



MARIPOSA COUNTY

Human Resources/Risk Management • (209) 742-1375



RESOLUTION - ACTION REQUESTED 2016-518

MEETING: September 27, 2016

TO: The Board of Supervisors

FROM: Steve Johnson, Human Resources Director - Risk Manager

RE: Agreement with Definiti-Workers' Compensation Bill Review Services

RECOMMENDATION AND JUSTIFICATION:

Approve an Agreement with Definiti Comp Solutions for professional services for Workers' Compensation medical bill review for a three-year period effective October 1, 2016, through September 30, 2019; and authorize the Board of Supervisors Chair to sign the Agreement.

See staff report for justification of this action.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

The Board of Supervisors initially approved an Agreement with Tristar Risk Management Services for administration of the County's Workers' Compensation claims effective July 1, 2006 and continued to approve subsequent agreements for various terms. This Agreement included medical bill review services. The latest agreement terminates on September 30, 2016.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not approve this action, however, an Agreement with Definiti Comp Solutions offers the County with clear cost savings potential based on Definiti's review of the County's Workers' Compensation medical bills.

FINANCIAL IMPACT:

For fiscal year 2016/2017, the County anticipates a reduction in the Workers' Compensation medical costs as a result of the County's agreement with Definiti.

Sufficient funds for the proposed Agreements are available to cover the costs of the Workers' Compensation program.

ATTACHMENTS:

**Board of Supervisors Staff Report Worker's Compensation Definiti Agreement
September 20, 2016 (DOCX)
Definiti Agreement (PDF)**

CAO RECOMMENDATION

Requested Action Recommended

Mary Hodson

Mary Hodson, CAO

9/22/2016

RESULT: ADOPTED [UNANIMOUS]
MOVER: Marshall Long, District III Supervisor
SECONDER: Merlin Jones, District II Supervisor
AYES: Smallcombe, Jones, Long, Cann, Carrier

PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement"), dated as of September 27, 2016, is made by and between Definiti Comp Solutions ("CONTRACTOR"), and Mariposa County ("COUNTY"), with reference to the following recitals:

RECITALS

A. CONTRACTOR desires to provide Medical Bill Review services as an independent contractor to COUNTY.

B. CONTRACTOR desires to provide these services in accordance with the terms and subject to the provisions set forth in this Agreement.

NOW THEREFORE, in reliance on the foregoing recitals, and in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Scope of Services

CONTRACTOR will provide workers' compensation "Repricing Services" for COUNTY, as further described herein. At its sole discretion, COUNTY may employ or not employ any of the Repricing Services listed herein. During the term of this Agreement and as directed by COUNTY, CONTRACTOR will provide the following Repricing Services:

- 1.1 Definitions: "Repricing Services" refers to the retrospective review and adjudication of workers' compensation medical bills, employing some or all of the following individual service elements:
 - i. "Medical Bill Review" or "MBR," which refers to all repricing techniques and services not otherwise specifically defined in this Section 1.1. Medical Bill Review includes but is not limited to the application of state fee schedules, the application of usual/customary medical billing data and databases, the application of the Center for Medicare & Medicaid Service-developed National Correct Coding Initiative (NCCI) edits, manual review to ensure correction of billed procedure/billing/diagnosis codes and/or designations that are inconsistent with services provided, manual review of bills to identify and correct billings that are unrelated to compensable injury or injuries, and manual audit by senior MBR analysts or nurses.
 - ii. "Preferred Provider Organization" or "PPO," which refers to organizations that have negotiated volume-based discounts with unaffiliated physicians and medical facilities, and the payment discounts offered by these organizations.
 - iii. "Internal Bill Negotiation" or "Negotiation," which refers to CONTRACTOR direct negotiation with physicians and medical facilities for reductions to medical bills.
 - iv. "Specialty Bill Review" or "SBR," which refers to internal or third-party specialty services providing discounts for services not covered by PPO or state fee schedule.
 - v. Supporting operations such as program reporting, data submission to state bodies and data interfaces with claims administrators and case management companies.

