

NORTH CAROLINA

SERVICES AGREEMENT OVER \$50,000

WAKE COUNTY

THIS AGREEMENT, is made and entered into this ____ day of _____, 20____ by and between Wake County, a body politic and corporate in North Carolina (the "County") party of the first part; and Sedgwick LLC, a limited liability company authorized to do business in North Carolina (the "Provider"), party of the second part;

WITNESSETH:

WHEREAS, the County established a self-funded workers' compensation plan and obtained excess insurance coverage in 1991 for the purpose of providing statutory workers' compensation benefits to Wake County employees; and funding for the costs associated with this program is established through the annual budgetary process.

WHEREAS, the Provider shall serve as an outside third party administrator providing workers' compensation claims administration services to the County.

NOW, THEREFORE, for the purpose and subject to the terms and conditions hereinafter set forth, the County hereby contracts for the services of the Provider, and the Provider agrees to provide the services to the County in accordance with the terms of this Agreement.

I.SERVICES TO BE PROVIDED

The services to be performed by the Provider shall be as follows: Full service claims management for the County's Workers' Compensation Claims as set forth in Provider's Response to RFP #19-083, and the following exhibits, incorporated into this Agreement by reference:

- A. Exhibit "A" Principal Services To Be Performed
- B. Exhibit "B" Required Minimum Standards For Claims Handling
- C. Exhibit "C" Pricing Proposal for RFP #19-083
- D. Exhibit "D" MMSEA Section 111 Addendum
- E. Exhibit "E" Provider's Response to RFP #19-083

Provider shall not sub-contract all or any part of the services provided for in this Agreement without written approval of the County.

II.TERM

February 1, 2020 at 12:01 a.m. through January 31, 2023 at 11:59 p.m., unless sooner terminated in accordance with the applicable provisions hereof, with provision for an additional one-year renewal option at the sole discretion of the County and subject to mutual agreement between the parties on fees to be paid to Provider for the Term of such renewal. The Effective Date of this Agreement shall be retroactive to February 1, 2020. In the event that the County has neither renewed this Agreement nor secured alternative services from another provider on or before the termination date of the Term or any renewal of the Term, this Agreement may be extended on a month to month basis for a period not to exceed six (6) months on the same terms and conditions. Provider shall cooperate in providing all necessary information and records to any successor Provider of substantially the same services prior to final termination of this Agreement.

III. MAXIMUM AMOUNT PAYABLE: Two Hundred Forty Thousand and One Hundred Dollars
_____ (\$ 240,100.00 _____) with no minimum amount due.

IV. PAYMENT

Each invoice sent by Provider shall contain Provider's name and federal tax identification number and shall be signed and dated by an officer of Provider. It shall detail all services provided in payment requests. The County will pay undisputed, properly submitted invoices within thirty (30) days after receipt. The Provider must invoice the County for Services within sixty (60) days after the Services are performed. The Provider waives the right to charge the County for any Services that have not been invoiced within sixty (60) days after such Services were rendered. The County shall not be liable for any payment under this Contract for services which are unsatisfactory and which the County has not approved.

V. RELATIONSHIP OF PARTIES

Provider is an independent contractor of the County. Provider represents that it has or will secure, at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the County. All personnel engaged in work under this Agreement shall be fully qualified and shall be authorized or permitted under state and local law to perform such services. It is further agreed that the Provider will obey all State and Federal statutes, rules and regulations that are applicable to provisions of the services called herein. Neither Provider nor any employee of the Provider shall be deemed an officer, employee or agent of the County.

VI. INSURANCE REQUIREMENTS

The Provider shall obtain, at its sole expense, all insurance required in the following paragraphs and shall not commence work until such insurance is in effect and certification thereof has been received by Wake County's Finance Office. If any required insurance policy expires during the term of this agreement, Provider must provide a Certificate of Insurance to the Wake County Finance Office as evidence of policy renewal prior to such policy expiration.

Provider signature on this agreement indicates that Provider agrees to the terms of this insurance section and understands that failure to comply may result in cancellation of this agreement at Wake County's option.

