

# Claims Services Agreement

**AGREEMENT** made this 16<sup>th</sup> day of March 2023, by and between **TRISTAR Risk Management, Inc.** a California corporation having its principal place of business at 100 Oceangate, Suite 840, Long Beach CA 90802 (“**TRISTAR**”), and **County of Webb, Texas** having its principal place of business at 1000 Houston St., 3<sup>rd</sup> Floor, Laredo, TX 78040 (“**Customer**”).

**WHEREAS**, Customer, as a qualified self-insured employer 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 desires to engage with 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:

## **Section 1. Term**

The initial term of this Agreement shall commence at 12:00 A.M. on October 1, 2021 (“**Effective Date**”) and shall remain in effect continuously through September 30, 2022, (“**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. The Initial Term and Renewal Period(s) shall be referred to collectively as “**Term**.”

## **Section 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:

**2.1.1** “**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

**2.1.2** “**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;
- iv. 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;
- v. 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;
- vi. comply with *Schedule B: Banking and Funding* attached hereto which governs the operation of an account maintained pursuant to *Section 4* (“Account”); ;
- vii. 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;
- viii. refer all regulatory complaints to Customer and cooperate with Customer to resolve such complaints;
- ix. 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;
- x. provide TRISTAR’s standard claims reports to Customer; and
- xi. make payments of valid claims for compensation, rehabilitation expenses, and other required benefits payable under applicable insurance laws, together with Allocated Loss Adjustment Expenses (as defined in Section 12), 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 C* attached hereto (“Information Services”);

2.2.3 provide, or use TRISTAR Managed Care, Inc. (“TMC”), an affiliate of TRISTAR, to provide, utilization management services in accordance with the provisions of *Schedule E* attached hereto (“Utilization Management Services”);

- 2.2.4 provide, or use TMC to provide, case management services in accordance with the provisions of *Schedule F* attached hereto (“Case Management Services”); and
- 2.2.5 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* and *Schedule D*) or, where required by state law, as loss.

### **Section 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 comply with the *Schedule B: Banking and Funding* as respects the operation of the Account including Customer’s obligation to provide funds to TRISTAR for the payment of all Claims and Allocated Loss Adjustment Expenses;
- 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 using Customer's letterhead, provide written direction to TRISTAR in the event Customer elects to proceed with Utilization Management Services that do not comply with URAC guidelines as set forth on *Schedule E*; and
- 3.1.9 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.

#### **Section 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 D* 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.

#### **Section 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 or a percent that is mandated pursuant to Chapter 2251 of the Texas Government Code, whichever is less; such charge to be effective beginning thirty (30) days after the County receives the invoice and on such date will be due until paid.

## **Section 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:
  - 6.3.1 for five (5) years from the closing of the Claim;
  - 6.3.2 for the duration of any applicable regulatory requirement or state law; or

6.3.3 for the duration of the applicable Statute of Limitations.

## **Section 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.

## **Section 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.

## **Section 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 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.

## **Section 10. Independent Contractor**

TRISTAR and its affiliates, shall act as 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.

## **Section 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, pandemic, epidemic, 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. TRISTAR shall in good faith still attempt to complete its obligations set out in this



Agreement with the understanding that said services may not be able to be fully completed and/or partially completed in a timely manner pursuant to this paragraph.

## **Section 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** 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.

## **Section 13. MMSEA**

- 13.1.1** 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:
- 13.1.2** 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)”).
- 13.1.3** 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 (“CSAs”) and Medicare set-aside agreements (“MSAs”).

- 13.1.4 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.
- 13.1.5 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*.

## **Section 14. Non-Hire**

- 14.1** Without the written consent of the other, Customer and TRISTAR shall not:
- 14.1.1 solicit for employment or employ any employee of the other who is or has been directly engaged in the performance of this Agreement; and
- 14.1.2 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.

## **Section 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 840  
Long Beach, CA 90802  
Attn.: Thomas J. Veale (tom.veale@TRISTARgroup.net)

*With a copy to:* TRISTAR Insurance Group, Inc.  
100 Oceangate, Suite 840  
Long Beach, CA 90802  
Attn.: General Counsel's Office (GeneralCounselOffice@TRISTARgroup.net)

Customer: County of Webb  
1000 Houston St. FL 3<sup>rd</sup>  
Laredo, TX 78040  
Attn.: Webb County Judge

*With a copy to:* County of Webb  
1110 Washington St. Suite 204  
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 (3<sup>rd</sup>) day after the date such notice is postmarked. Any delivery of notice shall be to the designated representative or office.

