correction or require additional corrective actions be added before accepting the plan. The County will conduct a second audit at the end of the 90-calendar day period for correction, or as soon thereafter as possible.

G. Reimbursable Expenses

The County will reimburse the Contractor for the cost of the following categories of expenses if the County Project Officer approves the specific expenses before they are incurred.

1. Travel meals and lodging associated with claims investigation requiring overnight travel.
2. Any additional expenses incurred by the Contractor at the request of the County that are not specifically chargeable to an individual claim file or part of the claim handling fees.

H. Litigation

Litigation for the County shall be handled by the Office of the County Attorney, or outside counsel hired and supervised by the Office of the County Attorney. The Contractor shall cooperate with the County and its agents to the fullest extent possible, including but not limited to responding to questions about the claims file and claims investigation, providing data and information, and providing access to the claims file

I. Ownership and Confidentiality of Files

The Contractor understands and agrees that all documents, data, information, and records given to the Contractor by the County, its employees or agents under this Agreement shall remain the sole and exclusive property of the County. All documents generated by the Contractor in the performance of Work under this Agreement, including but not limited to the claims file for each claim made against the County, shall be the sole and exclusive property of the County and may not be disclosed to any third party without the County's express written approval. Furthermore, the Parties agree that all investigative and analytical materials produced by the Contractor or in the Contractor's possession in the performance of Work under this Agreement, including but not limited to emails, correspondence, interview notes, recordings, analysis, recommendations, and draft agreements, are all prepared for review, evaluation, decision-making, and preparation in anticipation of litigation by the County's legal counsel, and subject to protection as attorney-client work product and/or attorney-client privileged communications, and shall be protected as such.

J. Claims Payments

The Contractor shall make claims payments on behalf of the County.

At the conclusion of each month, the Contractor shall provide to the County an invoice and a report on the per claim payments made under \$25,000.00 on behalf of the County for the previous month grouped by claim type, and listing the claim line i.e. medical, indemnity, expense, of the payment. For claim payments of \$25,000.00 and greater, the Contractor shall immediately invoice the County for electronic payment before the payment can be released. Pursuant to the Contractor's analysis, at the commencement of the contract term, the County will provide the Contractor \$350,000 as a loss deposit as security for the claims payments the Contractor makes on the County's behalf. The Contractor will hold the \$350,000 in a Funds Held for Others general ledger account.

The Contractor will prepare and submit to the County on at least an annual basis an account analysis to determine whether any adjustment to the loss deposit amount is warranted. All changes in the loss deposit amount must be agreed to in writing by both parties.

The Contractor is prohibited from withholding, transferring, or withdrawing funds in the Funds Held for Others general ledger account because of a dispute between the parties. Funds in the Funds Held for Others general ledger account may only be drawn down to reimburse the Contractor for payments made on behalf of the County that the County agrees are reasonable and necessary claims payments in the event the County fails to pay accepted invoices for a period of sixty (60) days or more.

Upon termination or expiration of this Agreement, the Contractor shall return the loss deposit to the County within five (5) business days.

The Contractor shall permit the County to audit the Funds Held for Others general ledger account on request by the County. The Contractor will provide any documentation requested in a County audit within five business days of the County's request to audit.

K. Optional Service

The County may, through an amendment to this Agreement, elect to purchase the following optional service at the price listed:

- Legal Bill Auditing – the Contractor may be requested to audit the legal bills of the County's excess carrier. In no event shall the Contractor have the authority to audit the legal bills of outside counsel retained by the Office of the County Attorney. The fee for this service shall be set at 3.2% of legal bills paid for the term of this Agreement.

Exhibit B
Contract Pricing

Unless otherwise stated, services listed cannot be unbundled.

General Administrative Services

Description	Proposal Pricing	Negotiated Pricing
Annual Administration Fee (what's included) <i>Includes Account management, 15 RMIS ID's with support</i>	\$59,000	\$45,000
Implementation Fee	Included	Included
Account Manager and Account Management staff	Included	Included
Communication materials/posters	Included	Included
Risk Control Services	160 hrs included	160 hrs included annually per contract

Risk Management Information System (RMIS) and Technical support

Description	Proposal Pricing	Negotiated Pricing
Annual RMIS Fee for Access	Included in Admin	Included in Admin Fee
RMIS User ID Cost	Included in Admin	Included in Admin Fee
Prior TPA's TPA/Carrier Data Conversion	\$4495 per line of business	\$4495 Total all lines of business
Prior TPA's TPA/Carrier Data Conversion Updates	\$495	\$495
County Human Resources Feed	\$1,500 annually	Waived/No Charge
Electronic Data Transmission/ Extracts (based on frequency, if applicable) Monthly/Weekly/Daily	\$5,995/\$17,500/\$29,000	\$3,600/\$7,800/\$18,950
Training – onsite and online	Included	Included in Admin Fee
Technical support	Included	Included in Admin Fee
State EDI files	Included	Included in Claim Fee
Monthly reporting	Included	Included in Claim Fee
Ad hoc report programming	\$125/hr	\$125/hr as needed upon client request

Monthly Carrier Data Extracts	Included	Included in Admin Fee
Annual Banking Fees (per account)		Included in Admin Fee
Carrier TPA Oversight Fees: Tail Claims/New claims		Not applicable for Virginia
OSHA reporting access/services	\$4200 for up to 10 ID's	\$4,200 total for unlimited users

Intake Services

Description	Proposal Pricing	Negotiated Pricing
Claim Intake internet, telephonic, fax, email	EDI included with \$20 for all other	EDI/online reporting: \$0 Telephonic/Email: \$20
Incident Only/record only Reporting	\$45 per claim	\$45 per claim
24/7 Nurse Triage	Varies by vendor selected	Varies by vendor selected. Ranges between \$75.55 and \$85.00 per claim up to 4 calls with injured employee
Self Insurance Reporting	Included	Included in Admin Fee

Allocated Expense Fees

Description	Proposal Pricing	Negotiated Pricing
Subrogation	15% of recovery	15% of recovery for Second Injury Fund or Third Party claims only. Does not apply to medical provider recovery
Indexing	\$11 per index	\$11 per index
Hardcopy File Storage	included	Monthly Storage Fee is included in Admin Fee if storage is within Iron

		Mountain. If there is a fee to transfer hard files to another storage company, shipping charges will be pass through cost back to client
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Medical Management Services

Description	Proposal Pricing	Negotiated Pricing
Fee Schedule and Usual & Customary	\$8.95 per bill	\$8.50 per bill
Professional Review	26% of savings capped at 10K per bill	26% of savings capped at 10K per bill
PPO Network	26% of savings	26% of savings
DME Network	26% of savings	26% of savings, if use of DME company outside of Helmsman network
Pharmacy Bills	\$8.95	\$8.50
State EDI	Included	Included in Admin Fee
Implant Review		Fee is pass through with no profit based on contract vendor of Helmsman. If outside of Helmsman network, 26% of saving would apply on bill reductions
Fee Negotiations	26% of savings	26% of savings
Duplicate Bill Processing	Included	Included in Claims Fees
Description	Proposal Pricing	Negotiated Pricing
Initial 1099 Provider Notification Letter	Included in per claim rates	Included in per claim rates
Telephonic Case Management	\$120 per hour	\$110 per hour, billable at 10 minute increments per usage

Field Case Management	\$120 per hour	\$110 per hour, billable at 10 minute increments per usage. This service may be unbundled with any costs passed through to the County with no profit load based on Helmsman contracted rates.
Return to Work Coordinator	\$120 per hour	\$110 per hour
Vocational Rehabilitation	Rate charged as incurred.	Rate charged as incurred. Service offered by Helmsman at \$300/per hour billable at 30 minute increments. This service may be unbundled with any costs passed through to the County with no profit load based on Helmsman contracted rates.
Utilization Review Pre-cert	\$155 per review	\$140 per review
Utilization review – drug strategies	\$25 per denied description	\$25 per denied description
Utilization Review – URAC appeal/non-clinical/Consult	\$105 per review	\$100 per review
Physician/ Medical Director Case Management	\$425 per Hour	\$395 per Hour, billable at 30 minute increments
Peer Review / Physician Advisor	Pass through vendor charge	Pass through vendor charge, Market rates with no profit load
Nurse case management (fee schedule per task assignments)	n/a	Noted above in Nurse fees
Specialty services (catastrophic claims	\$125 per hour	\$125 per hour
Medication Review ie contraindications, etc	Included	Included

Specialty Network Services (designate ability to unbundle and depict current utilized providers)

Description	Proposal Pricing	Negotiated Pricing
Durable Medical Equipment	\$8.95 per bill & 26% of prof. savings	\$8.50 per bill & 26% of prof. savings if out of Helmsman contracted network rates. If in Helmsman network, only \$8.50 per bill applies
Transportation	Pass through	This service may be unbundled with any costs passed through to the County with no profit load based on Helmsman contracted rates.
Translation	Pass through	This service may be unbundled with any costs passed through to the County with no profit load based on Helmsman contracted rates.
Specialty Investigative Unit (SIU)	\$95/hr + mileage	\$95/hr + mileage This service may be unbundled with any costs passed through to the County with no profit load based on Helmsman contracted rates.
Physical Therapy	\$8.95 per bill & 26%* of prof. savings	\$8.50 per bill & 26%* of prof. savings if out of Helmsman network. If in network, only \$8.50 per bill charge applies. This service may be unbundled with any costs passed through to the County with no

		profit load based on Helmsman contracted rates.
Occupational Therapy	\$8.95 per bill & 26%* of prof. savings	\$8.50 per bill & 26%* of prof. savings if out of Helmsman network. If in network, only \$8.50 per bill charge applies. This service may be unbundled with any costs passed through to the County with no profit load based on Helmsman contracted rates.
Radiological: MRI/CT Scan etc.	\$8.95 per bill & 26%* of prof. savings	\$8.50 per bill & 26%* of prof. savings if out of Helmsman network. If in network, only \$8.50 per bill charge applies. This service may be unbundled with any costs passed through to the County with no profit load based on Helmsman contracted rates.
Onsite Adjusting	Pass through vendor charge	This service may be unbundled with any costs passed through to the County with no profit load based on Helmsman contracted rates.
Auto Damage Appraisals	Included in Claim fee	Included in Claim fee
Description	Proposal Pricing	Negotiated Pricing
Property Appraisals	Pass through vendor charge	This service may be unbundled with any costs passed through to the County with no profit load based on

		Helmsman contracted rates.
Accident Reconstruction	Pass through vendor charge	This service may be unbundled with any costs passed through to the County with no profit load based on Helmsman contracted rates.