- 1.2 Medical Bill Review: CONTRACTOR shall review and make appropriate payment recommendations on all medical bills submitted for review by COUNTY or its Third Party Administrator. The bills shall be reviewed in accordance with COUNTY's authorized payment codes as well as validated for compensability against COUNTY claim, vendor and UR decision files. CONTRACTOR agrees to work with COUNTY's managed care consultant David Donn Consulting ("DDC") to deliver optimal service performance, in areas including, but not limited to, provision of staff meeting DDC requirements for experience and training, high level manual review of medical bills covering the range of procedures identified by DDC, specifications for thresholds for the use of Negotiation and SBR services, and program reporting compliant with DDC reporting specifications. MBR savings will be identified and applied to every bill reviewed by CONTRACTOR to the maximum ability of CONTRACTOR. CONTRACTOR agrees to implement in full DDC's program delivery specifications (the "DDC Model"), as detailed in the DDC Model document and updates provided from time to time by DDC and acknowledged and accepted by CONTRACTOR.
- 1.3 PPO: As directed by COUNTY and subject to the approval of PPO Network(s), CONTRACTOR shall administer one or more Networks that have negotiated contract rates with hospitals and providers, in an order of priority acceptable to COUNTY. COUNTY may at its sole discretion disallow the use of any PPO. For savings and fee calculation purposes, CONTRACTOR shall only attribute to PPO services the incremental savings beyond the maximum savings achievable through MBR.
- 1.4 Negotiation: CONTRACTOR may employ internal bill negotiation techniques and resources to achieve additional discounts beyond those achieved through MBR and PPO. CONTRACTOR shall only employ Negotiation techniques when it determines that Negotiation will yield incremental medical payment reductions in addition to reductions achieved through MBR and PPO. For savings and fee calculation purposes, CONTRACTOR shall only attribute to Negotiation services the incremental savings beyond the maximum savings achievable through MBR and PPO.
- 1.5 Specialty Bill Review: CONTRACTOR may employ various third-party or proprietary SBR services for the purpose of obtaining additional savings beyond the maximum savings that may be achieved by CONTRACTOR using its own internal bill review resources and its PPO partners. For savings and fee calculation purposes, CONTRACTOR shall only attribute to these third-party SBR services the incremental savings beyond the maximum savings achievable through MBR and PPO services, and CONTRACTOR shall direct all its third-party SBR partners to calculate savings only in this manner. COUNTY may at its sole discretion disallow the use of any third-party SBR service.
- 1.6 Scanning: If so directed by COUNTY, CONTRACTOR will at COUNTY's discretion scan all COUNTY medical bills and required reports, and store the corresponding image files electronically as directed by COUNTY. The scanner used to scan COUNTY bills shall be capable of producing image quality sufficient for electronically indexing all scanned images to particular COUNTY bills and claims. Scanning of bills shall be performed daily by CONTRACTOR's staff or subcontractor. Upon completion of scanning, all documents shall be destroyed or returned to COUNTY, as directed by COUNTY.
- 1.7 Imaged Document Storage: At the direction of COUNTY, CONTRACTOR agrees to store and maintain all medical bill and report images for a period of no less than five (5) years. CONTRACTOR shall provide COUNTY with online access to any internet-based system it offers for purposes of providing COUNTY access to these electronic documents. CONTRACTOR will make image files generated over the preceding two years available through such systems. CONTRACTOR will also download all historic COUNTY images, convert these

images to a file format consistent with CONTRACTOR format, and provide COUNTY with access to these images consistent with COUNTY's requirement to have access to images generated over the preceding two years. CONTRACTOR will also provide image data on an on-demand basis as prescribed by COUNTY.