## **Section 16. State Amendment Requirements**

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.

## **Section 17. Governing Law**

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.

## **Section 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.

*[The rest of this page is intentionally blank]*

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.

By: Thomas J Veale  
Thomas J Veale (Mar 16, 2023 16:38 PDT)  
Name: Thomas J. Veale  
Title: President  
Date: Mar 16, 2023

County of Webb, Texas

By: [Signature]  
Name: Tano E. Tijerina  
Title: County Judge  
Date: march 28, 2023

**ATTESTED:**  
Margie Ramirez Ibarra KC  
Margie Ramirez-Ibarra  
Webb County Clerk

APPROVED AS TO FORM:

[Signature]  
Jorge L. Trevino, Jr.

Webb County Civil Legal Division Attorney

\*By law, this 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).

## Schedule A General Information; Service Period; Fees; Expenses

*This Schedule A shall be effective October 1, 2021 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):** \$750,000 (firefighters and fire drivers)  
\$750,000 (police officers and police drivers)  
\$750,000 (any employee in, upon, entering, or alighting from a County owned, leased, or regularly chartered aircraft)  
\$500,000 (all other employees)

TRISTAR will be handling all claims that pierce the retention level on behalf of Safety National.

- A.1.2 **Settlement Authority:** \$5,000

#### A.1.3 Reporting Agent(s)

A.1.3.1 for MMSEA reporting to CMS: TRISTAR

A.1.3.2 for MMSEA compliance and other related services: TRISTAR's Preferred Provider, unless Customer directs the use of a different vendor.

- A.1.4 **Service Obligation:** Life of Contract

### 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:

A.2.1.1 the date the Claim is closed; or

A.2.1.2 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.

### A.3 Annual Services Fees

- A.3.1 **Annual Services Fee.** In consideration for the Basic 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:

<b>Claims Administration Service Annual Fee</b> <i>(claims reported to TRISTAR in the period listed)</i>	<b>Annual Fee</b>	<b>Quarterly Installment</b>
<b>October 1, 2021 – September 30, 2022</b>		
Workers' Compensation	\$53,924.00	\$13,481.00
Liability, Lines included	\$13,481.00	\$3,370.00
<b>Total:</b>	<b>\$67,405.00</b>	<b>\$16,851.00</b>
<b>Option Year 1 (October 1, 2022 – September 30, 2023)</b>		
Workers' Compensation	\$56,081.00	\$14,020.25
Liability, Lines included	\$14,020.00	\$3,505.00
<b>Total:</b>	<b>\$70,101.00</b>	<b>\$17,525.25</b>
<b>Option Year 2 (October 1, 2023 – September 30, 2024)</b>		
Workers' Compensation	\$58,324.00	\$14,581.00
Liability, Lines included	\$14,581.00	\$3,645.25
<b>Total:</b>	<b>\$72,905.00</b>	<b>\$18,226.25</b>

**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:

**A.3.2.1** For each additional user in excess of Three (3): Seven Hundred Fifty dollars (\$750) per user (“Additional User Rate”);

**A.3.2.2** OSHA Reports: Five Thousand dollars (\$5,000) per year (“OSHA Rate”);

**A.3.2.3** Standard Data File (monthly): One Thousand Two Hundred dollars (\$1,200) per year (“Data File Rate”)

**A.3.2.4** Self-Insured Reports: in accordance with TRISTAR’s rates, which vary by state, then in effect not exceed one thousand dollars (\$1,000) annually (“SIR Report Rate”); and

**A.3.2.5** Customized Interface: on a Time and Expense basis at the hourly rate of One Hundred Seventy-five dollars (\$175) (“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.

**A.3.3 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:

- A.3.3.1 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
- A.3.3.2 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**

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:

- A.6.1.1 Each Quarterly Installment shall be deemed fully earned, due, and nonrefundable upon the first (1<sup>st</sup>) day of each quarterly period for which it is incurred;

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

- A.6.1.2 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

- A.6.1.3 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:

- A.6.2.1 Each Quarterly Installment shall be invoiced by TRISTAR in advance of each quarter during the Term; and

- A.6.2.2 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      Banking and Funding

*This Schedule B shall be effective January 1, 2023 and it shall: i) apply to all Claims obligations, including loss, indemnity, and Allocated Loss Adjustment Expenses and other Claim-related expenses, and ii) remain in effect until the parties agree otherwise. 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 Account for the Payment of Claims and Allocated Loss Adjustment Expense(s)**

- B.1.1 All Claims obligations, including loss, indemnity, and Allocated Loss Adjustment Expenses and other Claim-related expenses, are the obligations of Customer and shall be paid by Customer.
- B.1.2 Customer acknowledges and agrees that the depository bank for Customer funds provided to TRISTAR for the payment of Claims and Allocated Loss Adjustment Expenses shall be **Citizens Business Bank** (“CBB”).
- B.1.3 Customer hereby authorizes TRISTAR to open an account with CBB in trust for (“ITF”) Customer to be used as the depository/funding account relating to the payment of Claims and Allocated Loss Adjustment Expenses (“Account”).
- B.1.4 Customer authorizes TRISTAR to utilize ECHO Health, Inc. (“ECHO”) to process payments electronically.

### **B.2 Duties of TRISTAR**

- B.2.1 Any amounts collected by TRISTAR on behalf of or for Customer and any amounts received from Customer shall be deposited in the Account. Claims and Allocated Loss Adjustment Expenses for the Claims will be paid by checks showing the identity of Customer that are issued by TRISTAR against funds in this Account. CBB shall keep records clearly recording the deposits into and withdrawals from the Account and the balance held on behalf of Customer. When requested by Customer, but no more than once each month, TRISTAR shall cause CBB to render an accounting detailing all transactions with respect to the Account, which accounting shall be provided by TRISTAR to Customer.
- B.2.2 TRISTAR shall collect, process, and report data in the manner prescribed by the Internal Revenue Service for the purpose of preparing Customer’s 1099 Miscellaneous Income filing with respect to the Claims and Allocated Loss Adjustment Expenses payments which are the subject of this Agreement. As respects the Account, TRISTAR shall file required Unclaimed Property reports.

### **B.3 Duties of Customer**

#### **B.3.1 Customer shall:**

- B.3.1.1 initially deposit in the Account an initial required balance set forth in Exhibit 1 attached hereto and made a part hereof (“Target Amount”); thereafter, maintain such required Target Amount by transferring additional funds to the Account at the interval indicated in *Exhibit 1* so that it equals or exceeds the Target Amount. Customer agrees to increase the Target Amount upon request of TRISTAR, and

in an amount to be determined by TRISTAR, within two (2) business days after Customer is notified by TRISTAR of the amount of the increase;

- B.3.1.2 maintain a minimum balance equal to or greater than Thirty (30%) percent of the Target Amount ("Minimum Balance") in the Account at all times. On any day the Account balance is less than the Minimum Balance, Customer agrees to transfer sufficient funds to the Account within two (2) business days after it is notified by TRISTAR so that the balance in the Account equals or exceeds the Target Amount;
  - B.3.1.3 transfer sufficient funds to the Account within two (2) business days of receipt of each request from TRISTAR to cover each obligation for Claims or Allocated Loss Adjustment Expenses exceeding Twenty-Five (25%) percent of the Target Amount ("Cash Call") that have been or are expected to be paid on behalf of Customer;
  - B.3.1.4 be liable for and pay any and all overdraft amounts including bank fees and charges and interest thereon. In the event TRISTAR pays any such amounts on Customer's behalf pursuant to TRISTAR's agreement with the Bank, Customer shall immediately reimburse TRISTAR upon demand; and
  - B.3.1.5 except as provided in *Section B.3.1.4* above, not be responsible for fees charged by CBB to administer the Customer transactions and the Account. However, earnings or credits earned are applied toward such bank fees, with the excess, if any, retained by TRISTAR.
- B.3.2 The Customer shall provide such documents, written authorizations or resolutions, in a form required or acceptable to the Bank, authorizing TRISTAR and/or the Bank to effect the funding and payment arrangement agreed to under this *Schedule B*.
- B.3.2.1 In the event of any dispute between TRISTAR and Customer regarding the propriety of any request for additional funds as contemplated by *Subsection 3.1* above, or regarding the propriety of TRISTAR's actions in paying or determining to pay a Claim or Claims or an Allocated Loss Adjustment Expense, Customer shall nonetheless permit or make the payments to the Account under a reservation of rights so that Customer may enforce its rights with respect to any such payments or any other matters relating to this *Schedule B*.
  - B.3.2.2 The Customer's obligations under this *Section 3* have been duly authorized by all necessary corporate action of the Customer and do not and will not violate any provision of law or of the Customer's charter, or by-laws, or require any consent or result in the breach of any agreement to which the Customer is a party or by which it may be bound or affected.

**Exhibit 1**  
**TO SCHEDULE B**

**ACCOUNT INFORMATION**

- Citizens Business Bank Trust Account\* #: **43036413**
- Target Amount: \$160,000
- Funding Frequency: Customer shall fund the Account through the Federal Reserve:
  - on any day the Account balance is less than the Minimum Balance; or
  - upon notification of a Cash Call; or
  - each month.
- TRISTAR is the owner of the account on behalf of Webb County. At the termination of TRISTAR's services to Webb County, TRISTAR shall close the account and return all unallocated funds to Webb County.

**ADMINISTRATION DETAILS**

- Once the start date is confirmed, TRISTAR Accounting shall send an invoice to Webb County about two weeks prior to the start date. TRISTAR then shall send a monthly invoice to return the balance to the original funding level.
- Checks shall be printed by ECHO daily from the bank account with TRISTAR.
- TRISTAR shall provide daily or weekly payment reports, as requested, as well as monthly payment reports as part of the loss runs.
- Webb County shall be provided regular reporting to ensure full and open disclosure of all payments and associated details.
- TRISTAR shall provide monthly bank reconciliation and a bank statement.
- TRISTAR shall handle all escheatment for the State.
- At any time, when a single payment depletes 20% of the balance, Webb County shall be given the option to prefund the payment. Accounting shall send the Prefund request.

## Schedule C 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 C.*

### C.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.

### C.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.

### C.3 Limitation of Liability

C.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.

### C.4 Proprietary Rights

C.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.

- C.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.
- C.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.

## **C.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.

## **C.6 Privacy**

- C.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.
- C.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 D Preferred Provider Specialty Services

*Schedule D is effective January 1, 2023 and is subject to change from time to time thereafter without prior notice. These Preferred Provider Specialty Services fees are paid as Allocated Loss Adjustment Expenses or, where required by state law, as loss.*

Service	Fee
<b>MANAGED CARE</b>	
<b>Medical Bill Review</b>	
Provider/Ancillary Bill Review	\$9.50 per bill
Hospital Bill Review	\$20 per bill
Clinical Nurse Review	27% of savings capped at \$25,000 per bill
Implantable Device Review	30% of savings
PPO/Pharmacy/DME	27% of Savings (all savings are post fee schedule or U&C)
Specialty Bill/Out-of-Network Review	30% of Savings (all savings are post fee schedule or U&C)
e-billing	\$2 per bill
Duplicate Bills Duplicate Line Items Monthly Savings Reporting	No Charge
<b>Utilization Review</b>	
One flat fee for pre-clinical review and/or pre-certification with nurse	\$99 per pre-certification
Concurrent review	\$125 per hour
<b>Peer Review</b>	
Level 1 (Includes review of medical records and communication of decision in writing to all parties)	\$290 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)	\$310 flat rate when assigned by a nurse case manager following case manager file review, or receipt of a referral by adjuster for review.
<b>Enhanced Intake and Nurse Triage</b>	
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.)	\$28 per intake call
Telephonic Nurse Triage (Nurse aids injured worker in self-treatment or sets up an appointment with appropriate provider utilizing medical triage guidelines/follow-up calls)	\$125 per intake call (includes wallet cards for all employees)
<b>Nurse Case Management</b>	
Telephonic Case Management (Texas)	\$109 per hour
Field Case Management (Texas)	\$115 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

<b>Service</b>	<b>Fee</b>
Catastrophic Case Management (High level of RN interaction with immediate response to significant injury, e.g., severe head injury, severe burns, gunshot. Available 24/7)	\$175 per hour plus mileage
<b>Pharmacy</b>	
Clinician Intervention: Complex Pharmacy Management, Weaning Protocols (Weaning is available when opioids have been prescribed for 60+ days with no evidence that the physician will end the treatment pattern.)	\$135 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 patterns and weaning options. Follow-up calls made by a pharmacy case manager.)	\$135 per hour pharmacist/pharmacist technician intervention <b>plus</b> pass-through of actual physician fees
Drug Testing: Full, Quantitative Testing (Candidates may be referred or identified by TMC based on risk factors such as claim age, high medication use, safety risk, injury type, etc.)	\$425 per test with report summary
Drug Testing Interpretation and Outreach: Complex Pharmacy Management, Weaning (Pharmacist to review and interpret drug testing results. Findings would be communicated to the examiner and/or provider, where permitted, with the goals of ensuring patient safety and reducing fraud, waste, and abuse.)	\$135 per hour
Pharmacist Medication Review:	
1-2 medications with full record review and recommendations	\$450 flat rate
3-6 medications with full record review and recommendations	\$675 flat rate
7 or more medications with full record review/recommendations	\$900 flat rate
<b>Other Networks</b>	
Texas 504	\$125 per claim
<b>Other Services</b>	
Claim Reporting: Fax or Internet	\$15 per report
Special Investigations	Outsourced, at cost – typically \$90-100 per hour
Central Index Bureau/OFAC/CSE/SS	\$29.95 per report
MMSEA Reporting	\$12 per claim
Subrogation/Recovery/Restitution	20% of all fees recovered
OHSA Reports	\$5,000 per year
Additional TRISTAR Connect users	\$750 per user
Standard Monthly Data File	\$1,500 per year
Customized Interface (Time and Expense basis)	\$200 per hour
Loss Control and Safety Services	\$175.20 per Hour
Remote Ergonomic Assessments for Office or Virtual Office	\$320 flat fee
ERGOhealthy Resource Center (Online ergonomic website) Includes direct access to an Ergonomic Coach	\$11 Per Employee Per Year ( <i>minimum 400 participants</i> )
MSA Cost Projection	\$2,300 flat rate
Social Security Verification	Included in the MSA fee

Service	Fee
Initial Medicare Conditional Payment Inquiry	Included in the MSA fee
CMS Submission of MSA (including re-review requests) and Basic Self Administration Help Service (includes CMS manual with 12 instances of telephone/email help requests in first year following funding of MSA).	Included in the MSA fee
MSA Revisions	Within 6 months: revisions included Beyond 6 months: \$500 per revision
Review and negotiation of demand letters (Conditional Payment Notices (CPN)/Conditional Payment Letters (CPL)/ Demands.	\$450 flat fee
Initiate letter process with Medicare contractor if no conditional payment letters have been received.	\$225 flat rate
Research, obtain, negotiate and assist in resolving Medicaid, Veterans Administration, and Medicare Advantage Plan liens and recovery requests.	\$450 flat fee
Mileage	IRS allowance rate

**ALLOCATED LOSS ADJUSTMENT EXPENSES** includes any fee or expense which is chargeable or attributable to the investigation, coverage analysis, adjustment, negotiation, settlement, defense, or general handling of any Claim or action related thereto, or to the protection and/or perfection of the Customer and/or Carrier's right of subrogation, contribution or indemnification, all as reasonably determined by TRISTAR. 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:

- ◆ 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;
- ◆ fees and expenses incurred for: handling any Alternative Dispute Resolution (ADR) proceeding; 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;
- ◆ fees and expenses for attendance at or participation in ADR proceedings, hearings, trials, or other proceedings by TRISTAR personnel or its subcontractors;
- ◆ 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;
- ◆ 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;
- ◆ fees and expenses incurred in conjunction with the telephonic, web, or other electronic methods of reporting Claims;
- ◆ 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;



- ◆ fees and expenses for surveillance, undercover operative and detective services or any other investigations;
- ◆ 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;
- ◆ fees and expenses for any public records, medical records, credit bureau reports, index bureau reports, and other like reports;
- ◆ 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;
- ◆ 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; and
- ◆ extraordinary travel and related fees and expenses incurred by TRISTAR at the express request of Customer, which are not otherwise payable under this Agreement.

## **Schedule E      Utilization Management 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 E.*

### **E.1      Description**

- E.1.1 Utilization Management Services is the evaluation of requests for treatment and/or procedures by determining the medical necessity, appropriateness, and efficiency of the requested services.
- E.1.2 Utilization Management Services may include pre-certification and concurrent review which shall be performed in accordance with the regulations of the pertinent state, as well as under the guidelines of TRISTAR's written policies and procedures and URAC guidelines. TMC's policies and procedures will meet all state statutes and regulations for workers' compensation. Telephone access, hours of operation, level of reviewers, peer review services, time frames and letters may all be specified by any one or more of the following entities: (i) URAC, or (ii) applicable State Department of Insurance.

### **E.2      Scope of Services**

- E.2.1 TMC will perform Utilization Management Services, which may include the following. TMC shall:
  - E.2.1.1 Provide qualified health professionals that operate and complete utilization reviews during normal business hours;
  - E.2.1.2 Employ a credentialed staff of health professionals to perform utilization reviews;
  - E.2.1.3 Perform reviews following the prospective requests for review or after the injury to determine medical necessity. Utilization management that is conducted prior to an injured worker's admission is considered pre-certification. Concurrent reviews occur while treatment is being delivered to an injured worker. This review assesses the patient's condition while in the hospital or for outpatient treatment(s) and/or procedures. Concurrent or prospective reviews are conducted within five (5) days from the receipt of the necessary medical information, but in no event more than fourteen (14) days from the treatment recommendations;
  - E.2.1.4 Perform expedited reviews when a) the injured worker faces an imminent and serious threat to his or her health, including but not limited to the potential loss of life, limb, or other major bodily function, or b) the normal time frame for the decision-making process would be detrimental to the injured worker's life or health or could jeopardize the injured worker's permanent ability to regain maximum function. An expedited review will not exceed seventy-two (72) hours after receipt of the written information reasonably necessary to make a determination;
  - E.2.1.5 Complete retrospective reviews at the request of TRISTAR or Customer. Retrospective reviews must be requested within thirty (30) days from the receipt of all medical information;

- E.2.1.6 Provide peer review services through independent IRO's that have achieved URAC accreditation. Any treatment requests that do not meet URAC guidelines cannot be authorized by TMC and must be referred for peer review. The peer reviewer will review the information from the treating physician and may contact the provider directly for additional information. If the peer reviewer agrees with the treatment plan, a recommendation to certify will be issued and sent to TMC. If the peer reviewer still finds the treatment not within guidelines, a letter to not certify is issued to the appropriate parties; and
- E.2.1.7 Offer a process whereby an injured worker or provider on behalf of that injured worker may contest an adverse determination. In order for TMC to respond appropriately to a wide range of appeal situations, TMC will provide the injured worker and provider with the required information in order to complete the appeal process.

## Schedule F Case Management 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 E.*

### F.1 Description

Case Management Services, which are provided in order to achieve quality healthcare services and contain costs, begin with injured employee identification and referral, examples of which include catastrophic injuries or illnesses, injuries associated with invasive treatment (e.g., Surgery), and individuals at risk for non-compliance with treatment.

### F.2 Scope of Services

F.2.1 TRISTAR, TMC will perform Case Management Services, which may include the following. TMC shall:

- F.2.1.1 Perform a thorough assessment of the injured worker's situation;
- F.2.1.2 Develop a case management plan including specific, measurable goals that focus on meeting the injured worker's needs through utilization of appropriate resources;
- F.2.1.3 Work with all medical service providers and coordinate activity in order to provide the best response to treatment;
- F.2.1.4 Offer treatment recommendations utilizing nationally recognized evidence-based treatment guidelines such as Official Disability Guidelines (ODG), American College of Occupational Environmental Medicine (ACOEM), the Medical Treatment Utilization Schedule (MTUS), or other evidenced-based guidelines to ensure a cost effective treatment plan is in place;
- F.2.1.5 Establish a target date for return to light and/or full duty in coordination with the Customer;
- F.2.1.6 Monitor treatment provided to an injured worker to ensure quality and appropriateness; and
- F.2.1.7 Close case when goals are met and the injured worker has improved medically.

# Webb County CSA eff 10-1-21 (03.16.2023)

Final Audit Report

2023-03-16

Created:	2023-03-16
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Status:	Signed
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2023-03-16 - 7:28:27 PM GMT- IP address: 47.176.144.50
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2023-03-16 - 7:31:31 PM GMT
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2023-03-16 - 9:33:32 PM GMT- IP address: 104.28.85.115
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