Workers' Compensation Insurance, with limits for Coverage A Statutory- for State of North Carolina and Coverage B - Employers Liability \$500,000 each accident/disease each employee/disease policy limit.

Commercial General Liability - with limits no less than \$1,000,000 per occurrence and \$2,000,000 aggregate, including contractual liability.

Commercial Automobile Liability, with limits no less than \$1,000,000 per occurrence for bodily injury and property damage for any vehicle used during performance of contract services, including coverage for owned, hired, and non-owned vehicles. Evidence of commercial automobile coverage is only necessary if vehicles are used in the provision of services under this Agreement.

Professional Liability/Technology Errors & Omissions Insurance, applicable to any professional services provided under this Contract with limits of no less than \$1,000,000 per claim and \$2,000,000 aggregate.

Cyber Liability Insurance, with limits not less than \$3,000,000 per claim. Coverage shall be sufficiently broad to respond to the duties and obligations undertaken by Provider in this Agreement regarding sensitive information in any form in Provider's care, custody, or control, and shall include

but not be limited to third party liability coverage for loss resulting from denial of service, unauthorized access, security failure, system failure, extortion, or any failure to prevent disclosure of sensitive information, including but not limited to Confidential Information (defined herein). Breach/crisis response coverage must include actions required by federal and/or state statutes, and include but not be limited to notification, call center costs, regulatory fines and penalties, investigation, and identity theft and credit report services, with limits sufficient to respond to these obligations. This insurance is required if Section XVI.B.3 applies.

If any coverage is on a claims-made basis, Provider agrees to maintain a retroactive date prior to or equal to the effective date of this Agreement and to purchase and maintain Supplemental Extended Reporting Period or 'tail coverage' with a minimum reporting period of not less than three (3) years if the policy expires or is cancelled or non-renewed. If coverage is replaced, the new policy must include full prior acts coverage or a retroactive date to cover the effective dates of this Agreement. Provider shall provide a Certificate of Insurance annually to Wake County indicating any claims made coverage and respective retroactive date. The duty to provide extended coverage as set forth herein survives the effective dates of this Agreement.

All insurance companies must be authorized to do business in North Carolina and have an AM Best rating of "A-/VII" or better; or have reasonable equivalent financial strength to the satisfaction of the County's Finance Office. Proof of rating shall be provided to the county upon request.

Insurance with limits no less than those specified above shall be evidenced by a Certificate of Insurance issued by a duly authorized representative of the insurer and dated no more than thirty (30) days prior to the start date of the agreement. In the case of self-insurance, a letter of explanation must be provided to and approved by Wake County Risk Management.

The Provider shall be responsible for providing immediate Notice of policy cancellation or non-renewal during the term of this Agreement and for three years subsequent for any claims made following the Notice requirement set forth in Section XVIII.

If Provider does not meet the insurance requirements specified above, alternate insurance coverage satisfactory to Wake County may be considered. Any requests for consideration of alternate coverage must be presented by Provider PRIOR TO provision of any services associated with this Agreement.

In the event that Provider uses subcontractors to perform any of the services under this Agreement, then and in that event, Provider shall contractually require such subcontractor(s) to meet all of the requirements of this section.

VII. INDEMNIFICATION

Provider agrees to defend, indemnify, and hold harmless the County for all loss, liability, claims or expense (including reasonable attorney's fees) arising from bodily injury, including death or property damage, to any person or persons caused in whole or in part by the negligence or misconduct of the Provider, except to the extent same are caused by the negligence or willful misconduct of the County. It is the intent of this section to require Provider to indemnify Wake County to the extent permitted under North Carolina law.

VIII. NO WAIVER OF SOVEREIGN IMMUNITY

Wake County and the Provider agree that nothing in this Agreement shall be construed to mandate purchase of insurance by Wake County pursuant to N.C.G.S. 153A-435; or to be inconsistent with Wake County's "Resolution Regarding Limited Waiver of Sovereign Immunity"

enacted October 6, 2003; or to in any other way waive Wake County's defense of sovereign or governmental immunity from any cause of action alleged or brought against Wake County for any reason if otherwise available as a matter of law.