Medicare Agent Reporting and Services

Description	Proposal Pricing	Negotiated Pricing
Set up and engagement	Included	Included
Monthly Maintenance	Included	Included
Quarterly Reporting	Included	Included
Medicare Set Asides: initial evaluation, revision, medical allocation	\$1500 for initial review. \$500 for Revision	\$1500 for initial review. \$500 for Revision within Helmsman MSA network. This service may be unbundled with any costs passed through to the County with no profit load based on Helmsman contracted rates.
Medicare Future Medical Allocation i.e. life care plan	\$900 per review	\$900 per review if in Helmsman network. Vendor rates apply if outside of Helmsman network. This service may be unbundled with any costs passed through to the County with no profit load based on Helmsman contracted rates.
Medicare Eligibility Verification	\$125 per review	\$125 per review

Per Claim Fees for New Claims

Claim Type	Life of Contract Fee Per Claim
Workers Compensation	
Record Only	\$45
Medical Only	\$157
Indemnity – Managed Medical	\$846
Indemnity – Employers Liability or Federal Act	\$846

Auto/General Liability	
Record Only	\$45
Fast Track	\$295
Physical Damage	\$295
Property Damage	\$468
Bodily Injury	\$761
Complex	\$761

Per Claim Fees for Open (Takeover) Claims

Claim Type	Life of Contract Fee Per Claim
Workers Compensation	
Medical Only	\$150
Indemnity – Managed Medical	\$395
Indemnity – Employers Liability or Federal Act	\$395

Auto/General Liability	
Fast Track	\$200
Physical Damage	\$200
Property Damage	\$295

Bodily Injury	\$295
Complex	\$295
Property Claims	\$468

Other Fees	
Claims Payment Account	\$350,000

Definitions

<p>For the purposes of this Agreement, the following definitions shall apply:</p>
<p>Allocated Loss Adjustment Expenses (ALAE) will be used in all claims reporting by the Contractor. ALAE is defined as all expenses or fees allocable to a specific claim including but not limited to, legal expenses or attorneys' fees, court costs or fees, and expenses and fees for litigation management, electronic legal billing, service of process, depositions or examinations under oath, interest, copies of any public records, transcription services, appraisals, subrogation, private investigation, surveillance (excluding Helmsman SIU on A/L claims), professional photography, expert witness analysis or testimony, accident reconstruction, engineering analysis and field investigation, hospital or other medical reports, medical examinations, medical or hospital bill review, PPO networks, Utilization Review, and Catastrophic Case Management (Florida only). The definition of "allocated loss adjustment expense" shall be amended when, and to the extent, necessary to bring the definition into compliance with applicable law.</p>
<p>Automobile/General Liability Fast Track Claim: A third party claim for damage covered by the Property Damage or Bodily Injury coverage grant of an Automobile, Garage or General Liability policy that has total paid loss and expense less than \$1,000 and is open for fewer than 30 days from the date of claim registration.</p>
<p>Automobile/General Liability Property Damage Claim: A third party claim that does not meet the Fast Track claim criteria for damage, which is covered by the Property Damage coverage grant of an Automobile, Garage or General Liability policy. Each claimant will have a separate file and corresponding Claims Service Fee.</p>
<p>Automobile/General Liability Bodily Injury Claim: A third party claim that does not meet the Fast Track claim criteria for bodily injury which is covered by the Bodily Injury coverage grant of an Automobile, Garage or General Liability policy, or any claim for damages under Underinsured or Uninsured Motorist or Personal Injury Protection coverage. Each claimant will have a separate file and corresponding Claims Service Fee. If a third party liability claim involves both property damage and bodily injury, a separate claim handling charge is incurred for both coverage grants for the purposes of Claim Service Fees.</p>
<p>Automobile/General Liability Complex Claim: Pollution claims, specialty claims, and any third party claim that involves contractual liability, liquor liability, discrimination, "high</p>

severity" of injury, "significant property damage" or complex coverage issues, and any claim that is open longer than two years. Our internal guidance generally defines "high severity" and "significant" based on a potential exposure above \$150,000.

Workers Compensation Medical Only Claim: Any claim, which is not a Managed Medical claim and meets the following criteria:

1. Medical paid >\$0 but < \$3,000 or Expense paid is >\$0
2. Days open from date of registration < 180 days

A claim where no Indemnity benefits are incurred or paid

Workers Compensation Managed Medical Claim: Any claim which meets the following criteria:

1. Medical paid >\$0 but < \$3,000 or Expense paid is >\$0
2. Days open from date of registration < 180 days
3. A claim where no Indemnity benefits are incurred or paid

Full investigation required and completed on a "Workers Compensation Medical Only Claim".

Workers Compensation Indemnity Claim: Any claim which meets the following criteria:

1. Medical paid > or = \$3,000
2. Days open from date of registration > or = 180 days
3. A claim where Indemnity benefits are incurred or paid

A claim where the employer provides salary continuation during the disability period, active or prior litigation, or is controverted.

Workers Compensation Indemnity Claim - Federal Act Claim: Any claim where indemnity benefits are alleged or paid under a federal workers compensation act (e.g. USL&H). This includes Maritime and Jones Act claims.

Workers Compensation Indemnity Claim - Employers Liability Claim: Any claim where benefits are alleged or paid under the Coverage B portion of the WC policy.

Record Only Claim: Any claim reported to Helmsman that requires no payment or activity other than generating a record within our claims management system.

EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is hereby entered into between Helmsman Management Services, LLC (hereafter referred to as "Business Associate") and the County Board of Arlington County, Virginia (hereafter referred to as "Covered Entity" or "County") (collectively "the parties") and is hereby made a part of any Underlying Agreement for goods or services entered into between the parties.

Recitals

The County provides services to its residents and employees which may cause it or others under its direction or control to serve as covered entities for purposes of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The County, in its capacity as a covered entity, may provide Business Associate with certain information that may include Protected Health Information (PHI), so that Business Associate may perform its responsibilities pursuant to its Underlying Agreement(s) with and on behalf of County.

Covered Entity and Business Associate intend to protect the privacy of PHI and provide for the security of any electronic PHI received by Business Associate from Covered Entity, or created or received by Business Associate on behalf of Covered Entity in compliance with HIPAA; in compliance with regulations promulgated pursuant to HIPAA, at 45 CFR Parts 160 and Part 164; and in compliance with applicable provisions of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the "HITECH Act") and any applicable regulations and/or guidance issued by the U.S. Department of Health and Human Services ("DHHS") with respect to the HITECH Act (collectively "federal law").

WHEREAS, federal law and the specific regulations promulgated pursuant to HIPAA at 45 CFR § 164.314, 45 CFR § 164-502(e) and 45 CFR § 164.504(e) require a Covered Entity to enter into written agreements with all Business Associates (hereinafter "Business Associate Agreement");

WHEREAS, the parties desire to comply with HIPAA and desire to secure and protect such PHI from unauthorized disclosure;

THEREFORE, **Business Associate** and **Covered Entity**, intending to be legally bound, agree as follows. The obligations, responsibilities and definitions may be changed from time to time as determined by federal law and such changes are incorporated herein as if set forth in full text:

1) Definitions

The capitalized terms used in this Business Associate Agreement shall have the meaning set out below:

- a) **Accounting**. "Accounting" means a record of disclosures of protected health information made by the Business Associate.

- b) **Breach.** “Breach” means the acquisition, access, use, or disclosure of protected health information in a manner not permitted by this Business Associate Agreement and/or by HIPAA, which compromises the security or privacy of the protected health information. For purposes of this Business Associate Agreement, any unauthorized acquisition, access, use, or disclosure of protected health information shall be presumed to be a breach.
- c) **Business Associate.** “Business Associate” means a person who creates, receives, maintains, or transmits protected health information on behalf of a Covered Entity to accomplish a task regulated by HIPAA and not as a member of the Covered Entity's workforce. A Business Associate shall include, but is not limited to, a non-workforce person/entity who performs data processing/analysis/transmission, billing, benefit management, quality assurance, legal, actuarial, accounting, administrative and/or financial services on behalf of the Covered Entity involving protected health information. A Business Associate also includes a subcontractor.
- d) **Covered Entity.** “Covered Entity” means a health plan, a health care clearinghouse, and/or a health care provider who transmits any health information in electronic form in connection with an activity regulated by HIPAA.
- e) **Data Aggregation.** "Data Aggregation" means, with respect to PHI created or received by Business Associate in its capacity as the Business Associate of Covered Entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- f) **Designated Record Set.** “Designated Record Set” means all records, including medical, enrollment, billing, payment, claims, and/or case management maintained by and/or for a Covered Entity.
- g) **Discovery.** "Discovery" shall mean the first day an unauthorized use or disclosure is known or reasonably should have been known by Business Associate, including when it is or should have been known by any person other than the person who engaged in the unauthorized use/disclosure who is an employee, officer, or agent of Business Associate.
- h) **Electronic Protected Health Information.** “Electronic Protected Health Information” means individually identifiable health information that is transmitted by or maintained in electronic media.
- i) **HIPAA.** “HIPAA” means the Health Insurance Portability and Accountability Act of 1996 as in effect and/or as amended.
- j) **HITECH Act.** “HITECH Act” means the portions of the Health Information Technology for Economic and Clinical Health Act which serve as amendments to HIPAA. HITECH is included within the definition of HIPAA unless stated separately.
- k) **Individual.** “Individual” means the person who is the subject of protected health information and/or a person who would qualify as a personal representative of the person who is the subject of protected health information.

- l) **Protected Health Information.** "Protected Health Information" or "PHI" means individually identifiable health information transmitted and/or maintained in any form.
- m) **Remuneration.** "Remuneration" means direct or indirect payment from or on behalf of a third party.
- n) **Required By Law.** "Required By Law" means an activity which Business Associate is required to do or perform based on the provisions of state and/or federal law.
- o) **Secretary.** "Secretary" means the Secretary of the Department of Health and Human Services or the Secretary's designee.
- p) **Security Incident.** "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with the system operations in an information system.
- q) **Underlying Agreement.** "Underlying Agreement" means the County contract for goods or services made through the County's procurement office which the parties have entered into and which the County has determined requires the execution of this Business Associate Agreement.
- r) **Unsecured Protected Health Information.** "Unsecured Protected Health Information" means protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology approved by the Secretary.

2) **Obligations and Activities of Business Associate**

- a) Business Associate acknowledges and agrees that it is obligated by law (or upon the effective date of any portion thereof shall be obligated) to meet the applicable provisions of HIPAA and such provisions are incorporated herein and made a part of this Business Associate Agreement. Covered Entity and Business Associate agree that any regulations and/or guidance issued by DHHS with respect to HIPAA that relate to the obligations of business associates shall be deemed incorporated into and made a part of this Business Associate Agreement.
- b) In accordance with 45 CFR §164.502(a)(3), Business Associate agrees not to use or disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law.
- c) Business Associate agrees to develop, implement, maintain and use appropriate administrative, technical, and physical safeguards that reasonably prevent the use or disclosure of PHI other than as provided for by this Business Associate Agreement, in accordance with 45 CFR §§164.306, 310 and 312. Business Associate agrees to develop, implement, maintain and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI, in accordance with 45 CFR §§164.306, 308, 310, and 312. In accordance with 45 CFR §164.316, Business Associate shall also develop and implement policies and procedures and meet the documentation requirements as and at such time as may be required by HIPAA.

- d) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate, of a use or disclosure of PHI by Business Associate in violation of the requirements of this Business Associate Agreement.
- e) In accordance with 45 CFR §§164.308, 314 and 502, Business Associate will ensure that any workforce member or agent, including a vendor or subcontractor, whom Business Associate engages to create, receive, maintain, or transmit PHI on Business Associate's behalf, agrees to the same restrictions and conditions that apply through this Business Associate Agreement to Business Associate with respect to such information, including minimum necessary limitations. Business Associate will ensure that any workforce member or agent, including a vendor or subcontractor, whom Business Associate engages to create, receive, maintain, or transmit PHI on Business Associate's behalf, agrees to implement reasonable and appropriate safeguards to ensure the confidentiality, integrity, and availability of the PHI.
- f) At the request of Covered Entity, Business Associate will provide Covered Entity, or as directed by Covered Entity, an Individual, access to PHI maintained in a Designated Record Set in a time and manner that is sufficient to meet the requirements of 45 CFR § 164.524, and, where required by HIPAA, shall make such information available in an electronic format where directed by the Covered Entity.
- g) At the written request of Covered Entity, (or if so directed by Covered Entity, at the written request of an Individual), Business Associate agrees to make any amendment to PHI in a Designated Record Set, in a time and manner that is sufficient to meet the requirements of 45 CFR § 164.526.
- h) In accordance with 45 CFR §164.504(e)(2), Business Associate agrees to make its internal practices, books, and records, including policies and procedures, and any PHI, relating to the use and disclosure of PHI, available to Covered Entity or to the Secretary for purposes of determining compliance with applicable law. To the extent permitted by law, said disclosures shall be held in strictest confidence by the Covered Entity. Business Associate will provide such access in a time and manner that is sufficient to meet any applicable requirements of applicable law.
- i) Business Associate agrees to document and maintain a record of disclosures of PHI and information related to such disclosures, including the date, recipient and purpose of such disclosures, in a manner that is sufficient for Covered Entity or Business Associate to respond to a request by Covered Entity or an Individual for an Accounting of disclosures of PHI and in accordance with 45 CFR § 164.528. Business Associate further shall provide any additional information where required by HIPAA and any implementing regulations. Unless otherwise provided under HIPAA, Business Associate will maintain the Accounting with respect to each disclosure for at least six years following the date of the disclosure.
- j) Business Associate agrees to provide to Covered Entity upon written request, or, as directed by Covered Entity, to an Individual, an Accounting of disclosures in a time and manner that is sufficient to meet the requirements of HIPAA, in accordance with 45 CFR §164.528. In addition, where Business Associate is contacted directly by an Individual based upon information provided to the Individual by Covered Entity and where so required by HIPAA and/or any implementing regulations, Business Associate shall make such Accounting available directly to the Individual.

- k) In accordance with 45 CFR §164.502(b), Business Associate agrees to make reasonable efforts to limit use, disclosure, and/or requests for PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request. Where required by HIPAA, Business Associate shall determine (in its reasonable judgment) what constitutes the minimum necessary to accomplish the intended purpose of a disclosure.
- l) In accordance with 45 CFR §502(a)(5), Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual, except with the express written pre-approval of Covered Entity.
- m) To the extent Business Associate is to carry out one or more obligation(s) of the Covered Entity's under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- n) In accordance with 45 CFR §164.314(a)(1)(i)(C), Business Associate agrees to promptly report to Covered Entity any Security Incident of which Business Associate becomes aware.
- o) In accordance with 45 CFR §164.410 and the provisions of this Business Associate Agreement, Business Associate will report to Covered Entity, following Discovery and without unreasonable delay, but in no event later than five business days following Discovery, any Breach of Unsecured Protected Health Information. Business Associate shall cooperate with Covered Entity in investigating the Breach and in meeting Covered Entity's obligations under HIPAA and any other applicable security breach notification laws, including, but not limited to, providing Covered Entity with such information in addition to Business Associate's report as Covered Entity may reasonably request, e.g., for purposes of Covered Entity making an assessment as to whether/what Breach Notification is required.

Business Associate's report under this subsection shall, to the extent available at the time the initial report is required, or as promptly thereafter as such information becomes available but no later than 30 days from discovery, include:

1. The identification (if known) of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach;
2. A description of the nature of the unauthorized acquisition, access, use, or disclosure, including the date of the Breach and the date of discovery of the Breach;
3. A description of the type of Unsecured PHI acquired, accessed, used or disclosed in the Breach (e.g., full name, Social Security number, date of birth, etc.);
4. The identity of the individual(s) who made and who received the unauthorized acquisition, access, use or disclosure;
5. A description of what Business Associate is doing to investigate the Breach, to mitigate losses, and to protect against any further breaches; and

6. Contact information for Business Associate's representatives knowledgeable about the Breach.
- p) Business Associate shall maintain for a period of six years all information required to be reported under paragraph "o". This records retention requirement does not in any manner change the obligation to timely disclose all required information relating to a non-permitted acquisition, access, use or disclosure of Protected Health Information to the County Privacy Officer and the County Project Officer or designee five business days following Discovery.