- 1.8 Medical Provider Network ("MPN"): As directed by COUNTY, CONTRACTOR shall incorporate any state-regulated MPN into the bill review process as the primary network employed for COUNTY's program. MPN will be employed as directed by COUNTY, subject to availability and specific network limitations on network position.
- 1.9 Client-Directed Networks. CONTRACTOR will electronically interface with all ancillary services providers, PPOs and/or similar networks employed by COUNTY, for purposes of receiving and processing billings. CONTRACTOR shall preserve the payment discounts of such networks without charging any additional fees to COUNTY beyond the MBR fee and any software related fees that may be charged to CONTRACTOR by its bill review software provider. If required by COUNTY, CONTRACTOR will enforce payment discounts of such networks. CONTRACTOR's electronic interface(s) with such network(s) will be established as mutually agreed between CONTRACTOR and COUNTY, but in no event within more than four (4) months following COUNTY notice to CONTRACTOR of the need for such interface(s).
- 1.10 Turn Around Time: CONTRACTOR will provide its best effort to complete the review of standard medical bills and bills subject to the primary PPO within five (5) business days of receipt of such bills. For complex bills that require high level reviews (i.e. surgery bills, hospital bills, services not covered by fee schedule, etc.), CONTRACTOR will provide its best effort to complete the review of such bills within ten (10) business days of receipt of such bills. All bills will be reviewed within twelve (12) business days, unless otherwise approved by COUNTY. If CONTRACTOR requires additional information to review a bill, it will request the additional information from COUNTY and notify COUNTY immediately of this request. If for any reason the processing of a medical bill is delayed by the actions or failure to act by CONTRACTOR, any and all penalties and/or interest charges incurred under applicable jurisdictional rules, regulations, code, or laws shall be the sole responsibility of CONTRACTOR.
- 1.11 Mailing Explanations of Review ("EORs"): If so directed by COUNTY, CONTRACTOR will mail EORs for denied bills to providers on behalf of COUNTY within one (1) business day of transferring of the electronic file containing CONTRACTOR medical bill payment recommendations ("Payment File.") The contents of EORs will be compliant with all applicable jurisdictional requirements.
- 1.12 Provider Inquiries: CONTRACTOR will respond to all inquiries on disputed bills reviewed by CONTRACTOR for the duration of this Agreement and up to six months after termination of this Agreement. CONTRACTOR shall provide to COUNTY upon request any correspondence between CONTRACTOR and providers regarding provider billing disputes.
- 1.13 Hearing Representation: As required by COUNTY, CONTRACTOR will provide at no additional cost to County supporting documentation or an expert witness with appropriate qualifications at lien hearings and other payment dispute meetings and conferences, provided that COUNTY has advised CONTRACTOR of said requests within fifteen (15) calendar days, or as soon as reasonably possible if COUNTY has received less notice itself. This representation will be provided for all disputed bills reviewed by CONTRACTOR for the duration of Agreement and up to six months after termination of Agreement.
- 1.14 State Reporting: For any review activity for which electronic reporting is required by the state(s) in which COUNTY incurs Workers' Compensation medical claim obligations,

CONTRACTOR shall report COUNTY medical data as required by that state and in compliance with all relevant state reporting statutes and regulations. CONTRACTOR or its MBR software partner will compile all data elements and deliver complete data to the appropriate recipient. Upon request, COUNTY will receive a copy of transactions/transmissions history performed by CONTRACTOR or its software partner for reporting compliance purposes. In the event of transaction errors, CONTRACTOR will notify COUNTY immediately of all errors resulting from COUNTY claims data. If errors resulted from Repricing data elements, CONTRACTOR will correct the errors and resubmit the transmission to the applicable state(s) pursuant to applicable rules and regulations. CONTRACTOR shall not be responsible for the failure of COUNTY to deliver claim information to CONTRACTOR or errors in claim information as provided by COUNTY to CONTRACTOR.

- 1.15 Personnel Training and Certification: CONTRACTOR will provide and fulfill all applicable state reporting, training and certification requirements, including without limitation providing bill review personnel training and certification in accordance with any applicable jurisdictional requirements.
- 1.16 Electronic Billing: As directed by COUNTY, CONTRACTOR will provide facilities for receipt of electronic billing from medical providers in full compliance with any jurisdictional requirements. CONTRACTOR or its third-party data clearinghouse will also provide a COUNTY-specific electronic mailbox for direct submission of bills from medical providers, and provide all electronic billing capabilities in accordance with timeframes prescribed by COUNTY.
- 1.17 Monthly Reports/Invoice: CONTRACTOR will provide COUNTY and its agent's reports and invoices that satisfy COUNTY requirements.
- 1.18 Data Stewardship: CONTRACTOR will maintain in its entirety all electronic COUNTY workers' compensation medical billing/payment data it receives or generates through the course of Services provided. In the event the Agreement is terminated or completed, CONTRACTOR will provide all such data to COUNTY's new service provider, as requested by COUNTY.
- 1.19 Provider Overpayment: CONTRACTOR will reimburse COUNTY in full for any and all provider overpayments resulting from incorrect payment recommendations issued to COUNTY by CONTRACTOR or any of its subcontractors. In the event an overpayment is identified that led to COUNTY overpayment of a medical provider, CONTRACTOR will seek overpayment reimbursement from that provider on behalf of COUNTY. If CONTRACTOR cannot recapture overpayment within ninety (90) days of the identification of the overpayment, CONTRACTOR will reimburse COUNTY directly for the total amount of the overpayment.
- 1.20 Fee Overcharges: CONTRACTOR will reimburse COUNTY in full for any and all service fees charged above contractual rate.