IX. NON-ASSIGNMENT

Provider shall not assign all or any portion of this Agreement, including rights to payments, to any other party without the prior written consent of the County. The Provider shall at all times be solely responsible for the accuracy of its work and the competency of the services provided herein, whether accomplished through its officers and employees or through its approved agents or subcontractors.

The County retains the right to select any counsel or case manager retained on the County's Workers' Compensation claims. The County retains the right to designate certain adjusters to handle the County's Workers' Compensation Claims.

X. ENTIRE AGREEMENT

The parties have read this Agreement and agree to be bound by all of its terms, and further agree that the Agreement, including incorporated Exhibits and Provider's Response to RFP #19-083, constitutes the complete and exclusive statement of the Agreement between the parties unless and until modified in writing and signed by the parties. Modifications may be evidenced by telefacsimile signatures.

XI. NON-APPROPRIATION

Provider recognizes that Wake County is a governmental entity, and the contract validity is based upon the availability of public funding under the authority of its statutory mandate.

In the event that public funds are not available and not appropriated to purchase the services specified in this Agreement, then this Agreement shall automatically expire without penalty to Wake County and without the thirty (30) day Notice requirement set forth in Section XVIII.

In the event of a legal change in Wake County's statutory authority, mandate, and mandated functions which adversely affects Wake County's authority to continue its obligations under this Agreement, then this Agreement shall automatically expire without penalty to Wake County and without the thirty (30) day Notice requirement set forth in Section XVIII.

XII. GOVERNING LAW

Both parties agree that this Agreement shall be governed by the laws of the State of North Carolina and the United States of America.

XIII. E-VERIFY REQUIREMENTS

To ensure compliance with the E-Verify requirements of the General Statutes of North Carolina, all contractors, including any subcontractors employed by the contract(s), by submitting a bid, proposal or any other response, or by providing any material, equipment, supplies, services, etc, attest and affirm that they are aware and in full compliance with Article 2 of Chapter 64, (NCGS 64-26(a)) relating to the E-Verify requirements.

XIV. IRAN DIVESTMENT

By signing this agreement; accepting this contract/purchase order; or submitting any bid, proposal, etc., vendors and contractors certify that as of the date of execution, receipt, or submission they are not listed on the Final Divestment List created by the NC Office of State Treasurer pursuant

to [NCGS 147 Article 6E, Iran Divestment Act](#), Iran Divestment Act Certification. Vendors and contractors shall not utilize any subcontractor that is identified on the Final Divestment List. Any organization defined under NCGS 147-86.80(2), Divestment from Companies Boycotting Israel, shall not engage in business totaling more than \$1,000 with any company/business, etc. that boycotts Israel. A list of companies that boycott Israel is maintained by the NC Office of State Treasurer, pursuant to NCGS 147-86.81(a)(1). Any company listed as boycotting Israel is not eligible to do business with any State agency or political subdivision of the State.

XV.FEDERAL FUNDS

If the source of funds for this contract is federal funds, the following federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable): Equal Employment Opportunity (41 C.F.R. Part 60); Davis-Bacon Act (40 U.S.C. 3141-3148); Copeland "Anti-Kickback" Act (40 U.S.C. 3145); Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708); Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387); Debarment and Suspension (Executive Orders 12549 and 12689); Byrd Anti-Lobbying Amendment (31 U.S.C. 1352); Procurement of Recovered Materials (2 C.F.R. § 200.322); and Record Retention Requirements (2 CFR § 200.324)