3) Permitted Uses and Disclosures by Business Associate

Except as otherwise limited in this Business Associate Agreement, Business Associate may use or disclose PHI, consistent with HIPAA, as follows:

- a) Business Associate may use or disclose PHI as necessary to perform functions, activities, or services to or on behalf of Covered Entity under any service agreement(s) with Covered Entity, including Data Aggregation services related to the health care operations of Covered Entity, if called for in the Underlying Agreement, if Business Associate's use or disclosure of PHI would not violate HIPAA if done by Covered Entity.
- b) Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- c) Business Associate may disclose PHI for the proper management and administration of Business Associate if:
 1. Disclosure is Required by Law;
 2. Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will remain confidential, and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed, and the person agrees to promptly notify Business Associate of any known breaches of the PHI's confidentiality; or
 3. Disclosure is pursuant to an order of a Court or Agency having jurisdiction over said information.
- d) Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

4) Obligations of Covered Entity

- a) Covered Entity will notify Business Associate of any limitations on uses or disclosures described in its Notice of Privacy Practices (NOPP).
- b) Covered Entity will notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes or revocation may affect Business Associate's use or disclosure of PHI.

- c) Covered Entity will notify Business Associate of any restriction of the use or disclosure of PHI, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- d) Covered Entity will notify Business Associate of any alternative means or locations for receipt of communications by an Individual which must be accommodated or permitted by Covered Entity, to the extent that such alternative means or locations may affect Business Associate's use or disclosure of PHI.
- e) Except as otherwise provided in this Business Associate Agreement, Covered Entity will not ask Business Associate to use or disclose PHI in any manner that would not be permissible under HIPAA if such use and/or disclosure was made by Covered Entity.

5) Term, Termination and Breach

- a) This Business Associate Agreement is effective when fully executed and will terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, including any material provided to subcontractors. If it is infeasible to return or destroy all PHI, protections are extended to such information, in accordance with the Section 5(d) and 5(e) below.
- b) Upon Covered Entity's determination that Business Associate has committed a violation or material breach of this Business Associate Agreement, and in Covered Entity's sole discretion, Covered Entity may take any one or more of the following steps:
 - 1. Provide an opportunity for Business Associate to cure the breach or end the violation, and if Business Associate does not cure the Breach or end the violation within a reasonable time specified by Covered Entity, terminate this Business Associate Agreement;
 - 2. Immediately terminate this Business Associate Agreement if Business Associate has committed a material breach of this Business Associate Agreement and cure of the material breach is not feasible; or,
 - 3. If neither termination nor cure is feasible, elect to continue this Business Associate Agreement and report the violation or material breach to the Secretary.
- c) If Business Associate believes Covered Entity has failed to fulfill any of its duties under this Business Associate Agreement, Business Associate will promptly notify Covered Entity as to same and Covered Entity shall promptly address the matter with Business Associate.
- d) Except as provided in Section 5(e) upon termination of this Business Associate Agreement for any reason, Business Associate will return or destroy, at the discretion of Covered Entity, all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision will also apply to PHI that is in the possession of workforce members, subcontractors, or agents of Business Associate. Neither Business Associate, nor any workforce member, subcontractor, or agent of Business Associate, will retain copies of the PHI.

- e) If Business Associate determines that returning or destroying all or part of the PHI received or created by and/or on behalf of Covered Entity is not feasible, Business Associate will notify Covered Entity of the circumstances making return or destruction infeasible. If Covered Entity agrees that return or destruction is infeasible, then Business Associate will extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate further agrees to retain the minimum necessary PHI to accomplish those tasks/responsibilities which make return and/or destruction infeasible.

6) Miscellaneous

- a) Covered Entity and Business Associate agree to take any action necessary to amend this Business Associate Agreement from time to time as may be necessary for Covered Entity or Business Associate to comply with the requirements of HIPAA, and/or any other implementing regulations or guidance.
- b) Notwithstanding the expiration or termination of this Business Associate Agreement or any Underlying Agreement, it is acknowledged and agreed that those rights and obligations of Business Associate which by their nature are intended to survive such expiration or termination shall survive, including, but not limited to, Sections 5(d) and 5(e) herein.
- c) In the event the terms of this Business Associate Agreement conflict with the terms of any other agreement between Covered Entity and Business Associate or the Underlying Agreement, then the terms of this Business Associate Agreement shall control.
- d) Notices and requests provided for under this Business Associate Agreement will be made in writing to Covered Entity, delivered by hand-delivery, overnight mail or first class mail, postage prepaid at:

(1) Marcy Foster,
Arlington County Privacy Officer
2100 Clarendon Blvd., Suite 511
Arlington, Virginia 22201

(2) Stephen Maclsaac
County Attorney
2100 Clarendon Blvd., Suite 511
Arlington, Virginia 22201

(3) Teresa Elkins
Risk Manager
2100 Clarendon Blvd., Suite 511
Arlington, Virginia 22201

Notice and requests provided for under this Business Associate Agreement will be made in writing in the manner described above to Business Associate at:

Helmsman Management Services, LLC
Attn: Adrian Marshall 2530 Sever Road,
Suite 200 Lawrenceville, GA 30093

- e) Covered Entity will have the right to inspect any records of Business Associate or to audit Business Associate to determine whether Business Associate is in compliance with the terms of this Business Associate Agreement. However, this provision does not create any obligation on the part of Covered Entity to conduct any inspection or audit.
- f) Nothing in this Business Associate Agreement shall be construed to create a partnership, joint venture, or other joint business relationship between the parties or any of their affiliates, or a relationship of employer and employee between the parties. Rather, it is the intention of the parties that Business Associate shall be an independent contractor.
- g) Nothing in this Business Associate Agreement provides or is intended to provide any benefit to any third party.
- h) The Business Associate will indemnify and hold harmless Arlington County, its elected officials, officers, directors, employees and/or agents from and against any employee, federal administrative action or third party claim or liability, including attorneys' fees and costs, arising out of or in connection with the Business Associate's violation (or alleged violation) and/or any violation and/or alleged violation by Business Associate's workforce, agent/s, or subcontractor/s of the terms of this Business Associate Agreement, federal law, HIPAA, the HITECH Act, and/or other implementing regulations or guidance or any associated audit or investigation.

The obligation to provide indemnification under this Business Associate Agreement shall be contingent upon the party seeking indemnification providing the indemnifying party with written notice of any claim for which indemnification is sought. Any limitation of liability provisions contained in the Underlying Agreement do not supersede, pre-empt, or nullify this provision or the Business Associate Agreement generally.

This indemnification shall survive the expiration or termination of this Business Associate Agreement or the Underlying Agreement.

- i) Any ambiguity in this Business Associate Agreement shall be resolved to permit the parties to comply with HIPAA, its implementing regulations, and associated guidance. The sections, paragraphs, sentences, clauses and phrases of this Business Associate agreement are severable. If any phrase, clause, sentence, paragraph or section of this Business Associate Agreement is declared invalid by a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences and sections of this Business Associate Agreement.
- j) If any dispute or claim arises between the parties with respect to this Business Associate Agreement, the parties will make a good faith effort to resolve such matters informally, it being the intention of the parties to reasonably cooperate with each other in the performance of the obligations set forth in this Business Associate Agreement. The Dispute Resolution clause of the Underlying Agreement ultimately governs if good faith efforts are unsuccessful.
- k) A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any other right or remedy as to any subsequent events.

- l) Neither party may assign any of its rights or obligations under this Business Associate Agreement without the prior written consent of the other party.
- m) This Business Associate Agreement and the rights and obligations of the parties hereunder shall be construed, interpreted, and enforced with, and shall be governed by, the laws of the Commonwealth of Virginia and the United States of America.
- n) This Business Associate Agreement shall remain in effect for the duration of the Underlying Agreement between the parties, any renewals, extension or continuations thereof, and until such time as all PHI in the possession or control of the Business Associate has been returned to the Covered Entity and/or destroyed. If such return or destruction is not feasible, the Business Associate shall use such PHI only for such limited purposes that make such return or destruction not feasible and the provision of this Business Associate Agreement shall survive with respect to such PHI.
- o) The Business Associate shall be deemed to be in violation of this Business Associate Agreement if it knew of, or with the exercise of reasonable diligence or oversight should have known of, a pattern of activity or practice of any subcontractor, subsidiary, affiliate, agent or workforce member that constitutes a material violation of that entity's obligations in regard to PHI unless the Business Associate took prompt and reasonable steps to cure the breach or end the violation, as applicable, and if such steps were unsuccessful, terminated the contract or arrangement with such entity, if feasible.
- p) Upon the enactment of any law or regulation affecting the use or disclosure of PHI, or any change in applicable federal law including revisions to HIPAA; upon publication of any decision of a court of the United States or of the Commonwealth of Virginia, relating to PHI or applicable federal law; upon the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of PHI disclosures or applicable federal law, the County reserves the right, upon written notice to the Business Associate, to amend this Business Associate Agreement as the County determines is necessary to comply with such change, law or regulation. If the Business Associate disagrees with any such amendment, it shall so notify the County in writing within thirty (30) days of the County's notice. In case of disagreement, the parties agree to negotiate in good faith the appropriate amendment(s) to give effect to such revised obligation. In the County's discretion, the failure to enter into an amendment shall be deemed to be a default and good cause for termination of the Underlying Agreement.
- q) The County makes no warranty or representation that compliance by the Business Associate with this Business Associate Agreement, HIPAA, the HITECH Act, federal law or the regulations promulgated thereunder will be adequate or satisfactory for the Business Associate's own purposes or to ensure its compliance with the above. The Business Associate is solely responsible for all decisions made by it, its workforce members, agents, employees, subsidiaries and subcontractors regarding the safeguarding of PHI and compliance with federal law.
- r) The Business Associate agrees that its workforce members, agents, employees, subsidiaries and subcontractors shall be bound by the confidentiality requirements herein and the provisions of this Business Associate Agreement shall be incorporated into any training or contracts with the same.

- s) This Business Associate Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
- t) This Business Associate Agreement shall replace and supersede any prior Business Associate Agreement entered between the parties.

IN WITNESS WHEREOF, each party hereto has executed this Business Associate Agreement in duplicate originals on the date below written:

Arlington County, Virginia

By: Marcy Foster
 (Signature)
 Name: MARCY FOSTER
 Title: County Privacy Officer
 Date: 4/29/2020

Business Associate

By: Peter J. Clas
 (Signature)
 Name: Peter J. Clas
 Title: Vice President
 Date: 4/22/2020

EXHIBIT D

NONDISCLOSURE AND DATA SECURITY AGREEMENT
(CONTRACTOR)

The undersigned, an authorized agent of the Contractor and on behalf of Helmsman Management Services, LLC ("Contractor"), hereby agrees that the Contractor will hold County-provided information, documents, data, images, records and the like confidential and secure and protect them against loss, misuse, alteration, destruction or disclosure. This includes, but is not limited to, the information of the County, its employees, contractors, residents, clients, patients, taxpayers and property as well as information that the County shares with the Contractor for testing, support, conversion or other services provided under Arlington County Agreement No. 17-314-RFP (the "Project" or "Main Agreement") or that may be accessed through other County-owned or -controlled databases (all of the above collectively referred to as "County Information" or "Information").

