

**AN ORDINANCE TO AUTHORIZE AND APPROVE AN AGREEMENT FOR
THIRD-PARTY CLAIM ADMINISTRATIVE SERVICES BETWEEN THE
CITY OF WILMINGTON AND PMA MANAGEMENT CORP.**

#0048

Sponsor:

**Council
Member
Harlee**

WHEREAS, pursuant to Section 2-308 and Section 8-200 of the City Charter, the City of Wilmington is authorized to enter into contracts for the supply of personal property or the rendering of services for a period of more than one year if approved by City Council by ordinance; and

WHEREAS, the City is authorized by the State of Delaware to self-insure its workers' compensation, commercial, automobile, general liability, professional liability, and property exposures; and

WHEREAS, PMA Management Corp. ("PMA") is a duly authorized provider of third-party administrator services in the State of Delaware and has been selected by the City to provide services as set forth in the Agreement for Third-Party Claim Administrative Services, a copy of which, in substantial form, is attached hereto and incorporated by reference herein as Exhibit "A" (the "Agreement"); and

WHEREAS, the term of the Agreement is for a period of one (1) year commencing on July 1, 2025, with three (3) available extension options of one (1) year each that may be exercised by mutual consent of PMA and the City; and

WHEREAS, the City proposes to pay PMA a fee of: (i) Two Hundred Forty-Eight Thousand Five Hundred Dollars (\$248,500.00) (allocated and billed separately as One Hundred Seventeen Thousand Forty-Four Dollars (\$117,044.00) for workers' compensation and One Hundred Thirty-One Thousand Four Hundred Fifty-Six Dollars (\$131,456.00) for claims other than workers' compensation) in twelve (12) equal monthly installments for the first year of the Agreement; (ii) Two Hundred Sixty-One Thousand Dollars (\$261,000.00)

(allocated and billed separately as One Hundred Twenty-Two Thousand Nine Hundred Thirty Dollars (\$122,930.00) for workers' compensation and One Hundred Thirty-Eight Thousand Seventy Dollars (\$138,070.00) for other than workers' compensation) to be paid in twelve (12) equal installments for the second year of the Agreement, if the first extension option is exercised; (iii) Two Hundred Seventy-Four Thousand Fifty Dollars (\$274,050.00) (allocated and billed separately as One Hundred Twenty-Nine Thousand Seventy-Eight Dollars (\$129,078.00) for workers' compensation and One Hundred Forty-Four Thousand Nine Hundred Seventy-Two Dollars (\$144,972.00) for other than workers' compensation) to be paid in twelve (12) equal installments for the third year of the Agreement, if the second extension option is exercised; and (iv) Two Hundred Eight-Seven Thousand Seven Hundred Fifty Dollars (\$287,750.00) (allocated and billed separately as One Hundred Thirty-Five Thousand Five Hundred Thirty Dollars (\$135,530.00) for workers' compensation and One Hundred Fifty-Two Thousand Two Hundred Twenty Dollars (\$152,220.00) for other than workers' compensation) to be paid in twelve (12) equal installments for the fourth year of the Agreement, if the third extension option is exercised; and

WHEREAS, it is the recommendation of the Department of Human Resources that City Council authorize the City to enter into the Agreement with PMA; and

WHEREAS, City Council deems it necessary and appropriate to authorize the City to enter into the Agreement with PMA.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF WILMINGTON HEREBY ORDAINS:

SECTION 1. The Agreement (being the Agreement for Third-Party Claim Administrative Services between the City of Wilmington and PMA Management Corp.), a

copy of which, in substantial form, is attached hereto as Exhibit “A,” for the period from July 1, 2025 through June 30, 2026, at an estimated total price of Two Hundred Forty-Eight Thousand Five Hundred Dollars (\$248,500.00) (allocated and billed separately as One Hundred Seventeen Thousand Forty-Four Dollars (\$117,044.00) for workers’ compensation and One Hundred Thirty-One Thousand Four Hundred Fifty-Six Dollars (\$131,456.00) for claims other than workers’ compensation), with the possibility of three (3) one-year extensions thereafter, at an estimated total price of (i) Two Hundred Sixty-One Thousand Dollars (\$261,000.00) (allocated and billed separately as One Hundred Twenty-Two Thousand Nine Hundred Thirty Dollars (\$122,930.00) for workers’ compensation and One Hundred Thirty-Eight Thousand Seventy Dollars (\$138,070.00) for other than workers’ compensation) for the first extension option, (ii) Two Hundred Seventy-Four Thousand Fifty Dollars (\$274,050.00) (allocated and billed separately as One Hundred Twenty-Nine Thousand Seventy-Eight Dollars (\$129,078.00) for workers’ compensation and One Hundred Forty-Four Thousand Nine Hundred Seventy-Two Dollars (\$144,972.00) for other than workers’ compensation) for the second extension option, and (iii) Two Hundred Eight-Seven Thousand Seven Hundred Fifty Dollars (\$287,750.00) (allocated and billed separately as One Hundred Thirty-Five Five Hundred Thirty Dollars (\$135,530.00) for workers’ compensation and One Hundred Fifty-Two Thousand Two Hundred Twenty Dollars (\$152,220.00) for other than workers’ compensation) for the third extension option, is hereby approved, and the Mayor, or his designee, is hereby authorized to execute as many copies of the Agreement, as well as to take all additional undertakings related thereto, as may be necessary.

SECTION 2. This Ordinance shall become effective upon its passage by City Council and approval by the Mayor.

First Reading..... May 22, 2025
Second Reading..... May 22, 2025
Third Reading.....

Passed by City Council,

President of City Council

ATTEST: _____
City Clerk

Approved this ____ day of _____, 2025.

Mayor

SYNOPSIS: This Ordinance authorizes the City to execute an agreement with PMA Management Corp. for third-party claim administrative services for the period of one (1) year from July 1, 2025 through June 30, 2026, with the option of three (3) one-year extensions thereafter.

FISCAL IMPACT STATEMENT: The fiscal impact of this Ordinance is a total estimated price of: (i) Two Hundred Forty-Eight Thousand Five Hundred Dollars (\$248,500.00) for the first year of the agreement; (ii) Two Hundred Sixty-One Thousand Dollars (\$261,000.00) for the second year of the Agreement, if the first extension option is exercised; (iii) Two Hundred Seventy-Four Thousand Fifty Dollars (\$274,050.00) for the third year of the Agreement, if the second extension option is exercised; and (iv) Two Hundred Eight-Seven Thousand Seven Hundred Fifty Dollars (\$287,750.00) for the fourth year of the Agreement, if the third extension option is exercised.

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EXHIBIT A

AGREEMENT FOR THIRD-PARTY CLAIM ADMINISTRATIVE SERVICES

THIS AGREEMENT FOR THIRD-PARTY CLAIM ADMINISTRATIVE SERVICES (this “**Agreement**”) for third-party claim administrative services (“**TPA services**”) made as of the 1st day of July, 2025, by and between PMA Management Corp. (“**PMA**”), a corporation duly incorporated under the laws of the Commonwealth of Pennsylvania, whose principal offices are located at 380 Sentry Parkway, Blue Bell, Pennsylvania 19422 and the City of Wilmington (“**Client**”), a political subdivision of the State of Delaware, whose principal place of business is located at 800 N. French Street, 4th Floor, Wilmington, Delaware 19801.

RECITALS

Client is authorized by the State of Delaware to self-insure its workers’ compensation program, commercial automobile, general liability, professional liability, and property insurance program;

PMA, a duly authorized provider of third-party administrator (“**TPA**”) services in the State of Delaware, hereby agrees to provide Client TPA and other services which are more fully described herein; and

Client, having selected PMA to provide TPA and other services, desires to enter into an agreement with PMA on the terms and conditions set forth herein.

ACCORDINGLY, in consideration of the foregoing and the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. DEFINITIONS

- a) “**ALAE**” shall mean any cost or expense in connection with the administration, investigation, adjustment or defense of claims on behalf of Client.
- b) “**Claim File**” shall mean the file, either electronic or paper, for any open or closed claim which is provided to PMA at the inception of this Agreement or created during this Agreement.
- c) “**Indemnity Claim**” shall mean any reported workers’ compensation claim that is not a Medical Only Claim or Record Only Claim.
- d) “**Clinical Case Manager**” shall mean a nurse who provides either on-site or telephonic medical management services in connection with workers’ compensation claims.
- e) “**Medical Only Claim**” shall mean any reported workers’ compensation claim meeting all of the following criteria: (1) there is no (a) subrogation activity, (b) litigation activity and the claim is not otherwise contested, (c) indemnity paid, salary in lieu of indemnity paid, or time lost from work beyond the state prescribed waiting period, (d) investigation or review regarding compensability or liability assessment, or (e) carrier report, excess reporting requirement, Client meeting (other than a routine meeting where the claim is noted), or settlement authority approval; (2) the claim is open for less than twelve (12) months from the date of injury or accident; and (3) total paid amount does not exceed \$3,500.

- f) **“Qualified Claim”** shall mean any commercial automobile, general liability, professional liability, property, or workers’ compensation Indemnity Claim, Medical Only Claim, or Record Only Claim occurring within the term of this Agreement, as well as any Takeover Claim that PMA agrees to service under this Agreement and any commercial automobile, general liability, professional liability, property, or workers’ compensation Indemnity Claim, Medical Only Claim, or Record Only Claim serviced under the prior agreement between the parties. Multiple Qualified Claims may exist as a result of a single occurrence (e.g. both bodily injury and property damage claims can result from a single occurrence).
- g) **“Record Only Claim”** shall mean any incident reported for statistical purposes only and specifically identified as a Record Only Claim at the time of the initial report, with no (1) reserve, (2) involvement of PMA personnel for follow up, outreach, or any other activity other than recording the incident in PMA’s system, (3) subrogation activity, (4) litigation activity and the claim is not otherwise contested, (5) payment of any type required or time lost from work, (6) investigation or review regarding compensability or liability assessment, or (7) carrier report, excess reporting requirement, Client meeting, or settlement authority approval.
- h) **“Takeover Claim”** shall mean any open claim which has been: (1) administered by Client or Client’s TPA prior to the inception of this Agreement and (2) subsequently transferred to PMA for servicing on or after the inception of this Agreement. Closed claims with accident dates prior to the Effective Date (as defined below) and subsequently reopened during the term of this Agreement will be considered Takeover Claims.

2. TERM

This Agreement is effective beginning July 1, 2025 (**“Effective Date”**) for a term of one (1) year until June 30, 2026 (**“Year One”**); thereafter, Client shall have the option to extend this Agreement for up to three (3) one-year options subject to a five percent (5%) increase on all fees. Each extension option may be exercised by Client individually. The first extension option would be for the period of July 1, 2026 through June 30, 2027 (**“Year Two”**), the second extension options would be for the period of July 1, 2027 through June 30, 2028 (**“Year Three”**), and the third extension option would be for the period of July 1, 2028 through June 30, 2029 (**“Year Four”**).

3. TPA SERVICES

- a) PMA shall provide customary and appropriate commercial automobile, general liability, professional liability, property, and workers’ compensation claim handling services for all Qualified Claims, including unlimited Takeover Claims. Specifically, with regard to:
 - i. Indemnity Claims - PMA will provide the services required to make a determination regarding compensability, make reserve recommendations to Client, pay the appropriate level of indemnity benefits and medical bills and expenses as provided in this Agreement, and under appropriate circumstances, attempt to resolve the claim.
 - ii. Medical Only Claims - PMA services will consist of the payment of medical bills and expenses as provided in this Agreement and making reserve recommendations to Client.
 - iii. Commercial Automobile, General, and Professional Liability Claims – PMA will provide the services required to make a liability determination, make reserve

recommendations to Client, set up claims with appropriate insurers, if required, and provide documents and feedback to their adjusters, attempt to settle the claim within the authority granted to PMA, and pay expenses and authorized settlement amounts. All services provided by PMA shall be in accordance with Client's other insurance arrangements applicable to the claim.

- iv. Property Claims – PMA will retain a vendor to make a damage assessment, report claims meeting the attachment point of an applicable policy, set up claims with appropriate insurers, if required, and provide documents and feedback to their adjusters, pursue subrogation where appropriate, and issue payment to Client if requested by Client. All services provided by PMA shall be in accordance with Client's other insurance arrangements applicable to the claim. Services shall not include representation of Client in the settlement of a claim or claims with Client's insurance company.
- v. Record Only Claims - PMA services will consist only of making a record of the injury or accident.

PMA shall determine whether a claim is an Indemnity Claim, a Medical Only Claim, a liability/property claim or a Record Only Claim for all purposes under this Agreement.

- b) PMA shall provide claim handling services for Qualified Claims from the date of first report of injury or first notice of claim for the term of this Agreement and continue to provide such services for existing claims and Takeover Claims for the term of this Agreement.
- c) PMA shall have full discretion to establish reserves for any Qualified Claim up to \$5,000 ("**Discretionary Authority Limit**"). PMA shall have full discretion to settle any Qualified Claim for an amount not to exceed the Discretionary Authority Limit and shall not need the approval of Client to consummate such settlement. This amount may be changed at any time by Client upon ten (10) days' prior written notice to PMA. Failure of PMA to settle a Qualified Claim within such limit, however, shall not subject PMA to any liability if a judgment, determination or a settlement of such Qualified Claim exceeds such limit.
- d) PMA is authorized to employ demand package nurse review and medical bill analysis services to evaluate and attempt to resolve demands related to bodily injury claims. The services may include, but not be limited to, (1) review and analysis of medical records and documents, (2) addressing claim relatedness for medical services and preexisting conditions, and (3) analysis of medical coding, and cost of care, injury and treatment.
- e) PMA shall file all required forms in the adjustment of Qualified Claims pursuant to the applicable workers' compensation statutory and regulatory scheme.
- f) Upon Client's request, PMA will provide status reports in accordance with PMA's customary business practice for all Qualified Claims having total incurred losses of \$50,000 or above.
- g) If requested by Client during the term of this Agreement, PMA will provide up to two (2) telephonic claim reviews annually based on mutually agreed upon claims selection.
- h) If requested by Client during the term of this Agreement, PMA will provide an annual stewardship report.

4. EXCESS REPORTING SERVICES

- a)** PMA will report to Client's excess insurance carrier or carriers ("**Carrier(s)**") all Qualified Claims serviced by PMA which meet Client's excess insurance reporting requirements, subject to the following requirements:
- i.** Client shall promptly provide PMA with copies of all applicable excess policies and contact information, as well as amended or modified policies, endorsements, and any excess claim reporting thresholds or standards agreed by Client and Carrier(s).
 - ii.** Client shall direct Carrier(s) to promptly provide PMA with copies of all claim notice confirmations, claim reports, and any similar reports provided by Carrier(s) to Client.
 - iii.** Client shall promptly provide claim data for conversion to PMA's computer system for purposes of determining historical loss information.
 - iv.** Client shall instruct its attorneys to advise PMA when in the attorney's professional opinion one of Client's claims meets the reporting thresholds or standards.
- b)** Client's failure to meet the requirements set forth above shall relieve PMA of its obligation to report excess claims to Carrier(s). PMA shall not be obligated to report any claims not serviced by PMA.
- c)** PMA will attempt to collect non-aggregate excess claim recoveries on behalf of Client for a period of sixty (60) days (from the date of the initial request), after which PMA will turn over pursuit of the outstanding balance to Client for the reimbursable funds and possess no further collection obligations or responsibilities for that outstanding balance.

5. MANAGED CARE SERVICES

- a)** Client agrees to exclusively utilize the following PMA managed care services:
- i.** PMA's medical bill review and repricing services, which may include, but are not limited to:
 - 1.** reviewing medical documents for appropriateness, relatedness to the injury or accident, unbundling, and conformity to applicable fee schedule or usual and customary re-pricing; and
 - 2.** utilizing PMA's complex bill review process to review certain medical bills for possible additional savings.
 - ii.** PMA's managed care networks which include:
 - 1.** traditional networks (e.g. physicians and medical facilities);
 - 2.** specialty networks (e.g. providers of durable medical equipment, diagnostic testing, physical therapy, pain management, home health, and dental services);

3. state specific networks (e.g. California Medical Provider Network, Texas Health Care Network); and
 4. out-of-network services from PMA and third-party vendors.
- iii. PMA's pharmacy benefit management program (e.g. bill repricing, home-delivery, brand-to-generic conversion, customized formularies, narcotic management, drug utilization review).
 - iv. Utilization of clinical case management services when any of the following criteria are met:
 1. surgical procedure;
 2. spinal cord injury;
 3. occupational disease or a pandemic requiring medical treatment;
 4. third degree burns;
 5. multiple complex fractures;
 6. crush injuries requiring poor initial medical outcome;
 7. head injuries with cognitive impairment or loss of consciousness;
 8. immediate post-injury hospital admission;
 9. multiple trauma; or
 10. adjuster identified assignments.

Continued clinical case management will proceed at the discretion of PMA.

- b) PMA shall also provide the Medicare related services set forth in Exhibit A to this Agreement, which is attached hereto and incorporated herein.
- c) PMA's Clinical Case Managers are authorized to provide PMA's pharmacy intervention services on all claims at PMA's discretion to assist with seeking improved claim outcomes. PMA's pharmacy benefit management program will review incoming claimant medications which are outside of Centers for Disease Control guidelines and recommend an intervention strategy which may include potential weaning, drug testing, and peer reviews to attempt to mitigate long term dependency at the point of sale.
- d) PMA is authorized to employ utilization review services for evaluation of reasonableness, necessity, duration, and frequency of treatment or medication. These services may include, but are not limited to the following:
 - i. Prospective Review - a review prior to treatment or admission conducted by an experienced registered nurse to validate the necessity, frequency, and duration of treatment.
 - ii. Concurrent Review - a review during the course of treatment conducted by an experienced registered nurse to evaluate treatment and planned procedures and establish target completion dates.
 - iii. Retrospective Utilization Review- a review after the completion of treatment conducted by an experienced registered nurse to identify inappropriate treatment utilization.

- iv. Peer Review or Physician Advisor Review - physician-to-physician review and contact to resolve questions related to treatment and diagnosis.
- e) PMA is authorized to employ prospective and concurrent utilization review services that may also include the use of physician advisor review such as for cases that are complicated and warrant physician review to resolve treatment or diagnosis questions.
- f) Upon Client request, PMA will utilize PMA Care24 point of injury nurse triage to assist with determining the direction of care when an injury is reported. This service may include, but is not limited to, a Clinical Case Manager providing self-care recommendations to the claimant, first notice of loss reporting, direction of care into the network or to a panel provider, or a recommendation for use of emergency room care.
- g) PMA may retain third-party vendors for the purpose of providing specific medical management services.

6. RISK CONTROL SERVICES

- a) Upon request, PMA will:
 - i. perform a risk management assessment;
 - ii. prepare a more detailed analysis of specific risk-related issues, or prepare custom risk control strategies and implementation plans;
 - iii. provide the following risk control services: industrial hygiene assessment, ergonomic risk assessment, and consultation services (e.g. strategic risk control plan facilitation, and employee communication initiatives, as well as management, supervisor, and employee development programs, and occupational health service programs);
 - iv. create and administer a specific risk control service project mutually agreed upon with Client.
- b) Any risk control services provided are solely to assist Client in reducing Client's exposure to risk of loss. Evaluations concern only such conditions and practices as may be evident at the time of PMA's visits. **THE SERVICES PERFORMED UNDER THIS AGREEMENT BY PMA SHALL NOT BE CONSTRUED AS APPROVAL BY PMA OF CLIENT'S OPERATIONS, PROCESSES, SERVICES, PRODUCT DESIGN, OR PRODUCT FUNCTION. THE PARTIES AGREE THAT, WHILE PMA WILL PERFORM RISK CONTROL SERVICES WITHIN INDUSTRY STANDARDS, NO GUARANTEES OR OTHER SIMILAR ASSURANCES CAN BE MADE BY PMA THAT IT HAS DISCOVERED ALL OF CLIENT'S PAST, CURRENT, OR FUTURE RISKS OR HAZARDS. THE PARTIES FURTHER AGREE THAT BY PROVIDING THE SERVICES SPECIFIED HEREUNDER, PMA IS NOT MAKING ANY WARRANTY, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY OR FITNESS OF CLIENT'S PRODUCTS OR PROCESSES FOR A PARTICULAR PURPOSE, COMPLIANCE WITH ANY LAW OR REGULATION, OR ANY OTHER WARRANTY, AND ANY LIABILITY OF PMA, ITS AFFILIATES OR AGENTS, FOR DIRECT, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING LOST**

PROFITS, FROM ANY CAUSE WHATSOEVER, IS EXPRESSLY DISCLAIMED, EVEN IF PMA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION 6 OF THIS AGREEMENT SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

7. RISK MANAGEMENT INFORMATION SYSTEM (“RMIS”)

a) PMA will provide the following RMIS services:

- i.** upon request, a standard conversion of Client’s existing claims data into PMA’s claim system. A standard conversion shall be from one electronic source and a customized conversion shall be from two (2) or more sources;
- ii.** access to PMA’s RMIS for up to three (3) users, provided Client agrees to the terms and conditions of the applicable license agreement when first accessing PMA’s RMIS;
- iii.** standard reports available through PMA’s RMIS;
- iv.** One (1) monthly data file transfer to a single carrier or RMIS system (“**Standard Data Feed**”);
- v.** customized reporting reasonably acceptable to PMA, subject to additional terms, conditions, and fees as may be agreed upon by the parties. PMA will provide a reasonable estimate of the costs of preparation of any such reports to Client in advance;

b) PMA warrants PMA’s RMIS against malfunctions, errors, or loss of data which are due solely to errors on its part. If Client notifies PMA in writing and furnishes adequate documentation of any such malfunction, error, or loss of data, then:

- i.** in the event of a malfunction, error, or loss of data, upon notice from Client within twenty (20) days of the event, PMA will recreate the reports designated by Client without an additional fee, using data as of the recreation date.
- ii.** the maximum and only liability of PMA for such malfunction, error, or loss of data shall be its obligation to recreate reports or regenerate data as described above.

c) THE WARRANTIES STATED IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL PMA BE LIABLE FOR ANY LOSS OR DAMAGE TO REVENUES, PROFITS, OR GOODWILL OR OTHER DIRECT, SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND RESULTING FROM ITS PERFORMANCE OR FAILURE TO PERFORM UNDER THIS SECTION, INCLUDING WITHOUT LIMITATION ANY INTERRUPTION OF BUSINESS, EVEN IF PMA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THIS SECTION OF THIS AGREEMENT SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

d) Obligations of Client regarding use of PMA’s RMIS:

- i. Client shall adhere to state and federal law with regard to protecting the privacy of any claimant whose information may appear in PMA's RMIS. Client agrees to use all available security features and to notify PMA promptly of all potential and actual breaches of the system.
 - ii. Client agrees that no information in PMA's RMIS will be used as a pretext for retaliatory or other illegal or unfair discriminatory employment practices in violation of any federal or state statute or regulation.
- e) General Provisions regarding PMA'S RMIS:
 - i. Client agrees to limit access to PMA's RMIS to those persons who perform the essential functions of claim and risk management, including protecting security access passwords and communications, except that this provision is not intended to limit Client from generating and using reports and statistics for legitimate business purposes.
 - ii. Unless otherwise stated, Client's access to PMA's RMIS will end upon termination of this Agreement.

8. LITIGATION SUPPORT SERVICES

- a) In the event a Qualified Claim managed by PMA pursuant to this Agreement: (x) enters into litigation; or (y) is scheduled for a workers' compensation hearing; or (z) involves a potential third-party (subrogation) claim (collectively, (x), (y) and (z), "**Disputed Claim**"), PMA will:
 - i. make recommendations to Client regarding claim matters relevant to the Disputed Claim;
 - ii. assist Client in the retention and appointment of counsel selected by Client to represent Client in and regarding such legal matters, and assist Client in the selection of expert witnesses and vendors; and
 - iii. pursue all appropriate subrogation claims as directed by Client.
- b) If requested by Client, PMA will manage Disputed Claims in accordance with PMA's "Defense Counsel Guidelines." PMA shall remain authorized to settle any Disputed Claim within the Discretionary Authority Limit or an amount in excess of the Discretionary Authority Limit that is authorized by Client.
- c) PMA is authorized to utilize legal bill analyzer services to review and process legal invoices from all defense counsel utilized by Client.

9. SECTION 111 REPORTING

- a) Client understands and acknowledges that it is a "Responsible Reporting Entity" ("**RRE**") as defined by the Centers for Medicare and Medicaid Services ("**CMS**") and is responsible for the reporting requirements as set forth in Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007.
- b) Client authorizes PMA or PMA's designee to undertake Client's Section 111 reporting requirements as Client's "Account Manager/Reporting Agent" as it relates to Client's Qualified

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Claims. Client further agrees to fully cooperate with PMA, including the execution of any documents necessary for such authorization.

- i. PMA shall not provide any Section 111 reporting services for Client's Record Only Claims.
 - ii. PMA shall not undertake Section 111 reporting activities for Client's claims which were converted from Client's prior TPA to PMA but were never serviced by PMA.
- c) Client acknowledges and agrees to provide PMA with complete, accurate, and timely data, as well as completed CMS documentation, for Section 111 reporting purposes.
- d) Upon receipt of complete, accurate claim data, PMA shall commence reporting of Client's data to CMS and shall continue for as long as PMA provides claims handling services for Client's Qualified Claims.
- e) PMA shall have no liability for any failure of (i) Client to register as a RRE; (ii) Client to execute any documents necessary to authorize PMA or PMA's designee as its "Account Manager/Reporting Agent;" or (iii) Client or its prior TPA to report Client's claims when they were first required to do so.

10. FUNDING of CLAIMS and EXPENSES

PMA will continue to establish a non-interest bearing checking account in PMA's name ("**Payment Account**") with PMA's bank, which is to be funded by Client but which PMA will administer for the purposes of paying Qualified Claims and ALAE, in accordance with the procedures set forth in this Section. PMA will provide Client with a monthly schedule (also known as a payment register) outlining all claim payments, ALAE, and correction items funded by PMA and will contain the name of the payee, date of payment, amount of payment, and claim number for all transactions occurring during the prior month.

- a) PMA will automatically withdraw funds from Client's account at Client's bank through the Automated Clearing House System ("**ACH Debit**") for deposit to the Payment Account. ACH Debit activities will occur on a monthly basis. Client acknowledges that it has signed an "Authorization to Access Account Form" prior to the inception of PMA's services. The Payment Account will initially be funded by Client in the amount equal to one and one half (1 ½) months of estimated claims payments and ALAE which amount may be revised at PMA's discretion at any time based upon actual claims and expense payment history. If at any time the Payment Account balance is depleted by seventy-five percent (75%) or more, PMA will automatically withdraw funds sufficient to replenish the Payment Account.
- b) Should Client fail at any time to maintain the required funding after receiving notification from PMA, PMA will stop providing all services, including ceasing to pay claims and expenses, until such funding has been restored and any related PMA bank charges, fees, or penalties have been paid by Client.
- c) PMA is not obligated to pay any claims or expenses on behalf of Client unless the required funds are made available by Client to PMA to do so. Should PMA advance funding on the part of Client, then Client shall immediately reimburse PMA or PMA will stop providing services, including ceasing to pay claims and expenses, until full reimbursement has been received and any related

PMA bank charges, fees, or penalties have been paid by Client. PMA shall have no liability to Client for any penalties, fines or assessments incurred due to Client's failure to maintain sufficient funds in the Payment Account or PMA's election to stop performing services as a result thereof.

d) This Section 10 of this Agreement shall survive the termination of this Agreement.