2. Term.

- 2.1 Term. The term of this Agreement (the "Term") shall be three (3) years, commencing as of the above date, with the option to extend to five (5) years after the third year anniversary, unless terminated sooner pursuant to Section 3.3 below. After one (1) year either party may terminate without cause upon giving the other party ninety (90) days written notice.
- 2.2 Terms of Payment: COUNTY will pay CONTRACTOR on a monthly basis, 30 days after receipt by COUNTY of a correct, itemized invoice and receipt of all applicable reports.

2.3 Early Termination. Notwithstanding any other provision of this Agreement, this Agreement may be terminated in accordance with the following provisions:

2.3.1 Either party may terminate this Agreement immediately upon the occurrence of any of the following events with regard to the other party, and upon written notice to the other party: (1) the making of a general assignment for the benefit of creditors; (2) the filing of a voluntary petition or the commencement of any proceeding by either party for any relief under any bankruptcy or insolvency laws, or any laws relating to the relief of debtors, readjustment of indebtedness, reorganization, composition or extension; (3) the filing of any involuntary petition or the commencement of any proceeding by or against either party for any relief under any bankruptcy or insolvency laws, or any laws relating to the relief of debtors, readjustment of indebtedness, reorganization, composition or extension, which such petition or proceeding is not dismissed within ninety (90) days of the date on which it is filed or commenced; or (4) suspension of the transaction of the usual business of either party for a period in excess of thirty (30) days.

2.3.2 COUNTY may terminate this Agreement upon thirty (30) days' prior written notice to CONTRACTOR in the event of a material breach by CONTRACTOR of any material term or condition hereof, if such breach is not cured to the reasonable satisfaction of COUNTY within sixty (60) days after COUNTY has given notice thereof to CONTRACTOR.

2.3.3 CONTRACTOR may terminate this Agreement upon thirty (30) days' prior written notice to COUNTY in the event of a material breach by COUNTY of any material term or condition hereof, if such breach is not cured to the reasonable satisfaction of CONTRACTOR within sixty (60) days after COUNTY has given notice thereof to CONTRACTOR.

2.4 Effect of Termination. Upon termination of this Agreement for any reason or cause whatsoever:

2.4.1 COUNTY shall pay CONTRACTOR any amounts owed to CONTRACTOR pursuant to Section 4 hereof as of the date of termination;

2.4.2 CONTRACTOR shall immediately discontinue the use of, and shall promptly submit to COUNTY all business records and proprietary information of COUNTY and any copies thereof in its possession;

2.4.3 Notwithstanding any provision of this Agreement to the contrary, CONTRACTOR and COUNTY shall take such steps as may be necessary to ensure the provision of proper care to persons under treatment by CONTRACTOR until appropriate alternative arrangements are made.

3. Compensation to CONTRACTOR. As full and complete compensation to CONTRACTOR for the professional services rendered by CONTRACTOR hereunder, COUNTY shall pay to CONTRACTOR the amounts set forth on, and in accordance with the other terms and provisions set forth in, Exhibit A attached hereto and incorporated herein by this reference.

4. Representations and Warranties.

4.1. Representations and Warranties of CONTRACTOR. CONTRACTOR hereby represents and warrants to COUNTY that, as of the date of this Agreement and at all times during the term of this Agreement:

- 4.1.1. This Agreement does not breach any other agreement to which CONTRACTOR is a party; and,
- 4.1.2. To the best knowledge and belief of CONTRACTOR, this Agreement is valid and lawfully enforceable in accordance with its terms, and this Agreement will not breach any ethical or professional duties; and
- 4.1.3. CONTRACTOR and/or each of the professionals employed or engaged by CONTRACTOR to render the professional services is duly licensed, certified, or registered, as applicable, to render such professional services.

5. Regulatory Matters.

- 5.1. In General. The parties agree to cooperate with the other in the fulfillment of their respective obligations under this Agreement, and to comply with the requirements of law and with all ordinances, statutes, regulations, directives, orders, or other lawful enactments or pronouncements of any federal, state, municipal, local or other lawful authority applicable to CONTRACTOR.
- 5.2. Compliance with the Law. Each party to this Agreement represents and warrants to the other party to this Agreement that, to the best of its knowledge, it is in compliance with all laws, regulations, ordinances, orders, and decrees of authority applicable to its conduct under this Agreement. Furthermore, each party shall obtain and maintain in full force and effect all permits, licenses, consents, approvals, registrations, memberships, authorizations, and qualifications under all federal, state, local and foreign laws and regulations, and with all federal, state, local and foreign governmental or regulatory authorities required of the respective party necessary for the accomplishment of this Agreement.

6. Insurance.

- 6.1. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

6.2 Minimum scope and limit of insurance:

Coverage shall be at least as broad as:

- 6.2.1 Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than
- 6.2.2 \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- 6.2.3 Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Consultant has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
- 6.2.4 Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

- 6.2.5 Professional Liability (Errors and Omissions) Insurance appropriate to the Consultant's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.
- 6.2.6 If the Consultant maintains broader coverage and/or higher limits than the minimums shown above, the Entity requires and shall be entitled to the broader coverage and/or higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

6.3 Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- 6.3.1 **Additional Insured Status:** The Entity, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Consultant including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).
- 6.3.2 **Primary Coverage:** For any claims related to this contract, the Consultant's insurance coverage shall be primary insurance primary coverage at least as broad as ISO CG 20 01 04 13 as respects the Entity, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Entity, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- 6.3.4 **Notice of Cancellation:** Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the Entity.
- 6.3.5 **Waiver of Subrogation:** Consultant hereby grants to Entity a waiver of any right to subrogation which any insurer of said Consultant may acquire against the Entity by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Entity has received a waiver of subrogation endorsement from the insurer.
- 6.3.6 **Self-Insured Retentions:** Self-insured retentions must be declared to and approved by the Entity. The Entity may require the Consultant to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Entity.
- 6.3.7 **Acceptability of Insurers:** Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the Entity.
- 6.3.8 **Verification of Coverage:** Consultant shall furnish the Entity with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the Entity before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Consultant's obligation to provide them. The Entity reserves the right to require complete, certified copies of all

required insurance policies, including endorsements required by these specifications, at any time.

7 **Indemnification.** - CONTRACTOR agrees to hold harmless and indemnify COUNTY, its officers, employees, agents, representatives, and successors-in-interest against any and all loss, damage, cost, lawsuits, demands, judgments, legal fees or any other expenses which CONTRACTOR, its officers, employees, agents, representatives, and successors-in-interest may incur or be required to pay by reason of any injury or property damage arising from the negligent act, error or omission of CONTRACTOR, its employees, its subcontractors, or its

8 **Ownership of Records; Disclosure of Information.**

8.2 All business records and information relating to the Repricing Services performed for COUNTY and those claimants referred to CONTRACTOR by COUNTY shall be the property of COUNTY, irrespective of identity of the party responsible for producing or maintaining such records and information.

8.3 CONTRACTOR recognizes and acknowledges that all records, files, reports, protocols, policies, manuals, data bases, processes, procedures, computer systems, materials and other documents used by COUNTY (or its affiliates/agents) in rendering services hereunder, or relating to the operations of CONTRACTOR (or its affiliates), belong to and shall remain the property of COUNTY, and constitute proprietary information and trade secrets that are valuable, special, and unique assets of COUNTY business. CONTRACTOR shall not, and shall assure that each of its CONTRACTOR services and members of its professional staff shall not, during or after the term of this Agreement, disclose any proprietary information or trade secrets of COUNTY (or its affiliates) to any other firm, person, association, or other entity for any reason or purpose whatsoever, without the written consent of COUNTY or its affiliates.

9 **Notices.** Any notices to be given hereunder by either party to the other shall be deemed to be received by the intended recipient (a) when delivered personally, (b) the day following delivery to a nationally recognized overnight courier service with proof of delivery, or (c) three (3) days after mailing by certified mail, postage prepaid with return receipt requested, in each case addressed to as follows:

CONTRACTOR: Definiti Comp Solutions Inc.
26445 Rancho Parkway South
Lake Forest, CA 92630

COUNTY: Human Resources Director/Risk Manager
P.O. Box 1917
Mariposa, CA. 95338

10 **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter of this Agreement. This Agreement may not be changed orally, and may only be amended by an agreement in writing signed by both parties.

- 11 **No Rights in Third Parties.** This Agreement is not intended to, nor shall it be construed to, create any rights in any third parties, including, without limitation, any CONTRACTOR or member of the professional staff employed or engaged by CONTRACTOR
- 12 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to conflict of law provisions.
- 13 **Alleged Illegality.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, that provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect, unless to do so would result in either party not receiving the benefit of its bargain.
- 14 **Waiver.** The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to that term or any other term of this Agreement.
- 15 **Rights Unaffected.** No amendment, supplement or termination of this Agreement shall affect or impair any rights or obligations which shall have theretofore matured hereunder.
- 16 **Interpretation.** All references made and pronouns used herein shall be construed in the singular or plural, and in such gender, as the sense and circumstances require.
- 17 **Successors.** This Agreement shall be binding upon and shall inure to the benefit of the parties, their respective heirs, executors, administrators and assigns.
- 18 **Further Actions.** Each of the parties agrees that it shall hereafter execute and deliver such further instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the terms hereof.
- 19 **Non-Assignment.** CONTRACTOR may not assign this Agreement except with the prior written approval of COUNTY, which it may provide, or not, in its sole and absolute discretion
- 20 **Counterpart.** This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same document.
- 21 **Facsimile Signatures.** The facsimile signature of a party to this Agreement shall be binding on that party for all purposes hereunder.
- 22 **Dispute Resolution.** In the event that a party to this Agreement has reasonable grounds to believe that the other party hereto has failed to fulfill any obligation hereunder, or that its expectations of receiving due performance under this Agreement may be impaired, such party will promptly notify the other party in writing of the substance of its belief. The party receiving such notice must respond within thirty (30) days of receipt of such notice and either provide evidence of cure of the condition specified, or provide an explanation of why it believes that its performance is in accordance with the terms of this Agreement, and also specify three (3) dates, all of which must be within thirty (30) days from the date of its response, for a meeting to resolve the dispute. The claiming party will then select one (1) of the three (3) dates and a dispute resolution meeting will be held. If the parties cannot in good faith resolve their dispute, they will be free to pursue all remedies allowed under the law without prejudice.
- 23 **Force Majeure.** Neither party hereto will be liable to the other for default or delay in the performance of any of its obligations hereunder (except any obligation to make payments when due) due to acts of God, accident, fire, flood, storm, riot, war, sabotage, explosion, strike, concerted acts

of workers, national defense requirements, governmental law, ordinance, rule or regulation, whether valid or invalid, extraordinary equipment failure, inability to obtain electricity or other type of energy, raw or finished material or feedstock from normal sources of supply, labor, equipment or transportation, or any similar or different contingency beyond its reasonable control which would make performance commercially impracticable, whether or not the contingency is of the same class as those enumerated above, it being expressly agreed that such enumeration is non-exclusively provided, however, that neither business downturn nor economic conditions will qualify as a contingency within the meaning of Article 26.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto affix their signatures below and execute this Agreement.

COUNTY:




John Carrier, Chair
Mariposa County Board of Supervisors

9-27-16

Date

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**




Steven W. Dahlem
County Counsel

9-27-16

Date

DEFINITI COMP SOLUTIONS:



Name
President/COO

Title

09/09/2016

Date

EXHIBIT A COMPENSATION

Service Rates / Gross Savings Hurdle Rate	
I. Base Service Rates	
Medical Bill Review ("MBR") ¹	\$13.40 per bill under a standard service delivery model (no scanning, indexing, or electronic storage of bills).
PPO Rate - Blue Cross ²	26%
PPO Rate - First Health, FOCUS ²	21%
PPO Rate - Interplan, CCN, ppoNext ²	18%
Specialty Bill Review ("SBR") ²	18%
Medical Provider Network ("MPN") - MPN application and maintenance including update of MPN with all County MPN adjustments	None - covered by MBR fee.
WCIS Reporting - Trading Partner certification with State of California and full support of County reporting, as detailed in "Scope of Services."	None - covered by MBR fee.
II. Additional Service Rates	
Settlement of disputes/liens on reviews performed by other MBR vendors.	\$85 per hour for all settlement work performed on prior MBR vendor reviews by Definiti personnel. \$100 per hour for all lien settlement work performed on prior MBR vendor reviews by subcontractors/partners of Definiti. These hourly rates apply to travel time incurred in the performance of prior MBR vendor lien settlement work. All hourly fees will be billed in ten (10) minute increments. All non-travel expenses will be billed at cost, with supporting receipts submitted.
III. Gross Savings Performance	
Gross Savings Percent ³	Hurdle Rate Established by mutual written agreement of the Parties after the first 6 (six) months of Services. The Parties agree that the Hurdle Rate will be 2 (two) savings points below the savings level that Parties mutually agree is the optimal appropriate overall savings level for the County's typical medical billing activity. Notwithstanding the above, in no event will the Hurdle Rate be below 65.00%.
IV. Performance-Based Fee Incentive	
<p>All performance-based adjustments to the above Base Service Rates will be calculated based on the overall gross savings performance of each "Performance Measurement Period", defined as follows: the first Performance Measurement Period is the first six calendar months in which Services are rendered. Subsequent Performance Measurement Periods are the six-month periods immediately following the preceding Performance Measurement Period. For example, if Services under this Agreement begin October 1, 2016, the first Performance Measurement Period will be October 2016-March 2017, and the second Performance Measurement Period will be April-September 2017. Performance-based adjustments calculated in every Performance Measurement Period will be applied to service rates for the six-month period immediately following a one-month lag period. For example, performance-based adjustments calculated in the October 2016-March 2017 Performance Measurement Period will be applied to service rates for the entire May-October 2017 period, with April 2017 serving as the one-month lag period used to calculate and apply rate adjustments.</p> <p>For any Performance Measurement Period in which Gross Savings Percent exceeds Hurdle Rate, all Base Service Rates for the applicable adjustment period will be increased by the same percentage by which the Gross Savings Percent for the period exceeds Hurdle Rate. This increase is calculated as the percentage by which Gross Savings Percent exceeds Hurdle Rate, rather than the nominal difference in Gross Savings Percent points. For example, if Hurdle Rate is 70.00% and Gross Savings Percent for a Performance Measurement Period is 77.00%, Gross Savings Percent has exceeded Hurdle Rate by 7.0 Gross Savings Percent points, or by 10.00%. Therefore, Base Service Rates for the applicable service rate adjustment period will be increased by 10.00%.</p> <p>For any Performance Measurement Period in which Gross Savings Percent falls below Hurdle Rate, all Base Service Rates for the applicable adjustment period will be decreased by the same percentage by which the Gross Savings Percent for the period fell short of Hurdle Rate. This decrease is calculated as the percentage by which Gross Savings Percent falls short of Hurdle Rate, rather than the nominal difference in Gross Savings Percent points. For example, if Hurdle Rate is 70.00% and Gross Savings Percent for a Performance Measurement Period is 63.00%, then Gross Savings Percent has fallen short of Hurdle Rate by 7 Gross Savings Percent points, or by 10.00%. Therefore, Base Service Rates for the applicable service rate adjustment period will be decreased by 10.00%.</p>	
Notes	
¹ Rate includes all MBR service components listed in the Scope of Service exhibit of this Agreement.	
² Rate is applicable only to savings that exceed savings that would otherwise have been available through the application of fee schedule and technical bill review.	
³ Gross Savings Percent is defined as total Performance Measurement Period savings from Medical Bill Review, PPO, and Third-Party Specialty Bill Review services divided by total Performance Measurement Period charges reviewed by Definiti. Gross Savings Percent will be calculated employing the following protocols:	
1) Net full and partial duplicate charges and savings.	
2) Net all charges and savings related to examiner-directed bill payments/full payments/denials, review-only bills, and non-reviewable documents such as provider appeal letters.	
3) Net all charges and savings related to additional information denials, unless such denials are linked to offsetting reconsiderations which reduce the original savings of the denial.	
4) Net all charges and savings related to disallowances due to enforcement of Utilization Review and case management treatment limitations/denials.	
5) Net all charges and savings related to enforcement of California 24-visit cap to PT/OT/DC medical treatment utilization only.	