

MARGIE R. IBARRA
COUNTY CLERK
FILED

2020 OCT 22 PM 3:00

WEBB COUNTY, TEXAS

BY REH DEPUTY

Claims Services Agreement with Extension

AGREEMENT made this 28th day of September, 2020, by and between **TRISTAR Risk Management**, a California corporation having its principal place of business at 100 Oceangate, Suite 700, Long Beach CA 90802 ("TRISTAR"), and **County of Webb, Texas** having its principal place of business at 1110 Houston St., Laredo, TX 78040 ("Customer").

WHEREAS, Customer, as a qualified self-insured under applicable state law, has a self-insured retention program with respect to workers' compensation, automobile liability, and general liability claims and claim expenses pertaining to Customer's business ("SIR Program") with retention levels that vary by product line; 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 publicly posted its request for proposals for Workmans Compensation Coverage TPA which resulted in no bids. Since Customer's engagement of TRISTAR was scheduled to terminate on September 30, 2020, the Customer desires to engage TRISTAR for a one (1) year extension of coverage to provide the Customer an opportunity to request quotes again for Workmans Compensation Coverage TPA; 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 initial term of this Agreement shall commence at 12:00 A.M. on October 1, 2017 ("Effective Date") and shall remain in effect continuously through September 30, 2018, ("Initial Term"), unless terminated in accordance with the provisions of Section 9 of this Agreement. In addition, the parties may renew the Agreement, on an annual basis, for two (2) additional one (1) year terms ("Renewal Period(s)"), thereafter. This Agreement is extended for an additional one (1) year term ("Extended Term") beginning October 1, 2020. The Initial Term, Renewal Period(s), and Extended Term shall be referred to collectively as "Term."

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:

Claims Services Agreement

with

Extension

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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 and compensability in accordance with Claims’ guidelines as may be agreed to by TRISTAR and Customer;
- iii) establish case-specific reserves:
 - up to Twenty-Five Thousand dollars (\$25,000);
 - greater than Twenty-Five Thousand dollars (\$25,000) at the direction of and with the approval of the Customer;adjust, resist, deny and/or settle Claims:
 - up to Five Thousand dollars (\$5,000);
 - greater than Five Thousand dollars (\$5,000) 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) make all payments for Claim and Allocated Loss Adjustment Expenses on checks drawn against a Claim payment checking account (“Account”) maintained by Customer pursuant to Sections 3.1.4 and 4.1;
- vi) 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 the Account;
- vii) refer all regulatory complaints to Customer and cooperate with Customer to resolve such complaints;
- viii) 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;
- ix) provide TRISTAR’s standard claims reports to Customer; and
- x) make 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 Customer pursuant to Section 3 hereof subject to the limitations and requirements of this Agreement.

- 2.2.2 provide to Customer services in accordance with the provisions of Schedule B attached hereto (“Information Services”);
- 2.2.3 receive and timely convert data from the preceding Claims administrator(s) (“Data Conversion Services”); and
- 2.2.4 provide, or use vendors to provide, specialty services (“Specialty Services”) such as early intervention, nurse case management, managed care, utilization review, medical bill review, PPO network, Specialty Carve-out PPO networks for Diagnostic Services and Durable Medical Equipment (collectively “Managed Care Services”), 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 12) 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 make all arrangements necessary in order for TRISTAR to be able issue payments from the Account;
- 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 (managed care, 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, 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 governmental entity 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. Customer shall assume all responsibility for the funding of the Account, including all bank charges and penalties imposed by reason of any failure to fund the Account. . Customer acknowledges that at no time will TRISTAR be obligated to make any 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 to the Account, 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.

5. Payment of Fees, Expenses, and Taxes

5.1 For Basic Services, Data Conversion Services, and Information 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 fees set forth on Schedule A ("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, Data Conversion 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. The parties agree that if there are more than two (2) 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 during each twelve (12) month period of the Term, TRISTAR shall be compensated in accordance with Subsection 5.3 for its involvement with any such additional 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. Limitation of Liability

- 7.1** Customer shall not and does not waive or relinquish any immunity or defense on behalf of itself, its commissioners, offices, employees and agents as a result of the execution of this Agreement.
- 7.2** Notwithstanding anything in this Agreement to the contrary, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (TORT, WARRANTY, CONTRACT, OR OTHERWISE) SHALL TRISTAR BE LIABLE TO ANY OTHER PERSON, OR ENTITY FOR ANY ACT PERFORMED, OR ANY FAILURE TO ACT, ON BEHALF OF CUSTOMER OR ANY OTHER PERSON OR ENTITY OR IN THEIR INTEREST, FOR ANY FINES OR PENALTIES, THE MULTIPLIED PORTION OF ANY MULTIPLIED DAMAGES, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, EXTRA-CONTRACTUAL, PUNITIVE, OR SPECIAL DAMAGES OF ANY CHARACTER, OR ANY DAMAGES FOR WHICH THE LAW OR PUBLIC POLICY PROHIBITS INDEMNIFYING OR INSURING EVEN IF TRISTAR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 7.3** As used in this Section 7, the terms "TRISTAR" and "Customer" shall include, respectively, the directors, officers, employees, contractors, subcontractors, agents and other representatives of TRISTAR or Customer.
- 7.4** The provisions of this Section 7 shall survive the termination of this Agreement.

8. Confidentiality, Privacy of Claim File 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 a statute, 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 and in conformance with local, state, and federal laws.

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 (1st) 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 fund 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 fund the 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, 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.
- 9.3** 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,:
- 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 funding of the Account 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, with the exception that if the public records are with regard to a public information request under Texas Government Code 552.001 then those fees apply and none other;
- 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.

Should the Customer assert as a defense to the payment of a fee which is regulated by a statute, court ruling or administrative law that prohibits the payment of any such fees to be recovered or paid to TRISTAR, then the statute, court ruling or administrative law shall control in the event of a conflict with the terms of this Agreement.

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 facsimile; and addressed as follows:

TRISTAR: TRISTAR Risk Management, Inc.
100 Oceangate, Suite 700
Long Beach, CA 90802
Attn.: Thomas J. Veale

With a copy to: TRISTAR Insurance Group, Inc.
2540 Route 130, Suite 109
Cranbury, NJ 08512
Attn.: General Counsel's Office

Customer: County of Webb
1110 Houston St. FL 3rd
Laredo, TX 78040
Attn.: Webb County Judge

With a copy to: County of Webb
1110 Houston St. FL 2nd
Laredo, TX 78040
Attn.: Dr. Pedro Alfaro, Risk Management Dept.

15.2 When required or issued pursuant to this Agreement, notices shall be deemed to have been given at the time i) when personally delivered during regular business hours, ii) upon the day following the day sent by overnight carrier, or iii) if mailed, upon the third (3rd) day after the date such notice is postmarked. Any delivery of notice shall be to the designated representative or office.

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. Governing Law

17.1 The Agreement shall be governed by and interpreted in accordance with applicable federal law. To the extent such federal law does not govern, the Agreement shall be governed by Texas law and the parties agree that venue and jurisdiction shall lie exclusively in Webb County, Texas. Any suit filed shall be filed in a state or federal court of competent jurisdiction.

18. General

18.1 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.

18.2 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.

18.3 This Agreement may only be amended, modified, or supplemented by a written instrument signed by the authorized representatives of the parties hereto.

18.4 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.

- 18.5** 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.
- 18.6** 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 legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.
- 18.7** 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.
- 18.8** Wherever approval of a party is required under this Agreement, it shall not be unreasonably withheld or delayed.
- 18.9** The captions are for convenience of reference only and shall not control or affect the meaning or construction of any provision of this Agreement.
- 18.10** 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.
- 18.11** 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.
- 18.12** 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.

19. Producer Compensation

- 19.1** TRISTAR shall not pay any producer compensation to Customer's benefit consultant, Roger Garza, Valley Risk Consulting, any subsidiary of Valley Risk Consulting or any employee of Valley Risk Consulting or any employee of a subsidiary of Valley Risk Consulting, or any Valley Risk Consulting employee's relative for services provided to TRISTAR or Customer. Customer does not consent to TRISTAR or any company or subsidiary affiliated or associated with TRISTAR paying such producer compensation to Customer's benefit consultant. It is the intent of the parties to this agreement that no one other than the parties to this agreement shall receive either a direct or indirect benefit as a result of this Agreement.

TRISTAR AND CUSTOMER 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.

TRISTAR Risk Management, Inc.

County of Webb, Texas

By: 

By: 

Name: Thomas J. Veale

Name: Tano E. Tijerina

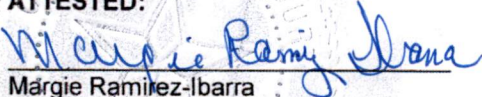
Title: President

Title: Webb County Judge

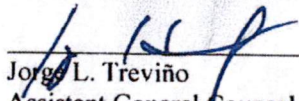
Date: 10/16/20

Date: 10-14-2020

ATTESTED:


Margie Ramirez-Ibarra
Webb County Clerk

APPROVED AS TO FORM:


Jorge L. Treviño
Assistant General Counsel
Civil Legal Division

The General Counsel, Civil Legal Division's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).*

Passed and approved by the Webb County Commissioners Court
On September 28, 2020 ; Item No 8.d.

Schedule A

Reporting Agent; Service Period; Fees and Expenses

This Schedule A shall be effective October 1, 2017 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 and in accordance with section 17.3 of this Agreement.

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 Reporting Agent(s)

A.1.1 Reporting Agent(s):

- i) for MMSEA reporting to CMS: 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.

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.

Data Conversion Services. TRISTAR will provide Data Conversion Services beginning on the Effective Date and ending upon the completion of the conversion.

A.3 Annual Services Fees

A.3.1 **Annual Services Fee.** In consideration for the Basic Services, Data Conversion Services, and Information Services performed by TRISTAR during the Service Period, TRISTAR shall be entitled to and Client shall pay TRISTAR in accordance with Section A.4, subject to any adjustments made in accordance with Subsection A.3.3, the following annual fees (“Annual Services Fee(s)”) each year in four (4) equal quarterly installments (“Quarterly Installment(s)”), in advance:

ANNUAL PERIOD	ANNUAL SERVICES FEE	QUARTERLY INSTALLMENT
<i>Initial Term</i>		
10/1/17 to 9/30/18.....	\$65,470.00	\$16,367.50
<i>Renewal Terms</i>		
10/1/18 to 9/30/19.....	\$67,106.80	\$16,776.70
10/1/19 to 9/30/20.....	\$68,784.40	\$17,196.10

Extended Term

10/1/20 to 9/30/21.....\$68,784.40.....\$17,196.10

A.3.2 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.6, subject to any increases made in accordance with Subsection A.3.3, for as long as the Optional Services are provided:

If requested by Customer:

Initial Term:

- i) **For each additional user in excess of Five (5):** Seven Hundred Fifty dollars (\$750) 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 Forty-Five dollars (\$145) (“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.

Renewal Terms:

For Optional Services requested by Customer during a Renewal Term, Customer shall pay TRISTAR for such Optional Services, in accordance with Section A.6, at TRISTAR’s then current rates for Optional Services unless other rates are mutually agreed upon

A.3.4 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 Services Fee(s) as it deems necessary in the event any of the following occurs, provided, however, that TRISTAR provides Customer sixty (60) days written notice and justification prior to any adjustment in fees:

- 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 Annual Services 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.4 Additional Services Fees

A.4.1 The Annual Services Fees shall apply to Services, other than Specialty Services, rendered during the Service Period for Claims. Should TRISTAR be engaged by the authorized representative of Customer to provide any other service, Customer shall pay TRISTAR for such services, in accordance with Section A.6, on a Time and Expense basis at TRISTAR’s then current hourly rates unless other rates are mutually agreed upon (“Additional Services Fees”). Failure by

TRISTAR to obtain the appropriate Customer's authorized representative's signature for any other services shall render any additional billable fees or expenses void.

A.5 Expenses

A.5.1 Reimbursable Expenses. Customer shall reimburse TRISTAR for specified Reimbursable Expenses.

A.5.2 Taxes. Customer shall pay Taxes when and if required by law and will provide any needed documents to TRISTAR that exempts payments of taxes.

A.6 Payment

A.6.1 Notwithstanding any expiration or sooner termination of this Agreement:

i) the Quarterly Installment shall be deemed fully earned, due, and nonrefundable upon the first (1st) day of each quarterly period for which it is incurred;

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

ii) 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

iii) the SIR Report Rate and Customized Interface Rate each shall be deemed fully earned, due, and nonrefundable when it is incurred.

A.6.2 All Fees and Expenses shall be payable by Customer to TRISTAR in accordance with Section 5.5 of the Agreement and invoiced as follows:

i) The Quarterly Installment shall be invoiced by TRISTAR in advance of each quarter during the Term; and

ii) The Optional Rates (if any), Additional Services Fees (if any), Reimbursable Expenses (if any), and Taxes (if any) 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 in accordance with Section 17.3 of this Agreement 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

TRISTAR MAKES NO WARRANTY OR REPRESENTATION RELATING TO TRISTAR SYSTEM, THE INFORMATION SERVICES, OR ANY OTHER SERVICES, OR MATERIALS PROVIDED IN CONNECTION THEREWITH. THE TRISTAR SYSTEM AND MATERIALS ARE FURNISHED AND ALL INFORMATION SERVICES ARE RENDERED ON AN “AS IS” BASIS WITHOUT ANY WARRANTY WHATSOEVER. TRISTAR DISCLAIMS AND EXCLUDES ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

B.3 Limitation of Liability

- B.3.1** Customer assumes sole responsibility for the selection of the Information Services, to achieve its intended results and for the use made and the result obtained. EXCEPT AS PROVIDED IN THIS SCHEDULE B, TRISTAR SHALL NOT BE LIABLE FOR DIRECT DAMAGES OR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EVEN IF TRISTAR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, TRISTAR IS NOT RESPONSIBLE FOR ANY COSTS INCURRED AS A RESULT OF THE USE OF THE INFORMATION SERVICES, INCLUDING WITHOUT LIMITATION, LOST PROFITS OR REVENUE, LOSS OF DATA, COSTS OF RECREATING DATA, THE COST OF ANY SUBSTITUTE EQUIPMENT OR PROGRAM, OR CLAIMS BY ANY THIRD PARTY. TRISTAR’S AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT OR THE INFORMATION SERVICES IS LIMITED TO THE AMOUNT OF FEES THAT CUSTOMER HAS PAID IN CONNECTION WITH THE SERVICE FOR WHICH CUSTOMER CLAIMS TRISTAR’S BREACH OF THIS AGREEMENT. THE PROVISIONS OF THIS AGREEMENT THAT LIMIT TRISTAR’S WARRANTIES AND CUSTOMER’S REMEDIES REPRESENT AN ALLOCATION OF RISK BETWEEN TRISTAR AND CUSTOMER. TRISTAR’S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

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 October 1, 2017 through September 30, 2021. These Preferred Provider Specialty Services fees are paid as Allocated Loss Adjustment Expenses or, where required by state law, as loss.

Services

Fees

Medical Bill Review:	
Provider/Ancillary Bill Review	\$8.75 per bill
Clinical Nurse Review (beginning 10/1/20)	27% of savings
Implantable Device Review	27% of savings
Plus	
PPO/Pharmacy/DME	27% of Savings (all savings are post fee schedule or U&C)
e-billing	\$1.00 per bill
Historical Bill Review Conversion	\$750-\$2000 One Time Fee at Implementation
Duplicate Bills Duplicate Line Items Monthly Savings Reporting Reconsiderations	} No Charge
Utilization Review:	
Pre-clinical review	\$22 per pre-clinical review. Fee waived if case proceeds to utilization review
Pre-Certification (In- or Out-Patient)	\$140 per pre-certification
Concurrent Review (Review during hospitalization or outpatient treatment, as treatment progresses to ensure duration and type of treatment meet appropriate guidelines)	\$125 per hour.
Peer Review:	
Level 1 (Includes review of medical records and communication of decision in writing to all parties)	\$250 flat rate for peer review of episodes of care identified on medical bill review.
Level 2 (Includes review of medical records, discussion with treating physician and communication of decision in writing to all parties)	\$295 flat rate when assigned by a nurse case manager following case manager file review, or receipt of a referral by adjuster for review.
Enhanced Intake and Nurse Triage:	
Enhanced Telephonic First Notice (Operator service by medical assistants. Injured employee and/or supervisor calls to report claims, assistance with PPO direction, questions and referrals. Optional integration with nurse triage services.)	\$20 per intake call (waived if call moves to triage)
Telephonic Nurse Triage (Nurse aids injured worker in self-treatment or sets up appointment with appropriate provider utilizing medical triage guidelines/follow up calls)	\$120 per intake call

Nurse Case Management	
Telephonic Case Management	\$105 per hour in Texas OR Duration Based
• First 30 days	\$370 per claim
• Second 30 days	\$285 per claim
• Each 30 days until closure	\$200 per claim
Field Case Management	\$105 per hour plus Mileage at IRS mileage rate
Field Case Management - Tasks	One time visit to provider \$475 plus mileage Two visits to provider \$750 plus mileage Medical record retrieval \$135 plus mileage Job Analysis \$475 plus mileage
Catastrophic Case Management (High level of RN interaction with immediate response to significant injury, e.g. severe head injury, severe burns, gunshot. Available 24x7)	\$150 per hour plus mileage
Pharmacy Benefit Management (PBM):	
Point of sale utilization review	\$125 per hour billed at 10 minute increments
Nurse Intervention: Complex Pharmacy Management , Weaning Protocols (Available when opioids have been prescribed for 60+ days with no evidence that physician will end treatment pattern.)	\$125 per hour
Physician Intervention: Complex Pharmacy Management. (Utilized in instances of numerous drug interactions of opioids, hypnotics and anti-depressants, requiring a physician-to-physician review of treatment pattern and weaning options. Follow up calls made by nurse case manager.)	\$125 per hour nursing intervention plus pass through of actual physician fees
Other Services:	
Special Investigations	Outsourced, at cost – typically \$85 per hour
Central Index Bureau	\$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