11. CLAIM HANDLING SERVICE FEE

a) For claim handling services to be rendered under this Agreement for Year One, Client agrees to pay PMA a fee of \$248,500, allocated and billed separately as \$117,044 for workers' compensation, and \$131,456 for other than workers' compensation to be paid in twelve (12) equal installments of \$20,709, allocated and billed separately as \$9,754 for workers' compensation and \$10,955 for other than workers' compensation. For Year Two, if extension occurs, Client agrees to pay PMA a fee of \$261,000, allocated and billed separately as \$122,930 for workers' compensation, and \$138,070 for other than workers' compensation to be paid in twelve (12) equal installments of \$21,750, allocated and billed separately as \$10,244 for workers' compensation and \$11,506 for other than workers' compensation. For Year Three, if extension occurs, Client agrees to pay PMA a fee of \$274,050, allocated and billed separately as \$129,078 for workers' compensation, and \$144,972 for other than workers' compensation to be paid in twelve (12) equal installments of \$22,838, allocated and billed separately as \$10,757 for workers' compensation and \$12,081 for other than workers' compensation. For Year Four, if extension occurs, Client agrees to pay PMA a fee of \$287,750, allocated and billed separately as \$135,530 for workers' compensation, and \$152,220 for other than workers' compensation to be paid in twelve (12) equal installments of \$23,980, allocated and billed separately as \$11,295 for workers' compensation and \$12,685 for other than workers' compensation. If during the term of this Agreement, Client submits more than ten (10) claims/loss lines that PMA determines arise out of, result from, or are otherwise related to any event, occurrence, disease, happening, or condition or any series or group of related or like events, occurrences, diseases, happenings, or conditions, then the following additional claim handling fees shall apply:

- i.** \$650 for each commercial automobile bodily injury claim;
- ii.** \$395 for each commercial automobile property damage claim;
- iii.** \$325 for each commercial automobile physical damage claim;
- iv.** \$650 for each general liability bodily injury claim;
- v.** \$395 for each general liability property damage claim;
- vi.** \$995 for each professional liability claim;
- vii.** \$595 for each first party property claim;
- viii.** \$850 for each Indemnity Claim;
- ix.** \$125 for each Medical Only Claim; and

- x. \$40 for each Record Only Claim.

If PMA determines that additional claim handling fees apply, then PMA may bill such additional claim handling fees as they are incurred or in any other reasonable manner as PMA shall determine.

12. OTHER FEES

As compensation for the TPA services provided in this Agreement, Client agrees to pay PMA the fees identified in the fee schedule attached to this Agreement as Exhibit A and incorporated into this Agreement by reference as an integral part of this Agreement. Payment shall be due as fees are incurred. Fees that are due annually or monthly shall be due on the Effective Date of this Agreement and each annual or monthly anniversary thereafter, as applicable. The fees set forth in Exhibit A can be changed by PMA if new arrangements are made by PMA and its third-party vendors. PMA shall provide Client notice of any change in fees within ten (10) business days of the implementation of the change.

13. PAYMENT of FEES

PMA will bill Client for fees when due. If the bills are not paid within thirty (30) days after receipt, PMA reserves the right to stop providing services, including ceasing to pay claims and expenses, until such bills have been paid in full.

14. CONFIDENTIALITY AND DATA SECURITY

- a) The parties acknowledge and agree that information emanating from either party's business in any form may be confidential and proprietary in nature. Each party will use its reasonable best efforts during and after the termination of this Agreement to preclude the duplication, use, or disclosure of any such confidential and proprietary information to any third party, unless such duplication or disclosure is specifically authorized under this Agreement or otherwise by the party claiming ownership. In addition, the parties agree that information contained in a Claim File or PMA's RMIS or otherwise provided in the context of this relationship shall be considered confidential and proprietary and may constitute privileged and/or attorney work product protected from discovery by law and/or rules of court. Therefore, neither party will release any such information unless:

- i. compelled by an order of a court of competent jurisdiction;
- ii. mandated by an insurance code, claim practices act, workers' compensation law, or other applicable law or regulation to provide information to the claimant or other person; or

- iii. mandated by applicable court discovery rules.

- b) If there is an obligation to release part but not all of the information, the part deemed not responsive will be withheld, but nothing in this Agreement is intended to abrogate the duty of either party to comply in good faith with discovery requests.

- c) Each party agrees that the information contained within PMA's RMIS must be treated in a confidential manner by all users who may gain authorized access to PMA's RMIS.

- d) Client agrees PMA (or its representative) may de-identify and thereafter utilize Client's information for benchmarking and related purposes.
- e) PMA processes on behalf of Client personal information disclosed to it by Client and personal information that Client has asked PMA to collect for the purpose of administering Qualified Claims in accordance with this Agreement (including managed care services, reporting, and other related support services) and providing risk control services. PMA shall not sell or share with third parties for marketing purposes personal information it collects pursuant to this Agreement. PMA shall not retain, use, or disclose personal information relating to Client's injured workers for any commercial purpose other than for the purpose of administering Qualified Claims in accordance with this Agreement (including managed care services, reporting, and other related support services), providing risk control services, or as permitted by applicable law. PMA may disclose information to vendors to the extent necessary or advisable to provide the services required under this Agreement; provided that any vendors so chosen shall be authorized in advance by Client and shall have responsibility to both PMA and Client to satisfy these confidentiality requirements.
- f) Where applicable, (1) PMA shall comply with all applicable sections of the California Consumer Privacy Act and the regulations promulgated thereunder as in effect from time to time (the "CCPA"), similar laws in Colorado, Connecticut, Delaware, Maryland, and New Jersey, and other states where such laws exist or are pending or proposed from time to time, and PMA shall notify Client if it determines it is unable to comply, (2) Client shall have the right, upon notice, to take reasonable and appropriate steps to stop and remediate PMA's unauthorized use of personal information under the CCPA or other such laws, and (3) Client shall inform PMA of any consumer request made pursuant to the CCPA or other such laws with which it must comply.
- g) Upon Client's request, PMA shall provide Client with its most recently completed SOC 2 or equivalent reports ("**SOC Reports**"). Client shall treat all SOC Reports as confidential information and shall not disclose any SOC Report to a third party, except that disclosure shall be permitted to Client's internal and external auditors, attorneys, and other advisers. Notwithstanding the foregoing, if Client receives a request under the Delaware Freedom of Information Act ("**FOIA**") for documents that include a SOC Report, Client shall promptly notify PMA of the request and provide Client's Law Department's opinion on whether disclosure of the SOC Report is required. If Client's Law Department determines that disclosure of the SOC Report is required pursuant to FOIA, Client shall be free to disclose the SOC Report in accordance with the deadline set forth by FOIA.
- h) Client shall own the right, title, and interest in and to the data that is related to the services provided for herein.
- i) PMA shall recover and return Client data to Client within thirty (30) days of termination of this Agreement in a file format reasonably requested by Client and destroy all copies of Client data in its possession or possession of any vendor in a way the Client data cannot reasonably be recovered and shall certify such destruction to Client. PMA shall be entitled to retain such data as required by law and/or regulatory requirements.
- j) Client shall have access to all data at all times.

- k)** Intentionally left blank.
- l)** With the exception of USB devices, all non-public data shall be encrypted in transit and at rest.
- m)** PMA certifies that it has a documented information security program established and maintained in accordance with a recognized standard such as NIST Security Framework.
- n)** PMA certifies that it has a documented protocol for prompt Client notification when it is impacted by an incident that compromises the security, confidentiality, or integrity of Client data wherein Client will be notified as soon as possible, but certainly within seventy-two (72) hours of any incident or breach by email and text to the managers overseeing this Agreement's operation for Client as well as the CIO or CISO of Client.
- o)** This Section 14 of this Agreement shall survive the termination of this Agreement.

15. NATURE of RELATIONSHIP

- a)** PMA agrees to perform the services described in this Agreement as an independent contractor and not as an agent or employee of Client. Client retains no control or direction over PMA, its employees or agents, or over the detail, manner or methods of the performance of the services described herein.
- b)** PMA retains third-party vendors to provide services under this Agreement and PMA's charges to Client may vary from the itemized charge to PMA. Client acknowledges and agrees that PMA may receive allowances or payments from vendors in connection with PMA's utilization of vendor services as consideration for PMA's efforts in the management, administration and integration of the services. If Client requests the use of a vendor not offered by PMA ("Client Vendor"), PMA may disapprove the use of the Client Vendor in its sole discretion. If PMA does not disapprove the Client Vendor and the Client Vendor services Client's Qualified Claims, then Client shall be responsible for all aspects of managing and monitoring the Client Vendor's performance, including service levels, costs and data security requirements, subject to the cyber security provisions for vendors above. Client authorizes and directs PMA to share with the Client Vendor information in its possession related to the Qualified Claims being serviced by the Client Vendor. PMA shall have no liability with respect to any act or omission of the Client Vendor and Client shall indemnify, defend and hold harmless PMA from any and all liabilities resulting from PMA's interaction with a Client Vendor. So long as funds are available in the Payment Account, PMA shall pay on behalf of Client all invoices submitted by a Client Vendor to PMA in the amount set forth in such invoice.

16. TERMINATION

- a)** This Agreement may be terminated:
 - i.** by either party at its convenience upon sixty (60) days' notice to the other party;
 - ii.** by mutual agreement of the parties;
 - iii.** by PMA if Client is in default in payment of any fees or expenses due hereunder or fails to maintain the requisite claim funding levels as required herein and PMA has given Client prior written notice of such default five (5) days prior to the date set for termination;

- iv. by the non-breaching party if the other party breaches (other than a monetary breach) under any of the terms, covenants, and conditions hereunder and the non-breaching party has given the breaching party prior written notice of such breach twenty (20) days prior to the date set for termination and the breaching party has failed to cure such breach prior to the termination date;
 - v. by one party if the other party becomes insolvent or bankrupt, is placed into receivership, makes an assignment for the benefit of creditors, or is levied upon or sold by sheriff's sale;
 - vi. by PMA or Client if PMA fails to obtain any required state or federal licensing for providing services hereunder; or
 - vii. by PMA or Client if any state regulatory entity fails to approve or subsequently disapproves or revokes the self-insured status of Client. PMA or Client may choose to suspend all or part of PMA's obligations under this Agreement or terminate this Agreement with respect to a state or states where Client loses its self-insured status.
- b) This Agreement shall be deemed terminated upon its normal expiration.
- c) Upon termination of this Agreement, PMA will provide a final accounting of any amounts due either party. Client shall be responsible for payment of all fees incurred by PMA up to and including the date of termination. Upon final closing of the account, PMA shall return the Claim Files to Client in electronic form, as provided above. PMA may at its option keep a copy of the Claim Files for PMA's records, which shall be stored in a secure manner and treated as confidential as set forth above.
- d) Client and PMA acknowledge that certain approved indemnity, medical, and expense payments may still be in process of payment upon the date of termination. Therefore, Client agrees that Client will remain responsible for payment of any and all indemnity, medical, and expense payments which may be processed by PMA for a Qualified Claim, which shall include, at a minimum, the maintenance of a claim funding mechanism for at least forty-five (45) days after the Agreement terminates. In addition, PMA shall return to Client any outstanding checks remaining unpaid after termination. PMA shall not be responsible for Client's escheat obligations with regard to issued but unrepresented checks either before or after the termination of this Agreement.
- e) PMA may utilize the Payment Account for any outstanding amounts owed by Client to PMA prior to returning unallocated funding to Client.
- f) This Section 16 of this Agreement shall survive the termination of this Agreement. Nothing in this Section 16 of this Agreement shall limit any other remedy that may be available to PMA or Client.

17. INDEMNIFICATION, HOLD HARMLESS, and LIMITATION OF LIABILITY

- a) To the fullest extent permitted by law, Client shall indemnify, defend, and hold harmless PMA, and its parents, affiliates, officers, directors, employees, and agents, from and against all claims, losses, damages, costs, liability, penalties or expenses, including reasonable attorneys' fees, caused by or resulting from (i) claims from third parties alleging negligence or willful misconduct of

Client, its officers, directors, employees or agents; (ii) a disclosure of confidential or proprietary information by Client to any third party; or (iii) Client's failure to maintain the funding required by this Agreement in the Payment Account.

- b) To the fullest extent permitted by law, PMA shall indemnify, defend, and hold harmless Client, its affiliates, officers, directors, employees, and agents, from and against all claims, losses, damages, costs, liability or expenses, including reasonable attorneys' fees, caused by or resulting from claims from (i) third parties alleging negligence or willful misconduct of PMA, its officers, directors, employees, agents, subcontractors, consultants, or subconsultants or (ii) a disclosure of confidential or proprietary information by PMA to any third party. However, the parties agree that PMA, its directors, officers, agents or employees, will not be liable to Client or any third party for claims arising from PMA's performance under this Agreement in those cases where PMA acted with the informed consent of Client.
- c) Client agrees that it will not hold PMA liable for, or reduce the compensation of PMA with respect to, any failure of PMA to deliver any services resulting from (i) any failure to cooperate on the part of Client or the prior administrator, or (ii) any files for Takeover Claims which have not been properly maintained or are not delivered to PMA in good order.
- d) Promptly after the receipt by any party seeking indemnification under this Section 17 of this Agreement ("**Indemnatee**") of notice of the commencement of any action or the assertion of any claim against such Indemnatee by a third party, such Indemnatee shall give such indemnifying party written notice thereof and the indemnifying party shall have the right to undertake the defense of such action or claim. If the indemnifying party fails to defend or, after undertaking such defense, fails to prosecute or withdraws from such defense, the Indemnatee shall have the right to undertake the defense and settlement thereof at the indemnifying party's expense. If the indemnifying party is defending such action or claim, the Indemnatee may retain separate counsel at its sole cost and expense and may participate in the defense of such action or claim. An indemnifying party may only settle an action or claim with the consent of the Indemnatee, which consent shall not be unreasonably withheld or delayed. If the Indemnatee does not consent to a settlement proposed by the indemnifying party that includes a full release of Indemnatee from all claims at issue, the Indemnatee shall be responsible for any settlement, award, judgment, or damages incurred above the settlement amount proposed by the indemnifying party, as well as all costs and expenses, including reasonable attorneys' fees, incurred in the defense of the claims from the date of the proposal.
- e) The indemnification provided in this Section 17 of this Agreement represents the sole remedy for actions or claims brought by third parties.
- f) Neither party shall be liable to the other party for punitive or consequential damages.
- g) Client agrees that PMA's total liability to Client under this Agreement (whether in contract, tort, or otherwise) shall not exceed the amount of claim handling fees billed and collected by PMA during the 12-month period immediately preceding the date Client first notifies PMA in writing of any potential action or claim.
- h) Any claim under this Agreement must be brought by the party only after notice and demand within three (3) years of the event forming the basis of the claim.
- i) This Section 17 of this Agreement shall survive the termination of this Agreement.

18. NOTICES

All notices required to be given by one party to the other under this Agreement will be in writing and will be sent by first class US mail, postage prepaid, or by nationally recognized overnight carrier and will be addressed as set forth below or to such other address as may be designated in writing by either party in accordance with the provisions of this Agreement and will be effective upon receipt.

For Client: Charlotte B. Barnes, Director
Department of Human Resources
City of Wilmington
800 N. French Street
4th Floor
Wilmington, DE 19801

For PMA: President
PMA Management Corp.
380 Sentry Parkway
Blue Bell, PA 19422

With a copy to: General Counsel
PMA Management Corp.
380 Sentry Parkway
Blue Bell, PA 19422

19. NON-SOLICITATION of PMA'S EMPLOYEES

Client agrees not to directly solicit for employment, either as an employee or an independent contractor, employees of PMA during the term of this Agreement or for a period of one (1) year following its termination. The parties acknowledge the difficulty in determining a specific damage amount for breach of this Section 19 of this Agreement; therefore, as liquidated damages and not as a penalty, if Client breaches the terms of this section, Client shall pay PMA an amount equal to one (1) year's base salary of each employee hired. This Section 19 of this Agreement shall survive the termination of this Agreement.

20. ASSIGNMENT

This Agreement will be binding upon the parties, their successors, and permitted assigns. Client may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of PMA. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the assigning or delegating party of any of its obligations under this Agreement.

21. COOPERATION

- a) Client and its agents, representatives and employees will promptly report to PMA all notices of injuries, losses, or claims for which Client may be liable under its self-insurance program, and to provide all necessary documents and materials to PMA, including, but not limited to, excess policies, which are necessary to provide the services hereunder.

- b) Each party and its agents will cooperate fully with the other party in connection with its obligations hereunder and upon reasonable request, assist in the investigation, litigation, settlement, and/or defense of a particular Qualified Claim, and with respect to any incident or breach of information security. Upon prior notice from Client, all Claim Files will be open to Client's inspection at reasonable times, at the office of PMA. PMA may, at its own option within five (5) business days of such request, provide Client or Client's representative with limited access to PMA's RMIS for the purpose of reviewing Claim Files electronically.
- c) This Section 21 of this Agreement shall survive the termination of this Agreement.

22. WARRANTIES and REPRESENTATIONS

- a) By affixing its authorized signature below, Client warrants that it has been duly authorized and/or otherwise possesses all requisite authority and may lawfully enter into this Agreement.
- b) By affixing its authorized signature below, PMA warrants that it has been duly authorized and/or otherwise possesses all requisite authority and may lawfully enter into this Agreement.

23. MODIFICATION

PMA may seek to modify fees if: (i) PMA's fees and charges were based upon inaccurate or erroneous data, or Client's business changes materially in the nature or volume of business or claims from what was originally contemplated at the inception of the Agreement; or (ii) during the term of this Agreement, legislative and/or regulatory changes materially impact or change the scope of PMA's services or responsibilities. If the parties are unable to reach an agreement with regard to the modification, then either party may terminate this Agreement with sixty (60) days' written notice to the other party, with the current fee structure remaining in effect. PMA will continue to provide services for the 60-day notice period, after which PMA will return all Claim Files to Client and submit a final billing to Client.

24. MISCELLANEOUS

- a) **Governing Law; Jury Trial Waiver; Venue.** This Agreement and all disputes relating in any way to this Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its principles of conflicts of laws. Both parties agree to waive any right to have a jury participate in the resolution of any dispute or claim between the parties arising under the Agreement. All disputes in connection with this Agreement shall be resolved by a court of competent jurisdiction located in New Castle County, Delaware. PMA agrees to submit exclusively to the jurisdiction and venue of said court.
- b) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof, and supersedes all prior written or oral agreements, representations, warranties, negotiations, or understandings. The parties further represent and warrant that they have not relied on any representations, warranties, or statements as an inducement to entering this Agreement other than what is expressly written herein.
- c) **No Waiver.** No delay or omission on the part of any party in exercising any right hereunder will operate as a waiver of such right or of any other right under this Agreement. A waiver on any one occasion will not be construed as a bar to or waiver of any right or remedy on any other occasion.

- d) **Standard of Care.** PMA shall discharge its obligations under this Agreement with commercially reasonable care, skill, prudence and diligence.
- e) **Force Majeure.** The obligations of either PMA or the Client under this Agreement will be suspended for the duration of any force majeure applicable to that party. The term “force majeure” means any cause not reasonably within the control of the party claiming suspension, including without limitation, an act of God, industrial disturbance, war, riot, weather related disaster, earthquake, and/or governmental action. Client’s obligation to fund its claims and expenses shall continue uninterrupted during this Agreement and shall not be subject to a force majeure event. The party claiming suspension pursuant to this section of the Agreement shall take all commercially reasonable steps to resume performance as soon as possible without incurring unreasonably excessive costs.
- f) **Severability.** The provisions of this Agreement are to be deemed severable, and the invalidity or unenforceability of any provision will, unless material and going to the essence of the Agreement as a whole, not affect or impair the remaining provisions which will continue in full force and effect.
- g) **Counterparts; Electronic Signature.** This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall constitute a single instrument. The intentional action in electronically signing this Agreement shall be evidence of consent to be legally bound by this Agreement. Further, the parties agree that this Agreement may be signed and/or transmitted by electronic mail of a .PDF document or electronic signature (e.g., DocuSign or similar electronic signature technology) and thereafter maintained in electronic form, and that such electronic record shall be valid and effective to bind the party so signing as a paper copy bearing such party’s hand-written signature. The parties further consent and agree that the electronic signatures appearing on this Agreement shall be treated, for purpose of validity, enforceability, and admissibility, the same as hand-written signatures. Each party agrees not to contest the admissibility or enforceability of the electronically signed copy of this Agreement in any proceeding arising out of this Agreement.
- h) **Captions.** The captions and headings to the various Sections of this Agreement have been inserted for convenience of reference only and shall not have the effect of amending or changing the express terms or provisions of this Agreement.
- i) **Ambiguities.** The parties agree that the terms and language of this Agreement are the result of detailed negotiations between the parties and, as a result, there shall be no presumption that any ambiguities in this Agreement shall be resolved against either party. Any controversy over the construction of this Agreement shall be decided in light of its business purposes, without regard to events of authorship or negotiation. In the event of any inconsistency or conflict between the terms or provisions of this Agreement and the terms or provisions of any other pre-existing or contemporaneous document or agreement as to the subject matter of this Agreement, the terms and provisions of this Agreement shall control and shall supersede the terms or provisions of such other document or agreement.
- j) **Calculation of Time.** All references herein to days shall be to calendar days, unless an express reference is made to business days. In the event the last day for compliance falls on a Saturday, Sunday, or holiday, the period for compliance shall be deemed to include the following business day.

- k) **Amendment.** Except as otherwise set forth in this Agreement, this Agreement will not be amended except as mutually agreed in a writing signed by both parties.
- l) **Use of Client Name and/or Logo.** During the term of this Agreement, Client authorizes PMA to utilize Client's name and/or logo in promotional or marketing efforts.
- m) **Insurance Coverage.** PMA shall obtain and provide insurance coverage for itself and all of its employees, if any, used in connection with the Agreement as follows: workers' compensation as required by law; commercial general liability insurance coverage in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate; cyber insurance coverage in the minimum amount of Five Million Dollars (\$5,000,000.00); and professional liability coverage in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate. All insurance required hereby, except workers' compensation and professional liability, shall be provided on a policy(s) that specifically names the City of Wilmington and its officials and employees as additional insureds. Such policies shall be issued by a Delaware-admitted, financially sound carrier and/or carriers with at least an A rating, except for cyber insurance, which shall be issued by a financially sound and at least A rated carrier and/or carriers and shall be subject to the reasonable approval of Client. PMA shall provide Client with a certificate of insurance evidencing the above stated coverage and naming Client as an additional insured with respect to the commercial general liability and cyber insurance coverage.
- n) **Use of Subcontractors.** Client may, from time to time, send written requests to PMA for PMA to reasonably identify, as PMA confidential information, any use of qualified consultants, subconsultants, or subcontractors to perform the services specific to Client and services otherwise required under the Agreement. For avoidance of doubt, PMA is responsible for any such use of consultants, subconsultants, or subcontractors.
- o) **Discrimination and Harassment.** In the performance of this Agreement, the parties agree that they shall not discriminate or harass, or permit discrimination or harassment, against any person because of age, sex, marital status, race, religion, color, national origin or sexual orientation.
- p) **Records.** PMA shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by Client to assure proper accounting for all project funds. Such records shall be made available for audit purposes to Client or its authorized representatives upon thirty (30) days' written request.
- q) **Reports and Information.** PMA, at such time and in such form as Client may reasonably require, shall furnish Client such reports as Client may request pertaining to the work or services undertaken pursuant to this Agreement. Client acknowledges that reports will in no event contain confidential information, unless Client first agrees in writing to protect the confidentiality of such information.
- r) **Business License.** To the extent required under applicable law, PMA shall obtain and/or maintain an appropriate business license from the City of Wilmington Department of Finance.

- s) **Taxes.** To the extent required under applicable law, PMA shall withhold, if applicable, City of Wilmington wage taxes from the compensation of its officers, agents, and employees as required by the City of Wilmington wage tax law.
- t) **Findings Confidential.** Subject to the terms of this Agreement and requirements of applicable law, all of the following, to the extent part of the services to be provided in this Agreement (if at all), drawings, plans, designs, reports, analyses, specifications, information, examinations, proposals, illustrations, copies, maps, graphics, slides, and documents prepared, assembled, drafted or generated by PMA under this Agreement are confidential, and PMA agrees that such documents shall not be made available to anyone, without the prior written approval of Client.
- u) **Covenants.** PMA covenants that it will comply with all applicable local, state, and federal laws and regulations in the performance of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the day and year first written above.

PMA MANAGEMENT CORP.

CITY OF WILMINGTON

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

Exhibit A – Other Services Fee Schedule

All fees are billed as incurred unless specifically agreed otherwise.

<u>Service Type</u>	<u>Amount</u>
<u>Managed Care:</u>	
Medical and pharmacy bill review and repricing	\$9.50 per bill, plus 35% of savings over and above fee schedule and/or usual and customary subject to a \$20,000 per bill cap
Utilization review	\$125 per review
Clinical case management services	\$103 per hour
Catastrophic Clinical Services	\$185 per hour
Medical consultant review	\$255 per review
PMA Care 24	\$103 per call
PMA Care 24 Set-Up	\$2,500 - \$3,000
PMACare Rx+ Pharmacy Intervention Services	\$75 per review
Medical Director	\$250 per hour
<u>Medicare Solutions</u>	
Section 111 Reporting	\$9.50 per claim queried
Medicare Set-Aside Allocation	\$2,200 each
CMS Submissions	\$630 each
Update (of prior MSA report)	\$800 - \$2,200 per report
Rush Request of MSA	\$500
Medicare Conditional Payment Research	\$130 each
Medicare Conditional Payment Appeal or Dispute	\$260 each
Medicare Conditional Payment Research Final Demand	\$55 each
Medical Cost Projections	\$1,900 each
Evidenced Based MSA	\$2,200 each
Life Care Plan	\$185 per hour
Demand Package Nurse Review	\$1,900 per review
Update (within 6 months of prior Demand Package Nurse Review)	\$950 per review
Demand Package Medical Bill Analysis	\$400 per review
Resolution Services	\$130 per hour
Medicare/Social Security Verification	\$225 each
Medicaid Conditional Payment Research	\$260 each
Medicare Advantage Plan Conditional Payment Negotiation	\$525 each
Treasury lien resolution	\$750 - \$1,250 each
Liability Conditional Payment Canvass	\$90 each
Liability Conditional Payment Dispute or Appeal	\$375 each

Liability Medicare Advantage Conditional Payment Dispute or Appeal	\$525 each
Provider Relations Specialist	\$110 per hour
<u>Information Systems:</u>	
RMIS fee	\$6,000 per year for up to 3 users \$500 per year each additional user
Standard Data Conversion	Not applicable
Customized Reporting/Programming	\$200 per hour
Standard Data Feed Set-Up	\$3,000 per year
Standard Data Feed	\$250-\$300 per month
<u>Risk Control:</u>	
General	100 hours of non-refundable, non-transferable risk control services are included in the flat fee for other than workers' compensation, \$145 per hour thereafter
Industrial Hygiene Services	\$180 per hour
Special Projects	To be determined
<u>Claim Adjustment:</u>	
Vocational Rehabilitation	\$103 per hour
Claim Indexing	\$19.75 flat fee per queried file or loss line
Legal Bill Analyzer	3% of gross billed charges
<u>Other:</u>	
Administrative	Included
Account Implementation	Not applicable
Non-standard claim intake	\$20 per claim
Subrogation Specialist Services	18% of gross recovery
Excess & Second Injury Fund Recovery Services	2% of gross recovery
Recover At Work	\$125 per hour
Recover At Work Special Projects	To be determined
Standard Data Extract (upon termination)	\$6,000
OSHA reporting preparation services	\$20 per incident \$3,000 annual minimum
OSHA Special Projects	To be determined
Each Claim Review in excess of two per year	\$2,500 per review, per day plus PMA expenses
Onsite claim review	Travel incurred by PMA personnel is reimbursed in full by the client
Physical File Storage	To be determined