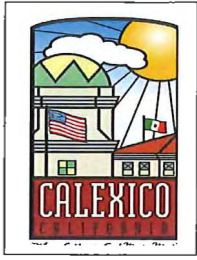


**AGENDA  
ITEM**

**11**



# CITY COUNCIL AGENDA STAFF REPORT

**DATE:** January 18, 2023

**TO:** Mayor and City Council

**APPROVED BY:** Esperanza Colio-Warren, City Manager

**REVIEWED BY:** Sandra Fonseca, Interim Finance Director

**PREPARED BY:** Denise Garcia, Human Resources/Risk Management Manager

**SUBJECT:** Approval of the Service Agreement Renewal for Administration of General Liability Claims with TRISTAR Claims Management Services, Inc. for the Term Beginning September 1, 2022 to August 31, 2025 and delegate the City Manager to Act and Sign on Behalf of the City of Calexico

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**Recommendation:**

Approve the service agreement renewal for administration of general liability claims with TRISTAR Claims Management Services, Inc., for the term beginning September 1, 2022 to August 31, 2025 and delegate the City Manager to act and sign on behalf of the City of Calexico.

**Background:**

As a certified self-insured employer, the City retains the services of a Third-Party Administrator to ensure its general liability requirements meet complex legal and administrative requirements. The City has worked with TRISTAR (formerly Hazelrigg) Claims Management Services, Inc. for over six years and has received outstanding service in all areas including representation and claims processing. The previous contract expired December 31, 2018.

**Discussion & Analysis:**

Under the terms of this agreement TRISTAR will continue to review and process claims in accordance with applicable statutory, PRISM Insurance Authority, and administrative regulations. The agreement reflects a 4% increase for claims administration fees. This is the first increase since January 2016. The increase was to be expected and extremely reasonable considering current market rates and economic circumstances. The claims adjuster currently assigned to the City is very

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responsive and well known in the general liability industry. The City has received excellent service from the adjuster and staff over the years.

**Fiscal Impact:**

Existing funds are currently budgeted for Internal Service Funds/General Liability.

**Coordinated With:**

City Manager.  
Alliant Insurance Services.  
PRISM Insurance Authority.  
City Attorney's Office.

**Attachment(s):**

1. TRISTAR Renewal Letter.
2. TRISTAR Claims Management Services Agreement.



August 8, 2022

Denise Garcia  
 Human Resources & Risk Management Manager  
 City of Calexico  
 608 Heber Ave.  
 Calexico, CA 92231

Re: City of Calexico - Liability Renewal  
 Effective September 1, 2022 - Life of Contract

Dear Ms. Garcia:

As part of our commitment to excellent service delivery, we continually review our customers' programs to determine appropriate performance and pricing. In this regard, we have reviewed the liability program for The City of Calexico, which we manage today.

We thank you for the valued 6 ½ year partnership that the City of Calexico has shared with Hazelrigg Claims Management, a TRISTAR Company. Reviewing your program, we note that your original contract expired on 12/31/2018, a new contract will need to be executed.

The current administration fees have remained flat since January 1, 2016 and for the upcoming policy period we are requesting a 4% increase on the claims administration fee. This increase is lower than the current consumer price index of 10%. This fee increase allows our company to keep investing in our people and system enhancements, so we can continue to provide The City of Calexico with exceptional claim staff and service. The new fees for the period of September 1, 2022 through August 31, 2023, are outlined in the below table.

CATEGORY LIFE OF CONTRACT	CLAIM HANDLING FEE(S)	UNIT OF MEASUREMENT (e.g., per Claim, Feature, report)	RATE FREQUENCY (e.g., one time, per month, per hour)
Property & General Liability Claims Admin Fee 9/1/22-8/31/23	\$31,200	Annual Fee	\$2,600 billed Monthly
Banking Fee	\$2,750 flat fee	Annual Fee	Billed Yearly, at start of new contract year
Mileage	Current IRS rate	Per mile	Billed as incurred
Misc.	At cost w/ receipt	Per receipt	Billed as incurred



We also realize your satisfaction with a program partner is about more than cost – it's about value and service for you and your employees. We are always interested in discussing ways to improve these, so please feel free to contact me anytime.

TRISTAR will be drafting the updated contract with the new pricing and will forward to the City for execution. If you need any further information or have any other questions, please feel free to contact the undersigned.

Thank you again for choosing TRISTAR Claims Management Services, Inc. We value your business and look forward to our continued partnership with The City of Calexico.

Sincerely,

*Delina Gonzaga*

Delina Gonzaga  
Director, Client Services  
(562) 506-0300 ext. 4926  
TRISTAR Claims Management Services, Inc.

cc: Keyan Aghili, Claims Manager, Hazelrigg Claims Management, A TRISTAR Company  
Alan Rauch, Area Manager, Liability Claims, TRISTAR Risk Management  
Laura Garza, VP Client Services, TRISTAR Risk Management



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## Claims Services Agreement

**AGREEMENT** made this 1<sup>st</sup> day of September, 2022 by and between **TRISTAR Claims Management Services, Inc.**, a Delaware corporation having its principal place of business at 100 Oceangate, Suite 840, Long Beach CA 90802 (“TRISTAR”), and **City of Calexico**, a California political subdivision, having its principal place of business at 608 Heber Ave., Calexico, CA 92231 (“Calexico” or “Customer”).

**WHEREAS**, Customer, as a qualified self-insured under applicable state law, has a self-insured retention program with respect to General and Property Liability claims and claim expenses pertaining to Customer’s business (“SIR Program”) with a retention level as set forth in *Schedule A* attached hereto (“Retention Level”); and

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

**WHEREAS**, Customer desires to engage TRISTAR as the claims administrator with respect to those claims and/or losses arising under the SIR Program; 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 term (“Term”) of this Agreement shall commence at 12:00 A.M. on September 1, 2022 (“Effective Date”) and shall remain in effect until August 31, 2025 unless and until terminated in accordance with the provisions of *Section 9* of this Agreement.

### **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”).

**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



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- respect to Claims; and be maintained in accordance with prudent standards of record keeping;
- ii. conduct analysis of Claims to determine their validity in accordance with Claims' guidelines as may be agreed to by TRISTAR and Customer;
  - iii. establish case-specific reserves, adjust, resist, deny and/or recommend settlement of Claims:
    - up to the authority limit set forth in *Schedule A* ("Settlement Authority");
    - in excess of the Settlement Authority at the direction of and with the approval of the Customer.
  - iv. upon approval or at the direction of Customer, use legal counsel where appropriate and assist legal counsel in the preparation of cases for hearings, trials, and/or appeals;
  - v. comply with *Schedule B: Banking and Funding Schedule* attached hereto governs the operation of an account maintained pursuant to *Section 4* ("Account");
  - 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;
  - ix. provide TRISTAR's standard claims reports to Customer; and
  - x. make payments of valid claims for compensation, expenses, and 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 information services in accordance with the provisions of *Schedule C* attached hereto ("Information Services"); and
- 2.2.3 provide, or use vendors to provide, specialty services ("Specialty Services") such as claim call-in reporting (telephonic, electronic, fax, or internet), Special Investigation (SIU), and index bureau reports. Specialty Services are charged as Allocated Loss Adjustment Expenses (as defined in *Section 12*) or, where required by state law, as loss.
- 2.3** TRISTAR has delegated authority within the retention level to adjust losses where there are no coverage issues present. Where a coverage issue is present, or there is a coverage question requiring a coverage analysis and determination, those matters shall be immediately referred to the Customer. The Customer retains ultimate authority to approve all coverage positions, such as reservation of rights and coverage denials.



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### **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 *Schedule B: Banking and Funding Schedule* 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 retained by the City. Customer has contracted with and meeting all requirements in connections therewith. TRISTAR will have no responsibility or liability for the obligations of vendors or Customer in connection with the services provided by such vendors and Customer shall indemnify, hold harmless, and defend TRISTAR against any such liability, except that TRISTAR shall cooperate with the vendors Customer contracted with and assist Customer with respect to such vendor requirements; and
  - 3.1.8 perform all such other actions and things reasonably necessary or otherwise required to enable TRISTAR to perform its services under this Agreement.
- 3.2** Customer represents and warrants that it is and shall remain throughout the Term a qualified self-insured under applicable state law.

### **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 and shall be funded by Customer as provided in *Schedule B: Banking and Funding*





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*Schedule*. 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 TMC), 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. The fees set forth on *Schedule D* may be adjusted from time to time without prior notice.

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

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



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## **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; however, the parties agree that if there are any such audits, reviews, and/or inspections including reasonable follow-up of the activities of TRISTAR by Customer, regulatory authorities or other parties, or any combination thereof, TRISTAR shall be compensated in accordance with *Subsection 5.3* for its involvement with any such audit(s), reviews, and/or inspections.
- 6.3** At the conclusion of TRISTAR’s obligation to handle Claims and subject to TRISTAR’s receipt 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.
- 6.4** At the conclusion of TRISTAR’s obligation to handle Claims and subject to TRISTAR’s receipt of all Fees and Expenses due TRISTAR, if the parties mutually agree that TRISTAR shall retain the physical Claim Files and/or retain copies of the electronic Claim Files, then Customer shall reimburse TRISTAR the fees and costs for TRISTAR’s storage of the either the physical or electronic Claim Files.

## **Section 7. Indemnification, Limitation of Liability**

- 7.1** TRISTAR agrees to hold Customer harmless, defend, and indemnify Customer against any and all losses, claims, expenses (including reasonable attorneys’ fees), fines, penalties, damages, judgments or liabilities (“Liabilities”) asserted against Customer by a third party but only insofar as the same have arisen as a proximate result of the adjudicated fraud, negligence or willful misconduct of TRISTAR in the provision of services under this Agreement.
- 7.2** Customer agrees to hold TRISTAR harmless, defend, and, upon demand, indemnify TRISTAR against any and all Liabilities whatsoever to which TRISTAR may be subject, other than those which TRISTAR is obligated to indemnify Customer pursuant to



*Subsection 7.1.* Furthermore, without limiting the generality of the foregoing, Customer shall indemnify and hold TRISTAR harmless against any liability arising out of or related to (i) any act or omission of TRISTAR taken or omitted to be taken at the request, direction, or approval of the Customer, (ii) any act or omission of the Customer or any preceding manager or administrator or of any third party providing services for Claims except those third parties contracted by TRISTAR to provide services for Claims pursuant to this Agreement, (iii) TRISTAR being named in litigation as an insurance carrier or insurer and/or as being responsible for the payment of Claims, and (iv) Customer's failure to pay any Claim or Allocated Loss Adjustment Expense(s) on a timely basis.

- 7.3** If Customer and TRISTAR cannot reach an agreement on the obligation of a party to defend or indemnify the other under *Subsections 7.1 or 7.2* as to pending Liabilities, Customer and TRISTAR agree that all costs and expenses related to the obligation of a party to defend or indemnify the other under *Subsections 7.1 or 7.2* shall be paid as Allocated Loss Adjustment Expenses attributable to the Claim which gave rise to the pending Liabilities, subject to an agreement by the parties or by final determination by a court of competent jurisdiction as to a party's obligations under *Section 7*, if any.
- 7.4** Pursuant to this *Section 7*, when the indemnified party receives notice of a claim or suit with respect to claims resulting from the assertion of liability by a third party for which indemnification is provided by this Section, the indemnified party will promptly notify the indemnifying party and provide a copy of the claim notice, summons and complaint, or other relevant documents. The indemnified party shall cooperate fully with the defense of any such claim. The indemnifying party shall consult with the indemnified party concerning counsel retained. Should the parties fail to reach agreement on selection of counsel, the opinion of the indemnifying party shall govern the selection. The indemnifying party shall control the conduct of the litigation and of other proceedings. The indemnifying party shall request counsel to keep both parties apprised of the status of the proceedings by promptly reporting all significant developments and, in addition, by providing general status reports on a timely basis. With regard to any claim for which indemnification is sought hereunder, the parties shall mutually agree as to the acceptance of any settlement offer(s), or alternatively, the indemnifying party shall decide whatever action is to be taken regarding any settlement offer(s), provided, that, the indemnifying party in such case shall obtain the complete and written release of the indemnified party with respect thereto.
- 7.5** 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 customer, or 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.
- 7.6** TRISTAR shall not be liable to Customer as a result of: (i) failure to achieve a desired result, so long as TRISTAR has acted reasonably based upon the information available at the time; (ii) acts, errors or omissions of any retained legal counsel; and (iii) any vendors or any third parties engaged, selected, chosen or recommended by Customer.



7.7 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.

7.8 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 the requirements of a governmental agency, the California Public Records Act, the Freedom of Information Act or a final binding order of a court of competent jurisdiction; and

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

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

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

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

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

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



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## 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 the Account 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 Account as required. The non-breaching party shall have the right to terminate this Agreement upon written notice to the breaching party if the breaching party fails to cure said material breach within the specified time period.
- 9.1.3 This Agreement shall immediately terminate at the election of either party upon the occurrence of any of the following events with respect to the other party: its insolvency, its inability to meet its debts as they mature, its filing of a petition of voluntary bankruptcy under any chapter of the US bankruptcy laws, institution of proceedings to adjudge it bankrupt in an involuntary proceeding, filing of a petition for rehabilitation or liquidation, execution of an assignment for the benefit of creditors, its appointment by a court of a receiver, trustee, rehabilitator or liquidator, or its dissolution.
- 9.2** If this Agreement is terminated:
- 9.2.1 for cause pursuant to *Subsection 9.1.2 or 9.1.3*, TRISTAR shall cease the handling of all Claims as of the effective date of termination ("Termination Date") and TRISTAR shall have no more obligations with respect thereto.
- 9.2.2 for convenience pursuant to *Subsection 9.1.1*, or non-renewal, the Parties shall reach an agreement regarding one of the following options:
- i. TRISTAR's continuation of the handling of all Claims reported to TRISTAR before the Termination Date under the terms, conditions and limitations of this Agreement, subject to the Parties agreeing on a fee arrangement; or
  - ii. TRISTAR's discontinuance of the handling of any and all Claims as of the Termination Date.
- 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



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but unpaid Fees and Expenses, TRISTAR shall provide the Transfer Services in accordance with *Subsections 6.3 and 9.3.2*.

9.3.2 Unless this Agreement has been terminated by Customer for cause pursuant to either *Subsection 9.1.2 or 9.1.3*, Customer shall reimburse TRISTAR for all fees and expenses incurred by TRISTAR (“Transfer Fees”) in connection with the Transfer Services. These Transfer Fees shall be considered Additional Services Fees and calculated in accordance with *Section 5.3*. Transfer Fees shall include, but not be limited to:

- i. the actual costs incurred (examples: packing materials and shipping expenses in the event there are physical Claim Files); plus
- ii. TRISTAR’s fees for its services in effecting such transfer (examples: hourly fees for clerical labor to inventory, sort, pack, and ship such Claim Files; hourly fees for data processing labor to perform data extract and testing with receiving vendor; fees for production of notification letters to claimants, attorneys, and medical providers).

9.3.3 As respects all Claims, Customer shall remain liable for the 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 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.

## **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, 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.

## **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. Please refer to *Schedule D* for specific details.



- 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.

### **Section 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 ("CSAs") and Medicare set-aside agreements ("MSAs").
- 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 D*.

### **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 email; and addressed as follows:

TRISTAR: TRISTAR Claims Management Services, 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: City of Calexico  
608 Heber Ave.  
Calexico, CA 92231  
Attn.: Denise Garcia – Human Resources & risk Management Manager;  
dgarcia@calexico.ca.gov

- 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, 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.





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## **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. General**

- 17.1** This Agreement constitutes the entire agreement of the parties and supersedes all previous agreements and/or contracts whether oral or written between them with respect to the subject matter hereof.
- 17.2** If any provision of this Agreement shall contravene or be invalid under the laws of the United States, the state in which enforcement is sought, or the regulatory requirements of such state, it is agreed that such provision shall not invalidate the whole Agreement but the Agreement shall be construed as if not containing the particular provision or provisions held to be invalid.
- 17.3** This Agreement may only be amended by a written instrument signed by the parties hereto.
- 17.4** The parties shall not disclose to any third party the terms and conditions of this Agreement, except as may be required by law, reasonable advice of its counsel, or the written consent of the non-disclosing party. Notwithstanding the aforementioned, this Agreement may be disclosed to the parties' representatives, accountants, attorneys, and advisors and to insurers of Customer, including excess insurers to and reinsurers of the SIR Program.
- 17.5** This Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns. A party may not assign this Agreement or the services required herein without the prior written consent of the other party, which shall not be unreasonably withheld or delayed, except that TRISTAR may assign this Agreement to an affiliate or subsidiary company, or a successor in interest by acquisition or merger provided that such succeeding company shall assume all rights and obligations under this Agreement.
- 17.6** Except as otherwise provided herein, nothing in this Agreement is intended or shall be construed to give any person, other than the parties hereto, their respective successors and permitted assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.
- 17.7** A party hereto shall not be deemed to have waived any rights or remedies accruing to it hereunder unless such waiver is in writing and signed by such party. No delay or omission by a party hereto in exercising any right shall operate as a waiver of said right on any further occasion.
- 17.8** Wherever approval of a party is required under this Agreement, it shall not be unreasonably withheld or delayed.
- 17.9** The captions are for convenience of reference only and shall not control or affect the meaning or construction of any provision of this Agreement.
- 17.10** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument.



- 17.11** The exchange of copies of this Agreement and of signature pages by e-mail transmission shall constitute effective execution and delivery of this Agreement and may be used in lieu of the original for all purposes. Signatures of the parties transmitted by e-mail shall be deemed to be their original signatures for all purposes.
- 17.12** No action or proceeding shall lie or be maintained by Customer against TRISTAR upon any claim, counterclaim or crossclaim arising out of or based upon this Agreement, or by reason of any act or omission, unless such action or proceeding is commenced within two (2) years of the accrual of such a claim, counterclaim or cross-claim.
- 17.13** This Agreement shall be interpreted and construed in accordance with the internal laws of the State of California without regard to conflicts of law. If any dispute or claim arises hereunder that the parties are not able to resolve amicably, the parties agree and stipulate that such litigation shall be resolved in The Superior Court of California, County of Los Angeles, in the State of California, and the parties irrevocably submit to the exclusive venue and jurisdiction of such court for the purpose of any such action or proceeding. In the event of a dispute between the parties resulting in litigation, the prevailing party may, in addition to any other relief obtained, recover its court costs and reasonable attorneys' fees.
- 17.14** 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.

TRISTAR AND CITY OF CALEXICO 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.

**City of Calexico**

**TRISTAR Claims Management Services, Inc.**

By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____



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

*This Schedule A shall be effective September 1, 2022 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): \$100,000; TRISTAR will be handling all claims that pierce the retention level on behalf of PRISM (Public Risk Innovation, Solutions and Management).

A.1.2 Reporting Agent(s):

A.1.2.1 for MMSEA reporting to CMS: TRISTAR Risk Management

A.1.2.2 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:

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 Basic Fees

A.3.1 **Flat Annual Fee.** In consideration for the Basic Services, other than Administration Services as hereinafter defined, performed by TRISTAR during the Service Period for Claims, TRISTAR shall be entitled to and Customer shall pay TRISTAR in accordance with Section A.7 at the following flat rates per Flat Annual Fee, as indicated, subject to any increases made in accordance with Section A.4 (“Flat Rate(s)”):

Claims Administration Service Annual fee	September 1, 2022 -- August 31, 2023*
Liability, General/Property	\$31,200 (\$2,600 billed monthly)

\* The Flat Annual Fee for years two and three of this agreement will be calculated based on Subsection A.4.1.2 below.

A.3.2 **Banking Fee.** In consideration for banking services (“Banking Services”) rendered during the Service Period and in accordance with this Agreement, Customer agrees to pay



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TRISTAR an annual fee of Two Thousand Seven Hundred Fifty dollars (\$2,750) (“Banking Fee”) per year, subject to any increases made in accordance with *Section A.4*, in accordance with *Section A.7* for as long as Banking Services are provided.

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

If requested by Customer:

A.3.3.1 For each additional user in excess of Two (2): Seven Hundred Fifty dollars (\$750) per user (“Additional User Rate”);

A.3.3.2 Standard Data File (monthly): One Thousand Five Hundred dollars (\$1,500) per year (“Data File Rate”)

A.3.3.3 Self-Insured Reports: in accordance with TRISTAR’s rates, which vary by state, then in effect (“SIR Report Rate”); and

A.3.3.4 Customized Interface: on a Time and Expense basis at the hourly rate of Two Hundred dollars (\$200) (“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.4 Increases

A.4.1 **Annual Increases.** As long as the Agreement applies to any Claims being handled by TRISTAR and with the prior written consent of the Customer, the Flat Rates, Annual Administration Fee, and Annual IS Fee, and Optional Rates (collectively, “Basic Fees”) may be increased at any time on or after Sept 1, 2023 (“Increase Date”) subject to the following:

A.4.1.1 Each such increase shall apply to all Claims reported and all Administration Services and Information Services provided on or after each such Increase Date;

A.4.1.2 There shall only be one (1) increase in each twelve (12) month period beginning on September 1<sup>st</sup> of each year. Each such increase shall be equal to the greater of:

- (i) the annual increase in the US Consumer Price Index - Urban for San Diego published by the US Department of Labor (“CPI-U”) which shall be determined by comparing the CPI-U for the nearest month preceding the Increase Date that CPI-U is available to the CPI-U for the same month twelve (12) months earlier; or

- (ii) Four percent (4%).

A.4.2 **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 Basic Fees as it deems necessary in the event any of the following occurs:



A.4.2.1 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 Basic Fees and this Agreement; and

A.4.2.2 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.5 Additional Services Fees**

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

## **A.6 Expenses**

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

A.6.2 **Taxes.** Customer shall pay any Gross Receipt, Excise, Sales or other applicable Tax imposed by governmental entities in those states where levied ("Taxes") unless Customer is exempted by law.

## **A.7 Payment**

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

A.7.1.1 the Flat Annual Fee shall be deemed fully earned, due, and nonrefundable as of the Effective Date;

A.7.1.2 the Banking Fee each shall be invoiced by TRISTAR as of the Effective Date and every twelve (12) months thereafter as long as the Banking Services are provided;

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

A.7.1.1 the Additional User Rate, , and Data File Rate shall be deemed fully earned, due and non-refundable as of the date an user is added or an Optional Service is provided, and each subsequent annual anniversary of the Effective Date; and

A.7.1.2 the SIR Report Rate and Customized Interface Rate each shall be deemed fully earned, due, and nonrefundable when it is incurred.

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

A.7.2.1 Flat Annual Fees shall be invoiced monthly at the beginning of the month that they are due; and

A.7.2.2 Additional Services Fees (if any), Optional Rates (if any), Reimbursable Expenses, and Taxes shall be invoiced by TRISTAR at the end of the month in which they are incurred and/or assessed.



## **Schedule B      Banking and Funding**

*This Schedule B shall be effective September 1, 2022 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 Bank of America (“BofA”).
- B.1.3 Customer hereby authorizes TRISTAR to continue using an account with BofA 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.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. BofA 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 BofA 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;



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- 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.



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## **Exhibit 1**

### **TO SCHEDULE B**

#### **ACCOUNT INFORMATION**

- Bank of America Trust Account\* #: 3250 7005 3209
- Target Amount: \$ 50,000
- 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 Calexico. At the termination of TRISTAR's services to Calexico, TRISTAR shall close the account and return all unallocated funds to the Calexico.

#### **ADMINISTRATION DETAILS**

- Once the start date is confirmed, TRISTAR Accounting shall send an invoice to the Calexico about two weeks prior to the start date. TRISTAR then shall send a monthly invoice to return the balance to the original funding level.
- TRISTAR shall provide daily or weekly payment reports, as requested, as well as monthly payment reports as part of the loss runs.
- The Calexico 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, Calexico shall be given the option to prefund the payment. Accounting shall send the Prefund request.





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## Schedule C Information Services

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

### C.1 Scope of Services

C.1.1 In consideration of the payment of the applicable fees calculated in accordance with *Schedule A*, TRISTAR shall furnish the following to Customer (“Information Services”):

C.1.1.1 online access to TRISTAR’s claim system (“TRISTAR Connect”); and

C.1.1.2 related materials.

### C.2 Limited Warranty

TRISTAR makes no warranty or representation relating to TRISTAR Connect, the information services, or any other services, or materials provided in connection therewith. The TRISTAR Connect 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’s exclusive remedy for damage or loss in any way connected with any Information Services furnished by TRISTAR, whether by breach of warranty, negligence or any breach of any other duty, shall be for TRISTAR to refund the amount paid for the Information Services, for which a claim is made.

C.3.2 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 C*, 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.



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- 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 C.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 September 1, 2022 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>	
<i>Liability Medical Cost Containment</i>	
Liability Medical Review	\$35 per bill
RN Liability Medical Review	\$130 per hour
<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
Additional TRISTAR Connect users	\$750 per user
Standard Monthly Data File	\$1,500 per year
Customized Interface (Time and Expense basis)	\$200 per hour
MSA Cost Projection	\$2,300 flat rate
Social Security Verification	Included in the MSA 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 (“ALAE”)** 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. ALAE 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



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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.