

5-14-19 11

PATRICK F. GILL  
WOODBURY COUNTY  
AUDITOR & RECORDER &  
COMM. OF ELECTIONS

TRISTAR

2019 MAY 15 09 08 17  
Claims Services Agreement

AGREEMENT made this 1<sup>st</sup> day of March, 2019 by and between TRISTAR Risk Enterprise Management, Inc. a Delaware corporation having its principal place of business at 100 Oceangate, Suite 700, Long Beach CA 90802 ("TRISTAR"), and Woodbury County, Iowa a political subdivision of the State of Iowa having its principal place of business at 620 Douglas, Suite 701, Sioux City, IA 51101 ("Customer").

WHEREAS, Customer, as a qualified self-insured under applicable state law, has a self-insured retention program with respect to automobile liability, general liability, and professional liability claims and claim expenses pertaining to Customer's business ("SIR Program") with a retention level as set forth in Schedule A attached hereto ("Retention Level"); and

WHEREAS, Customer has the sole responsibility to provide for competent claims administration and claims funding with respect to claims and/or losses and claims expenses arising within the SIR Program; and

WHEREAS, Customer desires to engage TRISTAR as the claims administrator with respect to those claims and/or losses arising under the SIR Program, including certain claims that were previously handled by Customer or any other entity; and

WHEREAS, TRISTAR desires to accept such engagement pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the terms, conditions and other agreements set forth herein, TRISTAR and Customer hereby agree as follows:

1. Term

The term ("Term") of this Agreement shall commence at 12:00 A.M. on March 1, 2019 ("Effective Date") and shall remain in effect unless and until terminated in accordance with the provisions of Section 9 of this Agreement.

2. Engagement, Duties, and Authority of TRISTAR

2.1 Customer hereby engages TRISTAR and TRISTAR hereby accepts such engagement as the claims administrator to represent and act for Customer with respect to all claims arising under the SIR Program, occurring during the Term, reported to TRISTAR during the Term, and assigned to TRISTAR by Customer ("Claims"). Claims shall consist of:

- i) "Takeover Claim(s)" which shall be defined as any Claim reported to TRISTAR that has been handled by Customer or any preceding manager or administrator prior to being assigned to TRISTAR and is open and pending as of the Effective Date; and
- ii) "Newly Reported Claim(s)" which shall be defined as any Claim other than Takeover Claims.

2.2 The terms and conditions of this Agreement will continue to apply during the Term and during any period Claims continue to be handled by TRISTAR. In consideration of payment of the agreed-upon fees as set forth in this Agreement, TRISTAR agrees to perform the following services ("Services") during the Service Period as defined in Schedule A and any extension or renewal thereof, if applicable, with respect to the Claims. Subject to the authority limits stated below, TRISTAR shall:

2.2.1 provide to Customer the following basic services ("Basic Services"):

- i) establish and maintain an electronic file with respect to each Claim ("Claim File"); such Claim Files shall include accurate records and accounts of all transactions with respect to Claims; and be maintained in accordance with prudent standards of record keeping;
  - ii) conduct analysis of Claims to determine their validity in accordance with Claims' guidelines as may be agreed to by TRISTAR and Customer;
  - iii) establish case-specific reserves, adjust, resist, deny and/or settle Claims:
    - up to the authority limit set forth in Schedule A ("Settlement Authority");
    - in excess of the Settlement Authority at the direction of and with the approval of the Customer;
  - iv) upon approval or at the direction of Customer, use legal counsel where appropriate and assist legal counsel in the preparation of cases for hearings, trials and/or appeals;
  - v) pursue, as deemed appropriate by TRISTAR, reasonable possibilities of subrogation, contribution, or indemnity (not insurance or reinsurance recoveries) on behalf of Customer and deposit all recovery amounts in an account until paid over to Customer;
  - vi) refer all regulatory complaints to Customer and cooperate with Customer to resolve such complaints;
  - vii) report cases involving suspected fraud to the appropriate state mandated agency and when reporting to the state insurance department is required, use an internal special investigative unit or contract with an entity to provide such services;
  - viii) provide TRISTAR's standard claims reports to Customer; and
  - ix) make timely requests for payments of valid claims for compensation, rehabilitation expenses, and other required benefits payable under applicable insurance laws, together with Allocated Loss Adjustment Expenses to Customer pursuant to Sections 3 and 4 hereof subject to the limitations and requirements of this Agreement.
- 2.2.2 provide to Customer information services in accordance with the provisions of Schedule B attached hereto ("Information Services");
- 2.2.3 receive and manually load Takeover Claims data from the preceding Claims administrator(s) ("Data Loading Services"); and
- 2.2.4 provide, or use vendors to provide, specialty services ("Specialty Services") such as claim call-in reporting (telephonic, electronic, fax or internet), Special Investigation (SIU), and index bureau reports. Specialty Services are charged as Allocated Loss Adjustment Expenses (as defined in Section 1.2) or, where required by state law, as loss.
- 3. Duties of Customer**
- 3.1 Customer shall:
- 3.1.1 promptly forward, or cause to be forwarded to TRISTAR, all claims, claim forms, demands, notices, inquiries or correspondence concerning or related to Claims;
- 3.1.2 at the time that Claims are assigned to TRISTAR, provide TRISTAR with a copy of any investigative and pertinent material;
- 3.1.3 not comment upon, discuss with third parties, or independently adjust, attempt to settle, or otherwise process Claims without prior written notice to TRISTAR;

- 3.1.4 directly pay all Claims, Allocated Loss Adjustment Expenses and other claim-related expenses in accordance with Section 4 of this Agreement;
- 3.1.5 cooperate with TRISTAR with respect to the performance of Claim services, including, but not limited to: responding promptly to TRISTAR's requests for information; providing timely direction to TRISTAR for matters exceeding its authority; meeting with TRISTAR, as may be needed; and making decisions as required by this Agreement and within such time periods as to meet all legal requirements applicable to the obligations under this Agreement;
- 3.1.6 report to any and all insurers, reinsurers or intermediaries all facts, notices, documents, and information sufficient to comply with reporting requirements of said insurers or reinsurers regarding the Claims hereunder. TRISTAR shall make no such reports unless specifically requested in writing by Customer, or as specifically provided in this Agreement. TRISTAR shall however cooperate with Customer with respect to Customer's obligations to insurers and reinsurers;
- 3.1.7 be responsible for managing the vendors (other third party administrators and other services) Customer has contracted with and meeting all requirements in connections therewith. TRISTAR will have no responsibility or liability for the obligations of vendors or Customer in connection with the services provided by such vendors and Customer shall, subject to appropriation and to the extent permitted by law, indemnify, hold harmless, and defend TRISTAR against any such liability, except that TRISTAR shall cooperate with the vendors Customer contracted with and assist Customer with respect to such vendor requirements; and
- 3.1.8 perform all such other actions and things reasonably necessary or otherwise required to enable TRISTAR to perform its services under this Agreement.
- 3.2 Customer represents and warrants that it is and shall remain throughout the Term a qualified self-insured under applicable state law.

#### **4. Payment of Claims and Allocated Loss Adjustment Expense(s)**

- 4.1 In addition to the invoices for Fees and Expenses (as defined in Subsection 5.5) addressed in Section 5 below, all Claims obligations, including loss, indemnity, and Allocated Loss Adjustment Expenses and other Claim-related expenses, are the obligations of Customer. Unless otherwise agreed by TRISTAR and Customer: i) as payment requests are processed by TRISTAR, they shall be paid by Customer; and ii) TRISTAR shall not process any such payments. Customer acknowledges that at no time will TRISTAR be obligated to make any such payments out of TRISTAR funds.
- 4.2 Unless otherwise agreed by TRISTAR and Customer, Specialty Services which are listed on Schedule C attached hereto shall be provided by TRISTAR's Preferred Provider network, which may include TRISTAR, its affiliates and subsidiaries (including TRISTAR Managed Care, Inc.), or third parties. Specialty Services will be charged to Customer as Allocated Loss Adjustment Expenses or, where required by state law, as loss. Customer understands and agrees that TRISTAR may receive compensation in connection with the Specialty Services, either by retaining a portion of the fees and expenses charged, or by receiving fees from preferred providers. The amount TRISTAR retains or receives will vary depending upon the preferred provider, and may be calculated based on percentage of savings, percentage of revenue to the provider, or TRISTAR's mark-up of provider fees. The amounts retained or received by TRISTAR in connection with Specialty Services are in addition to the Fees and Expenses paid to TRISTAR by Customer under Section 5 of this Agreement. The fees set forth on Schedule C may be adjusted from time to time upon one hundred twenty (120) days' prior written notice.

**5. Payment of Fees, Expenses, and Taxes**

- 5.1 For Basic Services, Information Services, and Data Loading Services performed, TRISTAR shall be entitled to and Customer shall pay the fees and expenses, including Reimbursable Expenses (as defined in Subsection 5.2), calculated and earned in accordance with this Section 5 and Schedule A.
- 5.2 TRISTAR shall be reimbursed for those expenses which are incurred by TRISTAR in the rendering or performance of services and not incorporated in the Basic Fee ("Reimbursable Expenses"). Reimbursable Expenses include, but are not limited to, any data processing or telecommunications charges, hotel, travel, living and out-of-pocket expenses related to the provision of services pursuant to this Agreement.
- 5.3 For all services other than Basic Services, Information Services, and Specialty Services provided under this Agreement, Customer shall compensate TRISTAR in accordance with this Section 5 and Schedule A ("Additional Services Fees"), plus Reimbursable Expenses. Additional Services Fees and expenses charged pursuant to this Subsection 5.3 are in addition to those fees and expenses charged under Subsections 5.1 and 5.2.
- 5.4 Customer shall be responsible to pay directly to the applicable taxing authority or to TRISTAR, if imposed on TRISTAR, all federal, state and local taxes (other than net income taxes) which TRISTAR may be required to pay or collect or which may be incurred or assessed against TRISTAR or Customer, under any existing or future law, relating to the sale, delivery, rendering or provision of services by TRISTAR to Customer ("Taxes").
- 5.5 TRISTAR shall submit itemized invoices to Customer for all fees, Reimbursable Expenses, and, if applicable, Additional Services Fees and Taxes ("Fees and Expenses") incurred in accordance with this Section 5 on a monthly basis and such invoice shall be paid by Customer to TRISTAR upon receipt of same. Amounts which remain unpaid in excess of thirty (30) days from the date of receipt of the invoice shall be subject to an interest charge of one and one-half (1.5%) percent per month, such charge to be effective beginning thirty (30) days after the date due until paid.

**6. Records: Inspection, Access, and Ownership**

- 6.1 Customer shall at all times retain the ownership of the Claim Files and Claims data (collectively, "Claim File Information"). Customer acknowledges that TRISTAR has a right of continuing possession and access to the Claim File Information, including any accessing software, hardware, and systems to permit TRISTAR to fulfill all of its obligations under this Agreement, whether before or after termination, including in the event of any dispute or legal action between the parties.
- 6.2 Claim File Information shall, upon thirty (30) days prior written notice to TRISTAR, be available for on-site audit, review, and/or inspection by duly authorized representatives of Customer and by regulatory authorities having appropriate jurisdiction; however, the parties agree that if there are any such audits, reviews, and/or inspections including reasonable follow-up of the activities of TRISTAR by Customer, regulatory authorities or other parties, or any combination thereof, TRISTAR shall be compensated in accordance with Subsection 5.3 for its involvement with any such audit(s), reviews, and/or inspections.
- 6.3 At the conclusion of TRISTAR's obligation to handle Claims and subject to the payment of all Fees and Expenses due TRISTAR, TRISTAR shall send directly to Customer or a third party selected by Customer i) an electronic copy in TRISTAR's then current format of the Claim File Information, and ii) all open and closed physical Claim Files, if any (collectively, "Transfer Services") in accordance with Subsection 9.3. Customer hereby acknowledges that Customer, such third party selected by Customer, or any succeeding administrator is responsible for retaining Claim File Information that is transferred to it for the longest of the following time periods:

- i) for five (5) years from the closing of the Claim;
- ii) for the duration of any applicable regulatory requirement or state law; or
- iii) for the duration of the applicable Statute of Limitations.

## **7. Indemnification, Limitation of Liability – Intentionally removed**

## **8. Confidential Information**

**8.1** The parties acknowledge that in the course of dealings between each other:

**8.1.1** each party will acquire from the other information about business activities and operations, technical information and trade secrets, all of which are highly confidential and proprietary (“Confidential Business Information”). Confidential Business Information shall not include (i) information already known to a party; (ii) information which now is or hereafter becomes publicly known through no wrongful act of a party, (iii) information received by a party from a third party without similar restriction and without breach of this Agreement; (iv) information independently developed by a party; (v) information approved for release by written authorization of the other party; and (vi) information which, after notice to a party providing a reasonable opportunity to contest disclosure, must be disclosed pursuant to the requirements of a governmental agency or a final binding order of a court of competent jurisdiction; and

**8.1.2** each party may gain access to and/or generate information of Customer’s consumers, customers, insureds or claimants which may include personally identifiable, financial and/or health information which may be protected by federal, state and local laws (“Protected Information”).

**8.2** In the event a party provides its Confidential Business Information and/or Protected Information (collectively “Confidential Information”) to the other party (“Receiving Party”), such Confidential Information shall be provided subject to the following confidentiality terms:

**8.2.1** A party’s Confidential Information shall be safeguarded by the Receiving Party with at least as great a degree of care as the Receiving Party uses to safeguard its own most confidential materials or information relating to its own business.

**8.2.2** The Confidential Information must be circulated, quoted, disclosed, or distributed solely on a “need to know basis” and only to employees, attorneys, or consultants of the Receiving Party (“Representatives”) after such Representatives have been informed of and agreed to be bound by this duty of confidentiality. Further, a Receiving Party agrees to obligate each of its Representatives to a level of care sufficient to protect the Confidential Information from unauthorized use or disclosure.

**8.2.3** A Receiving Party and its Representatives shall not further circulate, quote, disclose or distribute any of the Confidential Information except as permitted under this Section 8.

**8.3** The provisions of this Section 8 shall survive the termination of this Agreement.

## **9. Termination**

**9.1** This Agreement shall be terminated in accordance with any of the following subsections of this Section 9:

**9.1.1** Either party may terminate this Agreement by giving at least one hundred twenty (120) days prior written notice of termination to the other party, such termination to be effective no sooner than the first (1<sup>st</sup>) anniversary of the Effective Date.

- 9.1.2 Upon a material breach by TRISTAR or Customer in the performance of its duties or responsibilities as provided in this Agreement, the non-breaching party may advise the breaching party of said material breach by written notice. Except for breach by Customer for failure to pay Fees and Expenses or a breach by Customer for failure to pay Claims and Allocated Loss Adjustment Expenses as required in this Agreement ("Monetary Breach"), the breaching party shall then have thirty (30) days from the date of written notice within which to cure said breach. For Monetary Breach, the Customer shall have five (5) business days from date of written notice within which to pay overdue Fees and Expenses to TRISTAR or to pay Claims and Allocated Loss Adjustment Expenses as required. The non-breaching party shall have the right to terminate this Agreement upon written notice to the breaching party if the breaching party fails to cure said material breach within the specified time period.
- 9.1.3 This Agreement shall immediately terminate at the election of either party upon the occurrence of any of the following events with respect to the other party: its insolvency, its inability to meet its debts as they mature, its filing of a petition of voluntary bankruptcy under any chapter of the US bankruptcy laws, institution of proceedings to adjudge it bankrupt in an involuntary proceeding, filing of a petition for rehabilitation or liquidation, execution of an assignment for the benefit of creditors, its appointment by a court of a receiver, trustee, rehabilitator or liquidator, or its dissolution.
- 9.2 If this Agreement is terminated:
- 9.2.1 for cause pursuant to Subsection 9.1.2 or 9.1.3, TRISTAR shall cease the handling of all Claims as of the effective date of termination ("Termination Date") and TRISTAR shall have no more obligations with respect thereto;
- 9.2.2 for convenience pursuant to Subsection 9.1.1, Customer, in its sole discretion, shall exercise one of the following options:
- i) Customer may require TRISTAR to continue the handling of all Claims reported to TRISTAR before the Termination Date, on the terms, conditions and limitations of this Agreement; or
  - ii) Customer may require TRISTAR to cease the handling of all Claims as of the Termination Date and TRISTAR shall have no more obligations with respect thereto.
- 9.3 Upon termination of this Agreement:
- 9.3.1 TRISTAR and Customer shall perform all of their respective obligations in accordance with the terms of this Agreement whether to be performed before or after the Termination Date until the conclusion of TRISTAR's obligation to handle Claims as set forth in Section 9.2 and Schedule A. At that time and upon TRISTAR's receipt of payment of all earned but unpaid Fees and Expenses, TRISTAR shall provide the Transfer Services in accordance with Subsections 6.3 and 9.3.2.
- 9.3.2 Unless this Agreement has been terminated by Customer for cause pursuant to either Subsection 9.1.2 or 9.1.3, Customer shall reimburse TRISTAR for all fees and expenses incurred by TRISTAR ("Transfer Fees") in connection with the Transfer Services. These Transfer Fees shall be considered Additional Services Fees and calculated in accordance with Section 5.3. Transfer Fees shall include, but not be limited to:
- i) the actual costs incurred (examples: packing materials and shipping expenses in the event there are physical Claim Files); plus
  - ii) TRISTAR's fees for its services in effecting such transfer (examples: hourly fees for clerical labor to inventory, sort, pack, and ship such Claim Files; hourly fees for data processing labor

to perform data extract and testing with receiving vendor; fees for production of notification letters to claimants, attorneys, and medical providers).

- 9.3.3 As respects all Claims, Customer shall remain liable for the payment of all Claims and Allocated Loss Adjustment Expenses in accordance with Section 4 and the payment of all Fees and Expenses in accordance with Section 5 that they would have been liable for had the Agreement not been terminated.

#### 10. Independent Contractor

TRISTAR and its affiliates, shall act as an independent contractor(s) in providing services to Customer hereunder. Neither this Agreement nor the performance thereof by TRISTAR shall create nor be deemed to create any employer-employee, joint venture or partnership relationship between TRISTAR or any of its affiliates, officers, directors or employees, on the one hand, and Customer or any of its affiliates, officers, directors or employees, on the other hand.

#### 11. Force Majeure

If any cause or condition shall occur beyond the control of TRISTAR which wholly or partially prevents the performance by TRISTAR of its obligations hereunder, including, without limitation, any act of God or the public enemy, fire, explosion, flood, earthquake, war, riot, adverse weather conditions, breakdowns in equipment or facilities, strike, slowdown, work stoppage or other labor trouble, then TRISTAR shall be excused from its obligations hereunder to the extent made necessary by such cause or condition and during the continuance thereof, and TRISTAR shall incur no liability by reason of its failure to perform the obligations so excused. Such cause or condition shall not, however, relieve Customer of the obligation to pay to TRISTAR fees and charges due to TRISTAR for services rendered and expenses incurred hereunder prior to such stoppage.

#### 12. Definition "Allocated Loss Adjustment Expense"

- 12.1 For the purposes of this Agreement, Allocated Loss Adjustment Expense(s) ("Allocated Loss Adjustment Expense(s)") shall mean any fee or expense which is chargeable or attributable to the investigation, coverage analysis, adjustment, negotiation, settlement, defense or general handling of any Claim(s) or action(s) related thereto, or to the protection and/or perfection of the Customer's right of subrogation, contribution or indemnification, all as reasonably determined by TRISTAR.
- 12.2 Allocated Loss Adjustment Expense(s) may be incurred for services provided by TRISTAR, its affiliates and subsidiaries, or third parties and include, but are not limited to, the following:
- 12.2.1 attorney's fees and disbursements incurred in connection with the determination of coverage and/or the adjustment, defense, negotiation or settlement of any Claim; attorney's fees incurred for representation at depositions, hearings, pretrial conferences and/or trials;
- 12.2.2 fees and expenses incurred for: handling any Alternative Dispute Resolution proceeding ("ADR"); legal actions, including trials or appeals; pursuing any declaratory judgment action, including deposition fees; cost of appeal bonds; court reporter or stenographic services, filing fees, and other court costs, fees and expenses; transcript or printing services and all discovery expenses; service of process; witnesses' testimony, opinions, or attendance at hearings or trial;
- 12.2.3 fees and expenses for attendance at or participation in ADR proceedings, hearings, trials or other proceedings by TRISTAR personnel or its subcontractors;
- 12.2.4 statutory fines or penalties; pre- and post-judgment interest paid as a result of litigation, unless regulatory or reporting requirements define such interest as loss or indemnity payments;

- 12.2.5 subcontractors' fees and travel expenses, including independent adjusters, automobile and property appraisers, to the extent that same are incurred in the adjustment, negotiation, settlement or defense of any Claim;
- 12.2.6 fees and expenses incurred in conjunction with the telephonic, web, or other electronic methods of reporting Claims as set forth on Schedule C;
- 12.2.7 experts' fees and expenses including reconstruction experts, engineers, photographers, accountants, economists, metallurgists, cartographers, architects, hand-writing experts, physicians, appraisers and other natural and physical science experts, plus the fees and expenses associated with preparation of expert reports, depositions, and testimony;
- 12.2.8 fees and expenses for surveillance, undercover operative and detective services or any other investigations;
- 12.2.9 fees and expenses for: medical examinations, or autopsies, including diagnostic services, and related transportation services; durable medical equipment; and medical reports and rehabilitation evaluations, unless regulatory or reporting requirements define such fees and expenses as loss or indemnity payments;
- 12.2.10 fees and expenses for any public records, medical records, credit bureau reports, index bureau reports, and other like reports as set forth on Schedule C;
- 12.2.11 fees and expenses incurred where TRISTAR determines it is reasonable to pursue the rights of contribution, indemnification or subrogation of the Customer, including attorney and collection agency fees and/or expenses;
- 12.2.12 medical or vocational rehabilitation fees and expenses, and all other medical cost containment services, including, but not limited to utilization review and management, pre-audit admission authorization, hospital bill audit or adjudication, provider bill audit or adjudication, and medical case management, if applicable, unless regulatory or reporting requirements define such expenses as loss or indemnity payments as set forth on Schedule C; and
- 12.2.13 extraordinary travel and related fees and expenses incurred by TRISTAR at the express request of Customer, which are not otherwise payable under this Agreement.
- 12.3 With respect to TRISTAR's determination that a fee or an expense incurred pursuant to this Agreement is an Allocated Loss Adjustment Expense, TRISTAR makes no representation or warranty and assumes no responsibility that such determination (i) is in compliance with or meets the requirements of any statistical plan filing, statutory, regulatory, or insurance industry reporting scheme or the definition of "Allocated Loss Adjustment Expense" thereunder; (ii) is or could be characterized as payment of loss or indemnity; or (iii) is or is not subject to insurance or reinsurance coverage or limits. Customer agrees that it is responsible for making all such judgments and for complying with any and all such requirements.

### 13. MMSEA

- 13.1 Section 111 of the Medicare, Medicaid, and SCHIP (State Children's Health Insurance Programs) Extension Act of 2007 (all of which together shall be referred to as "MMSEA") (P.L. 110-173), contains mandatory reporting requirements ("MIR") for group health plan arrangements and for liability insurance (including self-insurance), no-fault insurance, and workers' compensation (see 42 U.S.C. 1395y(b)(7) & (8)). As respects compliance with MMSEA under this Agreement:



- 13.1.1 Customer has the obligation to perform MIR requirements as respects Claims, register with the Centers for Medicare and Medicaid Services ("CMS") as a Responsible Reporting Entity ("RRE"), and provide to TRISTAR all relevant information including the RRE Identification Number(s) assigned. Customer has appointed the reporting agent(s) identified on Schedule A for the purpose of meeting MMSEA obligations including MIR requirements ("Reporting Agent(s)").
- 13.1.2 Reporting Agent services include determining Medicare eligibility, reporting to CMS eligible Claims using the mandated format for a determination of Medicare eligibility, processing error corrections, and providing quarterly reports. Where applicable, Reporting Agent should also respond to all inquiries and requests for conditional payments, comply with settlement approvals, negotiate and prepare claim set-aside agreements ("CSA's") and Medicare set-aside agreements ("MSA's").
- 13.1.3 Customer consents to the disclosure by TRISTAR of Claims information required by MIR to Reporting Agent or others for the purpose of providing MIR pursuant to this Agreement. Customer and TRISTAR agree that Claim data reported to or by CMS is confidential and each shall take reasonably necessary steps to protect the confidentiality of this data.
- 13.1.4 Customer agrees that fees and charges by Reporting Agent incurred for compliance with MMSEA and other related services shall be paid by Customer and charged against the Claim Files as Allocated Loss Adjustment Expenses. Such fees and charges are listed on Schedule C.

#### 14. Non-Hire

- 14.1 Without the written consent of the other, Customer and TRISTAR shall not:
- i) solicit for employment or employ any employee of the other who is or has been directly engaged in the performance of this Agreement; and
  - ii) for a period of six (6) months following the termination of any employee who had been directly engaged in the performance of this Agreement, solicit for employment or employ such employee of the other.
- 14.2 Customer agrees that: (i) the prohibition against solicitation and employment of TRISTAR employees by Customer in Section 14.1 without TRISTAR's written consent shall also apply to any affiliates of Customer; and (ii) that violation of this prohibition by Customer shall be deemed to be a material breach of this Agreement by Customer. For purposes of this Section 14.2, "Affiliates of Customer" includes any entity controlling, controlled by, or in common control with Customer or any entity in which Customer has an interest during the Term or with which Customer has entered into a contract.
- 14.3 This provision shall not apply to any offer of employment by TRISTAR or Customer arising from a general employment solicitation to the public and not specifically directed at any employee of the other party who is directly engaged in the performance of this Agreement.
- 14.4 The provisions of this Section 14 shall apply during the Term and the six (6) month period immediately following the Term.

#### 15. Notices

- 15.1 All notices or other communications required pursuant to Section 9 shall be in writing and sufficient if i) delivered personally; ii) sent by a nationally recognized overnight carrier; or iii) sent by registered or certified mail return receipt requested, postage prepaid and via email; and addressed as follows:

TRISTAR: TRISTAR Risk Enterprise Management, Inc.  
100 Oceangate, Suite 700  
Long Beach, CA 90802  
Attn.: Thomas J. Veale (Tom.Veale@tristargroup.net)

*With a copy to:* TRISTAR Insurance Group, Inc.  
2540 Route 130, Suite 109  
Cranbury, NJ 08512  
Attn.: General Counsel's Office (Tim.McIntyre@tristargroup.net)

Customer: Woodbury County, Iowa  
620 Douglas, Suite 701  
Sioux City, IA 51101  
Attn.: Human Resources Director

16.2 When required or issued pursuant to this Agreement, notices shall be deemed to have been given at the time i) when personally delivered, ii) upon the day following the day sent by overnight carrier, or iii) if mailed, upon the third (3<sup>rd</sup>) day after the date such notice is postmarked.

#### 16. State Amendment Requirements

16.1 The Agreement shall be deemed to incorporate any and all provisions required by applicable state insurance laws, relating to insurance administrators or third party administrators, insofar as such provisions relate to the services performed by TRISTAR pursuant to the Agreement.

#### 17. General

- 17.1 This Agreement constitutes the entire agreement of the parties and supersedes all previous agreements and/or contracts whether oral or written between them with respect to the subject matter hereof.
- 17.2 If any provision of this Agreement shall contravene or be invalid under the laws of the United States, the state in which enforcement is sought, or the regulatory requirements of such state, it is agreed that such provision shall not invalidate the whole Agreement but the Agreement shall be construed as if not containing the particular provision or provisions held to be invalid.
- 17.3 This Agreement may only be amended by a written instrument signed by the parties hereto.
- 17.4 The parties shall not disclose to any third party the terms and conditions of this Agreement, except as may be required by law, reasonable advice of its counsel, or the written consent of the non-disclosing party. Notwithstanding the aforementioned, this Agreement may be disclosed to the parties' representatives, accountants, attorneys, and advisors and to insurers of Customer, including excess insurers to and reinsurers of the SIR Program.
- 17.5 This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns. A party may not assign this Agreement or the services required herein without the prior written consent of the other party, which shall not be unreasonably withheld or delayed, except that TRISTAR may assign this Agreement to an affiliate or subsidiary company, or a successor in interest by acquisition or merger provided that such succeeding company shall assume all rights and obligations under this Agreement.
- 17.6 Except as otherwise provided herein, nothing in this Agreement is intended or shall be construed to give any person, other than the parties hereto, their respective successors and permitted assigns, any

## Schedule A

### General Information; Service Period; Fees and Expenses

This Schedule A shall be effective March 1, 2019 and it shall: i) apply to all Claims reported and all Information Services provided on or after that date, and ii) remain in effect until the parties agree on new rates.

The terms and conditions of the Agreement apply unless and to the extent modified or supplemented by the specific terms and conditions of this Schedule A.

#### A.1 General Information

A.1.1 **Retention Level(s):** \$300,000

A.1.2 **Settlement Authority:** \$0

A.1.3 **Reporting Agent(s):**

- i) for MMSEA reporting to CMS: TRISTAR Risk Management (an affiliate of TRISTAR).
- ii) for MMSEA compliance and other related services: TRISTAR's Preferred Provider, unless Customer directs the use of a different vendor.

#### A.2 Service Period

A.2.1 In consideration of payment by Customer of the fees described in Section A.3, TRISTAR will provide the Services for the periods set forth below ("Service Period"):

**Basic Services.** TRISTAR will provide Basic Services for each Claim beginning on the date the Claim is reported to TRISTAR and ending on the sooner of:

- i) the date the Claim is closed; or
- ii) the effective date of termination of this Agreement in accordance with any provision of Section 9.

**Data Loading Services.** TRISTAR will provide Data Loading Services beginning on the Effective Date and ending upon the completion of the loading.

**Information Services.** TRISTAR will provide Information Services beginning on the Effective Date and ending on the date TRISTAR is no longer obligated to provide Basic Services as set forth above.

#### A.3 Basic Fees

A.3.1 **Annual Minimum Fee & Excess Flat Rates**

**Annual Minimum Fee.** In consideration for the Basic Services and Information Services performed by TRISTAR during the Service Period for Claims, TRISTAR shall be entitled to and Customer shall pay TRISTAR in accordance with Section A.6 at the following annual rate ("Annual Minimum Fee"), in advance, subject to any increases made in accordance with Section A.4, in accordance with Section A.7. The Annual Minimum Fee shall cover one (1) user of Information Services and up to a combined total of fifteen (15) Newly Reported Claims and Takeover Claims ("Claims Threshold") reported to TRISTAR during the Initial Period or each Annual Period, as defined below.

<u>PERIOD</u>	<u>ANNUAL MINIMUM FEE</u>
Initial Period.....	\$10,000 ( <i>pro-rated portion of \$12,000</i> )
First Annual Period.....	\$12,420
Each Subsequent Annual Period.....	3.5% increase over the prior Annual Period

*Where:*

The "**Initial Period**" shall be defined as the ten (10) month period beginning on March 1, 2019 and ending December 31, 2019.

An "**Annual Period**" shall be defined as each twelve (12) month period beginning on January 1, 2020 and each subsequent anniversary.

**Subject to the following:**

**Excess Flat Rates.** At the end of the Initial Period and at the end of the each Annual Period during the Term, a reconciliation shall be performed. In the event the number of Newly Reported Claims and Takeover Claims reported to TRISTAR during the Initial Period or during any Annual Period exceeds the Claims Threshold, then Customer shall pay TRISTAR in accordance with Section A.7 at the following flat rates per Feature for each Newly Reported Claim or Takeover Claims in excess of the Claims Threshold, subject to any increases made in accordance with Section A.4 ("Excess Flat Rate(s)")

- i) Automobile Liability – Bodily Injury: Seven Hundred Fifty-Seven dollars (\$757) per Feature;
- ii) Automobile Liability – Property Damage: Four Hundred Thirty-Two dollars (\$432) per Feature;
- iii) Automobile Physical Damage: Two Hundred Ninety-Eight dollars (\$298) per Feature;
- iv) General Liability– Bodily Injury: Seven Hundred Fifty-Seven dollars (\$757) per Feature;
- v) General Liability – Property Damage: Four Hundred Thirty-Two dollars (\$432) per Feature; and
- vi) General Liability – Professional Liability: One Thousand Nine Hundred Fifty dollars (\$1,950) per Feature.

As long as the Agreement applies to any Claims being handled by TRISTAR, the Excess Flat Rates shall be increased by 3.5% on January 1, 2020 and each subsequent anniversary.

*Where:*

"**Feature**" shall mean each line of coverage for each person or entity making a claim under the SIR Program.

**A.3.2 Data Loading Fee.** In consideration for the Data Loading Services rendered by TRISTAR during the Service Period and in accordance with this Agreement, Customer agrees to pay TRISTAR a fee ("Data Loading Fee") of Two Thousand Five Hundred dollars (\$2,500) in accordance with Section A.7.

**A.3.3 Fees for optional services requested by Customer.** In consideration for the services listed below (collectively, "Optional Service(s)") rendered during the Service Period upon the request of Customer and in accordance with this Agreement, Customer agrees to pay TRISTAR at the following rates ("Optional Rates") in accordance with Section A.7, subject to any increases made in accordance with Section A.4, for as long as the Optional Services are provided:

*If requested by Customer:*

- i) **For each additional user in excess of one (1):** Six Hundred dollars (\$600) per user ("Additional User Rate");
- ii) **OSHA Reports:** Four Thousand dollars (\$4,000) per year ("OSHA Rate");
- iii) **Standard Data File (monthly):** One Thousand Two Hundred dollars (\$1,200) per year ("Data File Rate")
- iv) **Self-Insured Reports:** in accordance with TRISTAR's rates, which vary by state, then in effect ("SIR Report Rate"); and
- v) **Customized Interface:** on a Time and Expense basis at the hourly rate of One Hundred Fifty dollars (\$150) ("Customized Interface Rate").

The Additional User Rate, OSHA Rate, and Data File Rate each shall be pro-rated for each applicable Optional Service added at any time other than as of the Effective Date or a subsequent Increase Date, as hereinafter defined.

Beginning on January 1, 2020, for Optional Services requested by Customer during an Annual Period, Customer shall pay TRISTAR for such Optional Services, in accordance with Section A.7, at TRISTAR's then current rates for Optional Services unless other rates are mutually agreed upon.

#### **A.4 Increases**

**A.4.1 Increases due to Material Change in business terms.** In addition to the foregoing, Customer agrees that TRISTAR, in its sole discretion, reserves the right to make adjustments to the Annual Minimum Fee, Excess Flat Rates, Data Loading Fee, and Optional Rates (collectively, "Basic Fees") as it deems necessary in the event any of the following occurs:

- i) a material discrepancy is discovered in the historical data and any other information provided to TRISTAR by Customer or its representatives that is used by TRISTAR to develop the Basic Fees and this Agreement; and
- ii) there is a material change in the scope of services to be provided by TRISTAR, including the use of TRISTAR's Preferred Provider network.

#### **A.5 Additional Services Fees**

**A.5.1** The Basic Fees shall apply to Services, other than Specialty Services, rendered during the Service Period for Claims. Should TRISTAR be engaged by Customer to provide any other service, Customer shall pay TRISTAR for such services, in accordance with Section A.7, on a Time and Expense basis at TRISTAR's then current hourly rates unless other rates are mutually agreed upon ("Additional Services Fees").

#### **A.6 Expenses**

**A.6.1 Reimbursable Expenses.** Customer shall reimburse TRISTAR for Reimbursable Expenses.

**A.6.2 Taxes.** Customer shall pay applicable Taxes. Customer is tax exempt in the State of Iowa.

**A.7 Payment**

**A.7.1** Notwithstanding any expiration or sooner termination of this Agreement:

*Optional Rates (if Optional Services requested by Customer and provided by TRISTAR):*

- i) the Additional User Rate, OSHA Rate, and Data File Rate shall be deemed fully earned, due and non-refundable as of the date a new user is added or an Optional Service is provided, and each subsequent annual anniversary of the Effective Date; and
- ii) the SIR Report Rate and Customized Interface Rate each shall be deemed fully earned, due, and nonrefundable when it is incurred.

**A.7.2** All Fees and Expenses shall be due and payable by Customer to TRISTAR in accordance with Section 5.5 of the Agreement and invoiced as follows:

- i) The Annual Minimum Fee shall be invoiced by TRISTAR as of the as of the Effective Date and as of the first day of each Annual Period;
- ii) The Data Loading Fee shall be invoiced by TRISTAR as of the as of the Effective Date; and
- iii) If there are any: Excess Flat Rate(s), Additional Services Fees, Optional Rates, Reimbursable Expenses, and Taxes shall be invoiced by TRISTAR at the end of the month in which they are incurred and/or assessed.

## Schedule B Information Services

The terms and conditions of the Agreement apply unless and to the extent modified or supplemented by the specific terms and conditions of this Schedule B.

### **B.1 Scope of Services**

In consideration of the payment of the applicable fees calculated in accordance with Schedule A, TRISTAR shall furnish the following to Customer ("Information Services"):

- online access to TRISTAR's claim system ("TRISTAR System"); and
- related materials.

### **B.2 Limited Warranty – Intentionally removed**

### **B.3 Limitation of Liability– Intentionally removed**

### **B.4 Proprietary Rights**

**B.4.1** Customer's rights to Information Services under this Agreement may not be transferred, leased, assigned, or sublicensed except by written consent of TRISTAR, which TRISTAR may grant or withhold at its discretion.

**B.4.2** Customer acknowledges that the Information Services contain proprietary and confidential information and materials of TRISTAR which are protected as TRISTAR trade secrets and as copyrighted works, and which Customer may not copy, modify, or distribute except as authorized by TRISTAR. Customer agrees not to remove or deface any titles, trademarks, copyright notices, "restricted rights" or other proprietary legends affixed to or incorporated in the TRISTAR System or the Information Services.

**B.4.3** All systems created or utilized by TRISTAR in the performance of activities under this Agreement shall belong to, and shall remain the property of, TRISTAR and its affiliates, and Customer shall have no ownership interest therein. The term "systems" as used herein shall include, but shall not be limited to, computer programs, computer equipment, formats, risk data report formats, procedures, documentation and internal reports of TRISTAR and its affiliates, but such term shall not include Claims File Information.

### **B.5 Internet Use**

Information transmitted and received through the internet may be neither secure nor confidential and TRISTAR cannot and does not guarantee the privacy, security, authenticity, and non-corruption of any information so transmitted or stored in any system connected to the internet. TRISTAR shall not be responsible for any adverse consequences whatsoever of Customer's connection to or use of the internet, and TRISTAR shall not be responsible for any use by Customer of Customer's internet connection in violation of any law, rule, or regulation or any violation of the intellectual property rights of another.

**B.6 Privacy**

- B.6.1** In the course of providing Information Services, TRISTAR may provide to Customer or Customer may gain access to or generate personally identifiable, financial and/or health information of consumers, insureds or claimants which may include confidential information (hereinafter collectively "Protected Information") which may be subject to federal, state and local laws. Customer acknowledges and agrees that it (i) shall at all times comply with all federal, state and local laws and regulations applicable to Protected Information and (ii) shall only use the Protected Information for the purposes for which it was provided under this Agreement and for no other purpose. Except as permitted by applicable law or as necessary to carry out its obligations under this Agreement, Customer shall not disclose, license, sell or otherwise transfer Protected Information to a third party.
- B.6.2** Customer shall immediately notify TRISTAR of any violations of any such law or regulation applicable to provision of services under the Agreement or of any complaint or judicial or administrative proceeding initiated concerning any actual or alleged violation of such law or regulation. Notwithstanding the termination or expiration of the Agreement, Customer shall comply with this Section 6 with respect to all Protected Information in Customer's possession or in the possession of Customer's subcontractors or any other third party over which it has control.



## Schedule C Preferred Provider Specialty Services

*Schedule C is effective March 1, 2019 and is subject to change from time to time thereafter upon 120 days' prior written notice. These Preferred Provider Specialty Services fees are paid as Allocated Loss Adjustment Expenses or, where required by state law, as loss.*

SERVICES	FEES
----------	------

**Liability Medical Cost Containment:**

Liability Medical Bill Review	\$25 flat fee per bill
RN Liability Medical Review	\$125 per hour

**Other Services:**

Special Investigations	Outsourced, at cost – typically \$85 per hour
Central Index Bureau/OFAC/CSE	\$15 per report
Claim Reporting: Telephonic	\$20 per report
Claim Reporting: Fax or Internet	\$10 per report
MMSEA Reporting	\$10 per claim
Mileage	IRS allowance rate

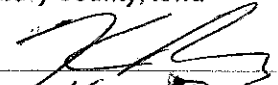
legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.

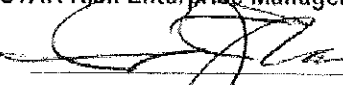
- 17.7 A party hereto shall not be deemed to have waived any rights or remedies accruing to it hereunder unless such waiver is in writing and signed by such party. No delay or omission by a party hereto in exercising any right shall operate as a waiver of said right on any further occasion.
- 17.8 Wherever approval of a party is required under this Agreement, it shall not be unreasonably withheld or delayed.
- 17.9 The captions are for convenience of reference only and shall not control or affect the meaning or construction of any provision of this Agreement.
- 17.10 This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.
- 17.11 The exchange of copies of this Agreement and of signature pages by e-mail transmission shall constitute effective execution and delivery of this Agreement and may be used in lieu of the original for all purposes. Signatures of the parties transmitted by e-mail shall be deemed to be their original signatures for all purposes.
- 17.12 This Agreement shall be interpreted and construed in accordance with the internal laws of the State of Iowa without regard to conflicts of law. The venue for any legal action arising from this Agreement shall be in state or federal court in Woodbury County, IA.
- 17.13 Each party represents to the other that it is authorized to enter into this Agreement and that its entry into this Agreement does not and will not violate the terms of any judgment, decree or ruling or any contract with any third party.

**CUSTOMER AND TRISTAR CERTIFY BY THEIR UNDERSIGNED AUTHORIZED OFFICERS THAT THEY HAVE READ THIS AGREEMENT, INCLUDING ALL SCHEDULES AND EXHIBITS HERETO, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.**

Woodbury County, Iowa

TRISTAR Risk Enterprise Management, Inc.

By:   
Name: Keith Radry  
Title: Chairman  
Date: 5/14/19

By:   
Name: THOMAS J. YEALE  
Title: PRESIDENT  
Date: 5/14/19