XVI.DATA CONFIDENTIALITY, INTEGRITY, AND AVAILABILITY

A. Definitions

1. Identifying Information ("II") pursuant to NCGS 75-61 et seq. as amended, is defined as data (electronic or printed) that could potentially identify a specific individual. II may include any or all of the following:
 - (1) Social security or employer taxpayer identification numbers
 - (2) Drivers license, state identification card, or passport numbers
 - (3) Checking account numbers
 - (4) Savings account numbers
 - (5) Credit card numbers
 - (6) Debit card numbers
 - (7) Personal Identification (PIN) Code
 - (8) Electronic identification numbers, electronic mail names or addresses, Internet account numbers, or Internet identification names
 - (9) Digital signatures
 - (10) Any other numbers or information that can be used to access a person's financial resources
 - (11) Biometric data
 - (12) Fingerprints
 - (13) Passwords
 - (14) Parent's legal surname prior to marriage

2. Protected Health Information ("PHI") pursuant to the Health Insurance Portability and Accountability Act (HIPAA) of 1996 et seq. as amended, is defined as data (electronic or printed) that could potentially identify a specific individual based on past, present, or future physical or mental health conditions, provisions of healthcare, or payment for the provision of health care to an individual. PHI may include any or all of the following:
- (1) Name
 - (2) Address (all geographic subdivisions smaller than state, including street address, city, county, precinct, or zip code)
 - (3) All elements of dates (except year) related to an individual, including birth date, admissions date, discharge date, date of death, and exact age if over 89
 - (4) Telephone and/or Fax numbers
 - (5) E-mail addresses
 - (6) Social security numbers
 - (7) Medical record numbers
 - (8) Health plan beneficiary numbers
 - (9) Account numbers
 - (10) Certificate and/or license numbers
 - (11) Vehicle identifiers and serial numbers, including license plate number
 - (12) Device identifiers and serial numbers
 - (13) Universal Resource Locators (URLs)
 - (14) Internet protocol (IP) addresses
 - (15) Biometric identifiers, including finger and voice prints
 - (16) Full face photographic images and any comparable images
 - (17) Any other unique identifying number or characteristic that could identify an individual
3. Confidential Information ("CI") is defined as data (electronic or printed) that in the event of unauthorized disclosure, alteration, or destruction could cause a significant level of risk to the County. Examples of Confidential Information include data protected by state or federal privacy regulations and data protected by confidentiality agreements including but not limited to II, PHI, PCI (as defined herein), and criminal justice information.

B. Provider Requirements

In the performance of this Agreement, the Provider **may store, transmit, or process Confidential Information and therefore agrees to comply with the following Sections XVI.B.3(a) through XVI.B.3(k)**

_____ (County Sign/Date)

(Provider Sign/Date)

If the Provider's responsibilities change at any point during the performance of the Services, the Provider must immediately Notify the County.

a. Data Security Commitment

Provider agrees to preserve the confidentiality, integrity, and availability of County data with physical, technical, and administrative controls that conform to generally recognized industry standards and best practices.

b. Applicable Federal Laws, State Laws, and General Statutes

The Provider shall comply with all applicable state laws, federal laws, regulations and general statutes relating to confidentiality, privacy, and security of data. In the event any governmental restrictions may be imposed which would necessitate the alteration of the material, quality, workmanship or performance of the services of this Agreement, it shall be the responsibility of the Provider to Notify the County at once, indicating the specific regulation which requires alterations. The County reserves the right to accept any such alterations, including any price adjustments occasioned thereby.

c. Non-Disclosure and Confidentiality Agreement

Provider shall implement feasible safeguards to restrict access and ensure the security, confidentiality, and integrity of Confidential Information and execute the Wake County Non-Disclosure and Confidentiality Agreement.

d. Risk Assessments

Provider shall periodically (at least annually) perform a SOC 2 Type II audit using the Security and Confidentiality trust principles and provide the County with a copy of the report. If the report contains material findings as reasonably determined by the County, then the County and the Provider shall in good faith address such findings.

e. Right to Audit

Provider shall permit the County with the opportunity and not the obligation to perform an audit of the Provider's data security policies, procedures, and operations. The County agrees to provide Provider with 30 days advance Notice prior to executing the audit. If the audit results in material findings as reasonably determined by the County, then the County and the Provider shall in good faith address such findings. Nothing herein shall be construed to prevent County from auditing County's data.

f. Data Breach Incident Response and Communications

Provider agrees to Notify the County of any suspected or confirmed data breach within 24 hours after the suspected or confirmed breach is first discovered. The Provider shall exercise due care to protect Confidential Information when providing such Notification. The provider will cooperate with the County to notify appropriate government or regulatory authorities as required by law or generate statute.

g. Business Contingency

Provider shall maintain a business contingency plan designed to address any emergency business shutdowns and shall provide such plan to the County upon request. In the event of an actual or perceived emergent issue, disaster, disruption of the service, or outage, Provider shall promptly provide the County with Notice of the same as well as ongoing status updates.

h. Location of Data

Provider agrees that any and all County data will be stored, processed, and maintained within the continental United States. This includes backup data and any disaster recovery locations.

i. Data Ownership and End of Agreement Handling

Provider agrees that the County owns all right, title, and interest in its data that is related to the Services provided by this Agreement. Provider agrees that upon termination of this Agreement, it shall provide a copy of all data to Wake County in a mutually agreed format. Provider further agrees that following successful transmission of all data to the County, any and all County data will be erased, destroyed, and rendered unrecoverable and certify in writing these actions have been completed within 60 days of the termination of this Agreement, unless required by law or otherwise directed by Wake County in writing prior to the expiration of the 60 days post agreement.

XVII.TERMINATION

A. Breach

In the event the Provider materially breaches any of its responsibilities hereunder and fails to cure such breach within 30 days of receiving Notice of the breach from the County, then the County may terminate this agreement.

B. Convenience

The County may terminate this Agreement for convenience by giving at least 30 days prior Notice.

C. Effect of Termination

In the event the Agreement is terminated for Convenience, the County shall remit payment for all undisputed products, services, and expenses up to the effective date of termination.

In the event the Agreement is terminated for Breach, the County may withhold payment of disputed products, services, and expenses.

D. Continued Administration of Pending Claims

The County reserves the right to use its internal audit staff to review records, if necessary. However, in the event that the County desires to terminate this contract before the expiration of the Term of this agreement, the County will determine whether it desires that Provider continue to administer any claim then open and pending to its competition or conclusion. The County will inform Provider of County's decision as to whether it desires that Provider continue to administer any claim then pending after the termination, or whether the County desires that Provider transfer those claims back to County or to another provider. If the County decides to keep pending and open claims with Provider to their completion or conclusion, Provider will continue to provide full service in accordance with this Contract and Bid proposal to these claim still open after the termination of this

contract. County shall compensate Provider for any additional services pursuant to the compensation set forth in this Agreement.

XVIII. NOTICE

Whenever either party desires to give notice to the other party, it must be given by written notice, sent by certified United States mail, with return receipt requested, or by nationally recognized overnight delivery service, addressed to the party for whom it is intended. For time sensitive matters, notice may also be given by electronic or verbal means (email or telephone) provided such is followed by a hard copy of such notice provided in the manner set forth above. Notice is deemed given when receipt is confirmed. The Provider shall exercise due care to protect Confidential Information when providing notice as outlined in Section XVI. Provider and the County designate the following as the respective places for giving such notice:

County: Name: Kimberly Coman
 Title: Risk Management Supervisor
 Address: P.O. Box 550
 City/State/Zip: Raleigh, NC 27602
 Telephone: (919) 856-5486
 Email: Kimberly.Coman@wakegov.com

Provider: Name: Click or tap here to enter text.
 Title: Click or tap here to enter text.
 Address: Click or tap here to enter text.
 City/State/Zip: Click or tap here to enter text.
 Telephone: Click or tap here to enter text.
 Email: Click or tap here to enter text.

WAKE COUNTY, NORTH CAROLINA

By: _____
Wake County Department Head

Date: _____

By: _____
Wake County Manager or Designee

Date: _____

PROVIDER

By: _____

Date: _____

Mailing Address

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

FINANCE DIRECTOR

The person(s) responsible for monitoring the contract performance requirements are

Ann Mattern (fiscal)

Department Head Initials

Kimberly Coman (performance)

DRAFT