In addition to the DATA SECURITY obligations set in the County Agreement, the Contractor agrees that it will maintain the privacy and security of County Information, control and limit internal access and authorization for access to such Information and not divulge or allow or facilitate access to County Information for any purpose or by anyone unless expressly authorized. This includes, but is not limited to, any County Information that in any manner describes, locates or indexes anything about an individual, including, but not limited to, his/her ("his") Personal Health Information, treatment, disability, services eligibility, services provided, investigations, real or personal property holdings and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, social security number, tax status or payments, date of birth, address, phone number or anything that affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual, or the record of his presence, registration, or membership in an organization or activity, or admission to an institution.

Contractor also agrees that it will not directly or indirectly use or facilitate the use or dissemination of County information (whether intentionally or by inadvertence, negligence or omission and whether verbally, electronically, through paper transmission or otherwise) for any purpose other than that directly associated with its work under the Project. The Contractor acknowledges that any unauthorized use, dissemination or disclosure of County Information is prohibited and may also constitute a violation of Virginia or federal laws, subjecting it or its employees to civil and/or criminal penalties.

Contractor agrees that it will not divulge or otherwise facilitate the disclosure, dissemination or access to or by any unauthorized person, for any purpose, of any Information obtained directly, or indirectly, as a result of its work on the Project. The Contractor shall coordinate closely with the County Project Officer to ensure that its authorization to its employees or approved subcontractors is appropriate and tightly controlled and that such person/s also maintain the security and privacy of County Information and the integrity of County-networked resources.

Contractor agrees to take strict security measures to ensure that County Information is kept secure; is properly stored in accordance with industry best practices, and if stored is encrypted as appropriate; and is otherwise protected from retrieval or access by unauthorized persons or for unauthorized purposes. Any device or media on which County Information is stored, even temporarily, will have strict security and access control. Any County Information that is accessible will not leave Contractor's work site or the County's physical facility, if the Contractor is working onsite, without written authorization of

**EXHIBIT E
INSURANCE CHECKLIST**

CERTIFICATE OF INSURANCE MUST SHOW ALL COVERAGE AND ENDORSEMENTS INDICATED BY "X"		
REQ'D	COVERAGES REQUIRED	LIMITS (FIGURES DENOTE MINIMUMS)
X	1. Workers' Compensation	Statutory limits of Virginia
X	2. Employer's Liability	\$100,000/accident, \$100,000/disease, \$500,000/disease policy limit
X	3. Commercial General Liability	\$1,000,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
X	4. Premises/Operations	\$500,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
X	5. Automobile Liability	\$1 Million BI/PD each accident, Uninsured Motorist
X	6. Owned/Hired/Non-Owned Vehicles	\$1 Million BI/PD each accident, Uninsured Motorist
X	7. Independent Contractors	\$500,000 CSL BI/PD each occurrence, \$1 Million annual aggregate
	8. Products Liability	\$500,000 CSL BI/PD each occurrence \$1 Million annual aggregate
	9. Completed Operations	\$500,000 CSL BI/PD each occurrence \$1 Million annual aggregate
X	10. Contractual Liability (Must be shown on Certificate)	\$500,000 CSL BI/PD each occurrence \$1 Million annual aggregate
X	11. Personal and Advertising Injury Liability	\$1 Million each offense, \$1 Million annual aggregate
X	12. Umbrella\Excess Liability	\$2 Million Bodily Injury, Property Damage and Personal Injury
	13. Per Project Aggregate	\$ _____
	14. Professional Liability	
	a. Architects and Engineers	\$1 Million per occurrence/claim
	b. Asbestos Removal Liability Medical	\$2 Million per occurrence/claim
	c. Medical Professional Liability	\$1 Million per occurrence/claim
X	15. Miscellaneous E&O	\$2 Million per occurrence/claim \$4 Million Aggregate
	16. Motor Carrier Act End. (MCS-90)	\$1 Million BI/PD each accident, Uninsured Motorist
	17. Motor Cargo Insurance	\$ _____
	18. Garage Liability	\$1 Million Bodily Injury, Property Damage per occurrence
	19. Garagekeepers Liability	500,000 Comprehensive, \$500,000 Collision
	20. Inland Marine-Bailee's Insurance	\$ _____
	21. Moving and Rigging Floater	Endorsement to CGL
	22. Dishonesty Bond	\$ _____
	23. Builder's Risk	Provide Coverage in the full amount of contract

	24. XCU Coverage	Endorsement to CGL
	25. USL&H	Federal Statutory Limits
	26. Carrier Rating shall be Best's Rating of A-VII or better or its equivalent	
X	27. Notice of Cancellation, nonrenewal or material change in coverage shall be provided to County at least thirty (30) days prior to action.	
X	28. The County shall be named Additional Insured on all policies except Workers Compensation and Auto.	
X	29. Certificate of Insurance shall show Bid Number and Bid Title.	
	30. OTHER INSURANCE REQUIRED: _____	
<u>INSURANCE AGENT'S STATEMENT:</u> I have reviewed the above requirements with the bidder named below and have advised the bidder of required coverages not provided through this agency.		
<u>CONTRACTOR'S STATEMENT:</u> If awarded the contract, I will comply with contract insurance requirements.		
CONTRACTOR NAME:		AUTHORIZING SIGNATURE: