

C-19-218-12-03

CLAIMS SERVICE AGREEMENT-WORKERS' COMPENSATION

THIS CLAIMS SERVICE AGREEMENT ("Agreement") is made by and between **TRISTAR Risk Management, Inc.** a California corporation, hereinafter referred to as "TRISTAR," with principal offices at 100 Oceangate, Suite 700, Long Beach, CA 90802, and **Hidalgo County**, Texas, a political subdivision of the State of Texas, hereinafter referred to as "Client", with principal offices located at 2812 S. Highway 281, Edinburg, TX 78539.

In consideration of the mutual covenants and promises of the parties, TRISTAR hereby agrees to furnish to Client, and Client hereby agrees to receive from TRISTAR, those certain claims handling services identified in this Agreement, all on the terms and conditions set forth herein:

ARTICLE 1 – TERM

1.1 The initial term of this Agreement shall commence on January 1, 2020, and shall remain in effect continuously through December 31, 2020, unless terminated in accordance with the provisions of Article 12 of this Agreement. In addition, the parties may renew the Agreement on an annual basis for two (2) additional one (1) year terms. The Agreement shall renew automatically upon expiration of the preceding one (1) year term unless one of the parties gives the other party written notice of its desire not to renew the Agreement for an additional one (1) year term at least ninety (90) days prior to the expiration of the current Agreement.

ARTICLE 2 – DEFINITIONS

As used herein and in the performance of services by TRISTAR for Client, the following terms shall have the meanings described below:

- 2.1 Adjust or Adjustment: The process of handling and disposing of claims involving injury, death damage or loss, in accordance and consistent with generally accepted claims handling standards.
- 2.2 Administrative Agency: Any state, federal, or local governmental agency which supervises or regulates the handling of claims, including, but not limited to, industrial commissions, workers' compensation offices, bureaus, commissions, and state insurance departments and boards.
- 2.3 Allocated Loss Adjustment Expenses (ALAE):
 - A. Except as provided in Subsection 2.3.B below, those expenses arising out of or connected with the handling and disposition of claims by TRISTAR including, but not limited to:

1. Fees of attorneys, including representation at hearings or pretrial conferences;
2. Fees of court reporters;
3. Court costs, court fees and court expenses, service of process;
4. Costs of undercover operative and detective services;
5. Costs of employing experts for advice, opinions, or testimony concerning claims under investigation or in litigation and costs of appraisals;
6. Costs of independent medical examinations and/or evaluations for rehabilitation and/or to determine the extent of Client's liability;
7. Costs of legal transcripts of testimony taken at coroner's inquests, criminal proceedings, or civil proceedings;
8. Costs of copies of public records and/or medical reports;
9. Fees paid to witnesses and corresponding travel expenses;
10. Costs of photographs and photocopy services;
11. Vocational Rehabilitation, Medical Case Management and Utilization Review;
12. Electronic Index Bureau inquiry or reporting fees;
13. Interest paid as a result of litigation;
14. State-mandated electronic data interchange (EDI) costs.
15. Section 111 MMSEA of 2007 reporting.

B. "Allocated Loss Adjustment Expenses" shall not include (i) any of the fees, costs, or expenses that are included in the claims service fees payable to TRISTAR by Client as agreed to herein or (ii) any payment of benefits to claimant or claimant's representatives.

2.4 Authority Limit: That sum of money set forth in this Agreement for which TRISTAR shall have full and sole discretion and authority to adjust and make payments on behalf of Client unless advised differently by Client in writing.

2.5 Claim: A single exposure of liability involving actual or potential injury, death, loss or damage reported by Client to TRISTAR which might result in any payment being made on behalf of Client and for which TRISTAR establishes a claim file, with the following types:

- A. Indemnity Claim: Each separate claim where a reserve is established in the indemnity category based on possible exposure, regardless of whether or not any indemnity payment is ultimately made.
 - B. Medical-Only Claim: Each separate claim where an indemnity reserve is never established, but a medical reserve is established based on possible exposure.
 - C. Incident Report: A claim where no reserve of any kind is established.
- 2.6 Claim Adjustment File: Documentation of the claim adjustment process arising from any single incident involving one or more claimants and containing the relevant activity records, including written records of notices, investigations, evaluations, and payments.
- 2.7 Incident Date: The date of an event as reported by Client or as later revised by TRISTAR as the more appropriate date of occurrence.
- 2.8 Report Date of Claim: The date when Client first reports claim to TRISTAR.
- 2.9 Reserve: The monetary evaluation by TRISTAR of the estimated financial exposure to Client with respect to a claim.
- 2.10 Services: Those services described in Article 3 of this Agreement and Exhibit A hereto (which Exhibit is incorporated herein by reference) that are furnished by TRISTAR to Client in accordance with the terms of this Agreement, the applicable insurance policy if any, or in compliance with the laws of any state having jurisdiction over the claim.

ARTICLE 3 – AUTHORITY AND RESPONSIBILITIES OF TRISTAR

- 3.1 Subject to all the terms and conditions of this Agreement, TRISTAR shall have the authority and responsibility to provide claims adjusting and administration services for the Client in connection with claims or losses adjusted during the term of this Agreement.
- 3.2 In connection with its authority and responsibilities under this Agreement, TRISTAR shall:
- A. Receive and examine, on behalf of the Client, all claims reported to it and initiate procedures for the proper servicing of each claim.
 - B. Investigate and adjust, settle or deny all claims in accordance with applicable insurance laws and Client guidelines, as provided in Article 4 hereof.

- C. Upon approval or at the direction of the Client, engage the services of persons or firms outside its organization for work in connection with investigations and adjustment of claims and to incur other “Allocated Loss Adjustment Expenses” (as herein defined) at the Client’s expense. Client shall have the right to require TRISTAR to cease using the services of any person or firm considered unsatisfactory by the Client.
- D. Establish and adequately reserve each claim for which there is injury and/or anticipated liability and/or a formal claim has been made and code each claim in accordance with Client’s statistical data requirements as may be mutually agreed upon.
- E. Make timely payments of valid claims for compensation, rehabilitation expenses, and other required benefits payable under applicable insurance laws, together with Allocated Loss Adjustment Expenses, out of funds provided by the Client pursuant to Article 5 hereof subject to the limitations and requirements of this Agreement. If an authorized representative of the Client directs in writing that any payment not be made, and if after receipt of such notice TRISTAR nevertheless makes such payment, TRISTAR will reimburse Client for the payment(s).
- F. Maintain an accurate and complete claim file on each reported claim which shall be available during normal business hours for inspection by the Client, its representatives or by appropriate regulatory authorities. The Client shall have the right to copy any and all claims files or any documents related to any claim. TRISTAR shall maintain and store closed claim files for no less than one year after the expiration of the statute of limitations applicable to each claim file or as otherwise directed by governing state law.
- G. Provide all forms necessary for efficient claims administration and prepare and timely file all legally required forms and reports with the appropriate state and federal agencies.
- H. In connection with the performance of its obligations under this Agreement, provide licensed claims adjusters and perform the services to be rendered in good faith, and in accordance with all applicable laws and regulations.
- I. Protect and pursue any subrogation rights of the Client which may arise upon payment of claims and notify the Client of any subrogation rights which, through litigation or otherwise, may be available to the Client.
- J. Perform all administrative and clerical work in connection with reported claims including the preparation of checks and/or drafts drawn on the loss fund established herein.

- K. Respond immediately to any inquiry, complaint or request received from an Insurance Department, other Regulatory Agency, Client, claimant, agent, broker, or other interested party relating to a claim serviced under this Agreement; a copy of both the original inquiry and the TRISTAR's response shall be provided in a timely manner to Client.
- L. Upon prior approval of Client, engage the services of licensed and/or Certified Health and Rehabilitation firms or individuals for Rehabilitation Management as may be required by state regulations.
- M. Report all cases involving suspected fraud to the appropriate state mandated agency. Settlement authority is not permitted on cases of suspected fraud unless TRISTAR receives written authority from Client. When operating in states that require fraud to be reported to the state insurance department, TRISTAR must maintain an internal special investigative unit or contract with an entity to provide such services.
- N. Provide first notice and status reports to excess insurers in accordance with the criteria and reporting format dictated by that excess carrier.

ARTICLE 4 - CLAIM SETTLEMENT AUTHORITY

- 4.1 Unless otherwise advised by the Client or in cases of suspected fraud, TRISTAR shall have authority to make payments on claim files with the following limitations:
 - A. Any settlement on a single claim file in excess of \$5,000 shall first be approved by the Client.
 - B. Single payments of any allocated adjustment expense in excess of \$10,000 shall first be approved by the Client.
 - C. Any settlement of a single claim file, which would involve an aggregate expenditure (of loss and Allocated Loss Expenses) in excess of the Client's SIR, must first be approved by Excess Carrier.
- 4.2 Client shall have the option of taking over the handling and settlement of any claim upon written notice to TRISTAR.
- 4.3 TRISTAR shall comply with claims procedures and guidelines as may be agreed to by TRISTAR and the Client.

ARTICLE 5 - CLAIM FUNDING/TRUST ACCOUNT

- 5.1 TRISTAR shall have the authority to draw upon a bank account which shall be established and funded by the Client for the purpose of making payments on claim files. It is the responsibility of the Client to have sufficient funding available in the

account to allow TRISTAR to be able to make all payments in a timely manner and as required by law.

- 5.2 If the account is established by TRISTAR for Client, under TRISTAR's tax identification number at a banking institution selected by TRISTAR:
- A. Client will incur no banking charges nor earn interest.
 - B. Client account will be exclusive to Client and funds will not be commingled with funds of any other Client.
 - C. Account will have a Positive Pay feature with daily electronic transmission of data from TRISTAR to bank.
 - D. TRISTAR accounting department will perform a monthly bank reconciliation and supply same to Client on a timely basis.
 - E. By 10th day of each month, TRISTAR will invoice Client for funds expended the previous month, so that the account can be replenished. Along with the invoice, Client will be provided with documentation, such as check registers, concerning funds expended in the previous month
- 5.3 If Client elects to arrange its own banking for claims funding, Client will be responsible for all banking fees and none of the services outlined in Article 5.2 will be provided by TRISTAR except for any documentation concerning funds expended the previous month.
- 5.4 Payments from Claims Fund: TRISTAR shall make payment of claims and Allocated Loss Adjustment Expenses from a claims payment account funded by Client (as provided in Article 5 of this Agreement).
- 5.5 No TRISTAR funding: Client acknowledges that at no time will TRISTAR be obligated to make any claims payments out of TRISTAR funds.
- 5.6 Requirements of Administrative Agencies: TRISTAR shall file, on a timely basis on behalf of Client, such forms and reports as may be required by any Administrative Agency concerning the claim fund account, including handling Escheat reporting.
- 5.7 1099 Filings: TRISTAR shall collect, process, and report data in the manner prescribed by the Internal Revenue Service for the purpose of preparing Client's 1099 Miscellaneous Income filing with respect to the claims payments which are the subject of this Agreement.

ARTICLE 6 – PAYMENT OF CLAIMS; DISCRETIONARY AUTHORITY

- 6.1 Claims Payments: TRISTAR shall have the authority to make payments on any claim handled by TRISTAR pursuant to this Agreement.
- 6.2 Allocated Loss Expenses: TRISTAR shall have the authority to pay, on behalf of Client, any claims- related services falling within the definition of Allocated Loss Expenses.
- 6.3 Authority Limit: TRISTAR shall make no single payment in excess of its authority limit indicated in Article 4 to this Agreement, without the approval of Client.
- 6.4 Discretion: TRISTAR shall have the full and sole discretion to finally adjust or settle any claim in an amount equal to or less than the authority limit indicated in Exhibit A to this Agreement without supervision or direction from Client, and such adjustment or settlement shall be binding upon Client.
- 6.5 Reservation of Rights: TRISTAR reserves the right, on any particular claim, to disregard the authority granted in this Article 4 and treat said claim as requiring Client's approval prior to final disposition. Client reserves the right, on any particular claim, and upon written notice to TRISTAR, to revoke the authority granted in this Article 4 and treat such claim as requiring Client's approval prior to final disposition.

ARTICLE 7 – PROPRIETARY INTEREST

- 7.1 Ownership of Systems: 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 Client 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, but such term shall not include claims adjustment file data.
- 7.2 Ownership of Files: TRISTAR shall be entitled to full and complete possession of all files and materials prepared by TRISTAR in the course of investigating or administering any claim under this Agreement, until this Agreement is canceled and all outstanding sums due to TRISTAR are paid by Client. After termination of this Agreement and the payment of all fees due to TRISTAR, Client shall be entitled to return of Client's files to the extent allowed by law.
- 7.3 Protection of Data: TRISTAR shall make reasonable efforts to ensure the availability of the computer loss data and the operation of the computer hardware. In the event of damage to or malfunction of the computer hardware or software, TRISTAR will use reasonable efforts to obtain replacement alternative computer hardware to restore service to an acceptable level in a timely manner. In the event that computer loss

data is not available for use by the computer system utilized by TRISTAR, TRISTAR will attempt to reconstruct or recover such unavailable data from computer data files stored at remote locations and from source records, in order to restore service to an acceptable level in a timely manner.

- 7.4 Privacy of Data: TRISTAR will make reasonable efforts to maintain the confidentiality of the data supplied to and used by TRISTAR in the performance of this Agreement. TRISTAR will not disclose such data or the contents of the corresponding data files without the consent of Client. Notwithstanding the foregoing, Client agrees that TRISTAR shall have the right to use such data for the purpose of preparing and disseminating analytical reports inclusive of the cumulative data of TRISTAR Clients, provided such use in no way specifically identifies Client or its operations or expenses, nor individual claimant information.

ARTICLE 8 – INDEPENDENT CONTRACTOR; AGENCY; SUBCONTRACTING

- 8.1 In the performance of this Agreement, TRISTAR, its affiliated corporations and the employees and officers of TRISTAR are independent contractors.
- 8.2 TRISTAR reserves the right to subcontract activities under this Agreement, but such action will not relieve TRISTAR of its obligations to Client in any way.

ARTICLE 9 – INDEMNIFICATION AND INSURANCE

- 9.1 TRISTAR agrees to defend and hold harmless Client, their officers, agents and employees, from and against any and all liability, loss, damage or expense, including attorney's fees, incurred in connection with claims or demands for damages arising out of the services provided under this Agreement, to the extent such claims or demands arise from or are caused by the negligence or willful misconduct of TRISTAR.
- 9.2 Client agrees to defend and hold harmless TRISTAR, their officers, agents and employees, from and against any and all liability, loss, damage or expense, including extra contractual and punitive damages and attorney's fees, incurred in connection with claims or demands for damages arising out of the services provided under this Agreement, except to the extent such claims or demands arise from or are caused by the negligence or willful misconduct of TRISTAR to the extent allowed by law.
- 9.3 TRISTAR shall, at all times while obligations under this Agreement remain to be performed by TRISTAR, maintain in force such insurances as are normal and customary or required by law to protect itself and its Clients, including the following:
- A. Workers' Compensation Insurance under the laws of the states in which operations are conducted.

- B. Comprehensive General Liability Insurance with limits of not less than \$1 million including contractual liability and personal injury for libel, slander and assault insuring this Agreement.
 - C. An Errors and Omissions policy providing coverage in the amount of not less than \$3 million.
 - D. A Fidelity bond providing coverage for all officers and other employees of TRISTAR (including “money and securities” coverage) in the amount not less than \$1 million.
- 9.4 Client shall have the right to inspect each of the above-mentioned policies and bonds and TRISTAR, upon Client’s request, shall cause its insurers to provide Client with a certificate of insurance or other evidence of coverage which provides Client with 30 days notice of cancellation.
- 9.5 In the event TRISTAR is unable, after using its best efforts, to obtain any of the above- mentioned coverages, it shall immediately notify Client. Client shall then have the opportunity to immediately terminate this Agreement or continue the Agreement upon the understanding that TRISTAR will continue to use its best efforts to obtain and thereafter immediately obtain any or all such coverages when and if they become available.

ARTICLE 10 – COMPENSATION

- 10.1 Exhibit A: Except as otherwise provided in this Agreement, Client shall compensate TRISTAR in accordance with the terms of Exhibit A to this Agreement. Fees will be for the term of the Agreement.
- 10.2 Separate Claims Fund: The compensation payable to TRISTAR under this Article 9 shall in no way include or affect the separate payment obligations of Client as respects the claims fund described in Article 5 of this Agreement or the direct payment for other services rendered by TRISTAR.
- 10.3 Payment Terms: All sums due TRISTAR are due and payable within twenty (20) days of receipt by Client of TRISTAR invoice.
- 10.4 Billing Disputes: Client shall have twenty (20) days from its receipt of any billing to dispute any bill, or portion of a bill, submitted by TRISTAR. Should Client fail to dispute a billing within the prescribed period of time, the billing shall be deemed correct.

ARTICLE 11-DEFAULT

- 11.1 The following are events of default under this Agreement:

- A. Any material breach of this Agreement which is not cured by the breaching party within ten (10) days of receipt of notice of such breach by the other party.
 - B. Failure of Client to provide sufficient funds for payments on claims.
 - C. Failure of Client to pay Administration fees to TRISTAR as per Agreement.
 - D. Dissolution, liquidation, voluntary or involuntary bankruptcy of a substantial part or all of a party's business or entity.
- 11.2 The failure of either party to declare a default at the time of the defaulting event shall not act as a waiver to declare a default at a later date.

ARTICLE 12 – TERMINATION

- 12.1 This Agreement may be terminated by Client or TRISTAR as follows:
- A. Upon ten (10) days written notice in the event of a default as defined in Article 11.
 - B. Immediately with written notice in the event of fraud, abandonment, gross or willful misconduct, insolvency, or lack of legal capacity, by either party.
- 12.2 This Agreement may be terminated by Client without cause upon thirty (30) days' written notice to TRISTAR.
- 12.3 Termination by Client: In the event this Agreement is terminated by Client, then any and all claims and unresolved recovery activities pending on the date of termination shall, at Client's option, either:
- A. Continue to be handled by TRISTAR until the expiration of the period in which Client has paid the claims service fees, and thereafter on a time-and-expense basis at TRISTAR's prevailing hourly rate and expense method of billing when time and expenses are incurred, or
 - B. Thereafter be assumed and handled by Client or delegated by Client to some third party, provided, however, that TRISTAR shall be entitled to all fees earned or incurred prior to the effective date of termination without offset or reduction.

Client shall inform TRISTAR in writing, prior to the termination date of the contract, of the selected option. Should Client fail to inform TRISTAR or should agreement not be reached between TRISTAR and Client for the continued handling of the open claims, then TRISTAR, on the termination date, shall suspend all activity on

Client's files, and TRISTAR thereafter shall have no responsibility for the disposition of such matters.

ARTICLE 13 - HIRING OF EMPLOYEES

- 13.1 Client agrees that during the term of, and for a period of two (2) years after the termination of this Agreement, it will not, without prior written consent of TRISTAR, hire any employee of TRISTAR or its affiliate who was assigned to, or performed, any service for Client in connection with this Agreement.

ARTICLE 14 -PAYMENT OF PENALTIES/ RECONCILIATION

- 14.1 Though TRISTAR claims handlers make every effort to avoid penalties, some are inevitable. All penalties are payable from the Claims Fund of Client. When penalties are due to improper processing by TRISTAR, TRISTAR will reimburse the Client or claims fund.
- 14.2 Recognizing that many penalties involve small amounts of money, the accounting cost of reconciling can outweigh the amounts to be reconciled. For that reason, TRISTAR performs reconciliation at the end of each service year, or quarterly for accounts with annual administration fees in excess of \$500,000. Client is supplied documentation as to the reconciliation.

ARTICLE 15 - GENERAL PROVISIONS

- 15.1 The subject headings of the Articles of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.
- 15.2 This Agreement sets forth the entire understanding of the parties and supersedes any prior Agreement or understanding relating to the subject matter hereof. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- 15.3 In the event of any conflict or ambiguity between the terms and provisions of this Agreement and any Exhibit attached hereto, the terms and provisions of the Exhibit shall govern.
- 15.4 Nothing in this Agreement shall be construed to mean that either party has waived any rights to seek a legal or equitable remedy for breach of this Agreement by the other party.

- 15.5 Each of the Exhibits listed below is an essential part of the Agreement, which governs the rights and duties of the parties:
- Exhibit A- Relating to Fees payable to Tristar
 - Exhibit B- Fee Schedule for Managed Care Services (including fees for services provided by Injury Management Organization, Inc.)
- 15.6 TRISTAR may not assign, sell, transfer or otherwise convey, pledge or encumber any of its rights, obligations or interests under this Agreement without the prior written consent of the Client.
- 15.7 Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.
- 15.8 This Agreement is performable in Hidalgo County, Texas, shall be governed by and construed in accordance with the laws of the State of Texas. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable or void in any jurisdiction, the other provisions of this Agreement shall remain in full force and applicable law shall be construed in order to effectuate the purpose and intent of this Agreement.
- 15.9 Each notice or other instrument referred to in this Agreement shall be in writing and shall be deemed “given” to a party when delivered by hand, when given by facsimile transmission during normal business hours or three (3) days after a writing is deposited in the mail, postage prepaid and registered, addressed to each party at the address set forth below or at such other address as such party, by notice to the other party, may designate from time to time.

If to TRISTAR:

TRISTAR Risk Management, Inc.
100 Oceangate, Suite 700
Long Beach, CA 90802
Attention: Thomas J. Veale
Telephone: (562) 495-6600
Fax: (562) 432-8619

With a copy to:

TRISTAR Insurance Group, Inc.
2540 Route 130, Suite 109
Cranbury, NJ 08512
Attn.: General Counsel’s Office

If to Client:

Hidalgo County Purchasing Department
Administration Building
2812 S. Highway 281
Edinburg, TX 78539

- 15.10 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.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate by their authorized representatives on the dates set forth below.

TRISTAR RISK MANAGEMENT, INC.

Date: _____ By: _____
Name: Thomas J. Veale
Title: President

HIDALGO COUNTY

Date: _____ By: _____
Name: Richard F. Cortez
Title: County Judge

ATTEST

By: _____
Arturo Guajardo, Jr., County Clerk

Approved by Commissioners Court on _____

Approved as to Form:
Office of the Criminal District Attorney
Ricardo Rodriguez, Jr.

By: