

## CLAIM ADMINISTRATOR AGREEMENT

THIS AGREEMENT is made and entered into as of this first (1<sup>st</sup>) day of July, 2023, between, **Monterey Bay Area Self Insurance Authority (hereinafter referred to as “MBASIA” and/or “CLIENT”), and ACCLAMATION INSURANCE MANAGEMENT SERVICES, INC. (hereinafter called the “Claim Administrator” and/or “AIMS”).** Client and Acclamation Insurance Management Services, Inc. may each be referred to herein as a “Party”, or collectively as “Parties”.

In consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### I. APPOINTMENT AND AUTHORITY

A. Appointment. Subject to the express limitations of authority set forth herein and in accordance with the provisions of this Agreement, the CLIENT hereby appoints the Claim Administrator to adjust and administer claims, and the Claim Administrator accepts such appointment, for such class(es) of business and in such territories as are set forth in Schedule A, attached to this Agreement and incorporated by this reference herein.

B. Exclusivity. During the Term of this Agreement the Claim Administrator is the CLIENT’S only claims administrator in connection with claims outlined on Schedule A attached. All new notices of such claims that the CLIENT or its designee(s) first receive during the Term of this Agreement will be forwarded only to the Claim Administrator for the purposes of providing claim services as set out herein.

C. General Scope of Authority. In providing the claims services contemplated under this Agreement, the Claim Administrator agrees and is hereby authorized:

1. To investigate, adjust, settle, resist or otherwise process all submitted claims, pursuant to the procedures and within the authority granted by the CLIENT as set forth in Schedule B attached to this Agreement.
2. To investigate, adjust, settle, resist, or otherwise handle all submitted claims in excess of the authority granted or in variance of the procedures only with the prior approval of the CLIENT.
3. To make payment on claims approved for settlement in accordance with the procedures set forth in Schedule B attached.
4. To handle all submitted claims according to the requirements of any appropriate legislative and/or regulatory authority.
5. To file any reports, maintain any licenses or any other authorization necessary or required by law to carry out the Claim Administrator’s obligations and duties under this Agreement.

D. Settlement Authority. The Claim Administrator has the authority to do whatever is reasonably necessary, legal and proper to administer claims within the Claim Administrator’s settlement authority limit and

in accordance with the procedures established under this Agreement. The Claim Administrator shall, in connection with such claims, exercise its own judgment unless the CLIENT specifically advises otherwise.

## II. REPORTS AND RECORDS

A. Records. The Claim Administrator shall keep accurate, complete and separate records of all claims handled under this Agreement and for the duration set forth herein or as required by law and/or regulation. The claim files and records shall be established and maintained in accordance with applicable law and/or regulation and shall at a minimum contain all documents, notes, and work papers that reasonably pertain to each claim in such detail that pertinent events and the dates of the events can be reconstructed and the Claim Administrator's actions pertaining to the claim can be ascertained. The open claim files shall be electronically stored in the Claim Administrator's offices. Closed files will be maintained by the Claim Administrator for the term of this Agreement or sent to the CLIENT as requested by the CLIENT. All claim files, both open and closed, remain the property of the CLIENT no matter where they are held or stored. If the CLIENT chooses to have claim files shipped to a different location, costs of such shipping and photocopying of open claim files will be borne by the CLIENT.

B. Right to Inspect. The CLIENT, or its duly authorized representative, and any state insurance regulatory official may at all reasonable times inspect and copy any and all files, records, books, and bank account records maintained by the Claim Administrator for services provided under this Agreement. This right to inspect and copy records, books and bank account records shall survive the cancellation, suspension or termination of this Agreement and shall continue until all claims under this Agreement have been closed or returned to the CLIENT, and all regulatory requirements have been met.

C. Loss Run Reports. The Claim Administrator shall furnish the CLIENT and/or its designee(s) with standard loss run reports on a periodic and timely basis. The reports shall contain such information, in such form, and on such schedule as is reflected in Schedule B attached to this Agreement.

D. Reports for Regulatory Purposes. Upon written request, the Claim Administrator shall also provide the CLIENT with any reports or computer data related to the services performed for the CLIENT under this Agreement, that may be required by the CLIENT to satisfy various boards, bureaus, and state regulatory report requirements.

## III. SERVICE FEES AND EXPENSES; PAYMENT TERMS

A. Service Fees. The CLIENT agrees to pay and the Claim Administrator will accept as full compensation for claim services provided under this Agreement the claim service fees as set out in Schedule C attached to this Agreement and incorporated herein by this reference.

B. Allocated Expenses. The CLIENT shall also be responsible for and shall pay all Allocated Expenses, as defined herein, in addition to the claim service fees as provided for in this Agreement. For the purposes of this contract, Allocated Expenses include but are not limited to the following:

1. Fees for medical examinations of claimants, including the reasonable and necessary transportation expenses of claimants.
2. Costs of reports from attending or examining physicians.
3. Attorney's fees and disbursements.
4. Costs of Medicare Lien negotiation & objections.

5. Costs of court reporting services and transcripts.
6. Witness attendance fees.
7. Court costs.
8. Printing costs related to trials and appeals.
9. Fees associated with the procuring of testimony, opinions, reports, and analyses of professionals and experts.
10. The costs of reports from government agencies or branches.
11. The costs of credit bureau reports.
12. The costs of private investigators.
13. The costs of photographs.
14. Medical or vocational rehabilitation costs and expert testimony.
15. Charges for medical costs containment services, i.e., utilization review, pre-admission authorization, Medical Provider Network, hospital bill audit, provider bill audit and medical case management and Call Center/Injury Intake.
16. Extraordinary travel expense incurred at the request of the CLIENT.
17. The costs of services related to the collection of the subrogation rights of the Client, for which the CLIENT shall have given prior approval.
18. All fees, excluding membership fees, for indexing claimants' injuries and/or liability claims.
19. Mediation and arbitration costs.
20. Medicare Conditional Lien Negotiation costs

Such Allocated Expenses are limited to reasonable, customary and necessary expenses incurred by the Claim Administrator in the course of the performance of this Agreement.

C. Invoices and Disputes. Applicable service fees and Allocated Expenses (if paid directly by Client and not off the individual Claim File) will be invoiced to the CLIENT on a monthly basis. The CLIENT shall remit payment to the Claim Administrator within thirty (30) days (excluding holidays) after receiving the Invoice. The CLIENT may only withhold from payment an amount disputed by the CLIENT in good faith if it provides Claim Administrator with written notice of such dispute, together with reasonable detail of the facts underlying such dispute, within ten (10) days following the date of such invoice; otherwise such invoice shall be deemed final.

D. Audit Rights. During the Term upon the CLIENT'S request, the CLIENT shall have the right to inspect and audit the services provided the Claim Administrator within the previous twelve (12) month period. The Claim Administrator shall make the applicable records relevant to the services provided during such period, and appropriate personnel, available during normal business hours for inspection or audit by the CLIENT or its authorized representative. The CLIENT will pay the cost of such audit unless an audit reveals an overbilling of five percent (5%) or more, in which case the Claim Administrator shall reimburse the CLIENT for the reasonable cost of the audit. The Claim Administrator shall immediately upon notice from the CLIENT pay or credit the CLIENT the amount of any overpayment exceeding five percent (5%) as revealed by the audit, together with any reimbursement pursuant to the preceding sentence.

#### **IV. COMPLIANCE WITH APPLICABLE LAW**

The Claim Administrator agrees to operate at all times in compliance with applicable federal, state, and local statutes, regulations, codes and ordinances, including those applicable to unfair trade and claim practices, complaint handling, and records retention pertaining to the services contemplated under this Agreement.

## V. TERM AND TERMINATION

A. Term. The term of this Agreement shall be for a period of five (5) years commencing on the date first written above (the "Initial Term") and may be extended for subsequent one (1) year periods (each, a "Renewal Term") by mutual agreement of the Parties in writing for an additional two (2) years. This Agreement covers the Initial Term stated above unless terminated pursuant to the provisions of this Agreement. Any Renewal Term shall be the subject of further negotiations between the Parties. The Initial Term and all Renewal Terms are collectively referred to as the "Term."

B. Termination Without Cause. Either Party may terminate this Agreement by giving sixty (60) days' advance written notice to the other Party.

C. Termination for Cause. Either Party may terminate this Agreement effective upon written notice to the other Party, if the other Party breaches this Agreement and such breach: (1) is incapable of being cured; or (2) being capable of cure, remains uncured for sixty (60) days after the breaching party receives written notice thereof.

D. Termination for Insolvency. Either Party may terminate this Agreement by written notice to the other Party if the other Party: (i) becomes insolvent or admits inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law which is not fully stayed within seven (7) business days or is not dismissed or vacated within forty-five (45) days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

E. Effect of Expiration or Termination. If the Agreement is terminated or not renewed:

1. the client shall exercise the following option within sixty (60) days prior to the date of termination/expiration:

a. Require the Claim Administrator to return all open files, at the Client's expense, at the termination of the Agreement and the Claim Administrator shall be entitled to payment for all undisputed services rendered and Allocated Expenses incurred up to that time under this Agreement. The Client will secure services for the return of such files.

2. If any fees have been prepaid by the CLIENT, the Claim Administrator shall refund to the CLIENT the amount of any such prepaid fees that exceeds the value of services actually rendered by the Claim Administrator prior to the termination date.

F. Survival. Sections III.C (Invoices and Disputes), V.E (Effect of Expiration or Termination), VI.B (Claim Administrator Indemnification), VI.C (CLIENT Indemnification), VI.D (Indemnification Procedures), VI.E (Limitation on Liability), VII (Representations and Warranties), VIII (Dispute Resolution), IX (Confidentiality), X (Relationship of the Parties), and XI (General Provisions), and any right or obligation of the Parties in this Agreement which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration.

## VI. INSURANCE, INDEMNITY, AND LIMITATION ON LIABILITY

A. Insurance.

1. The Claim Administrator, at its sole cost and expense, is required to maintain in full force and effect during the Term of this Agreement:

- a. A policy of errors and omissions insurance coverage appropriate to the Claim Administrator's profession, which affords coverage in the minimum amount of \$5,000,000 per occurrence/claim, with a per claim or occurrence deductible not to exceed \$25,000; and
- b. A policy of general liability insurance and automobile liability insurance coverages, which afford coverage in the minimum amount of \$1,000,000, with coverage including but not limited to Bodily Injury and Property Damage.

2. Insurance required hereunder shall be primary and non-contributing coverage over any other valid and collectible insurance available to the CLIENT. The Claim Administrator shall furnish proof of such insurance to the CLIENT prior to initiation of this Agreement and each renewal thereof, and shall provide notification to the CLIENT in the event of lapse of such coverage.

B. Claim Administrator Indemnification. The Claim Administrator hereby agrees to indemnify, defend, and hold the CLIENT harmless from any and all third party claims, damages, actions, liability or loss which result solely from negligent or willful acts, errors or omissions of the Claim Administrator, or its servants, agents or employees, in the performance of duties under this Agreement, except to the extent such Losses are caused by the gross negligence or willful misconduct of the CLIENT or its officers, employees, or agents.

C. CLIENT Indemnification. The CLIENT hereby agrees to and hereby does indemnify, defend (with counsel reasonably acceptable to the Claim Administrator) and hold harmless Claim Administrator (and its affiliates, agents, employees, attorneys, successors and assigns) from and against any and all suits, actions, claims, demands, losses, liabilities, damages, judgments, fines, penalties, deficiencies, costs and expenses, including interest, penalties and reasonable attorneys' fees and costs, based upon, arising out of or otherwise in connection with: (i) any breach by the CLIENT of any warranty, covenant or agreement, or any inaccuracy in any representation of the CLIENT contained in this Agreement; or (ii) the CLIENT'S failure to duly perform or observe, or otherwise negligent act, error, or omission, regarding any term, provision, covenant or agreement to be performed or observed by the CLIENT to this Agreement.

D. Indemnification Procedures. The party seeking indemnification ("Indemnitee") will promptly notify the indemnifying party ("Indemnitor") in writing of any action for which it seeks to be indemnified and cooperate with the Indemnitor at the Indemnitor's sole cost and expense. The Indemnitor shall immediately take control of the defense and investigation at its sole cost and expense. The Indemnitor shall not settle any action in a manner that adversely affects the rights of the Indemnitee without its prior written consent, which shall not be unreasonably withheld. The Indemnitee's failure to provide notice as promptly as practicable will not relieve the Indemnitor of its indemnity obligations except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

E. Limitation on Liability. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF

WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING OR ANY OTHER PROVISION OF THIS AGREEMENT, ANY PURPORTED LIMITATION ON A PARTY'S LIABILITY SHALL NOT APPLY TO ANY CLAIM ARISING FROM (a) THE PARTY'S BREACH OF ITS OBLIGATIONS WITH RESPECT TO CONFIDENTIAL INFORMATION; OR (b) DAMAGES TO THE EXTENT CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PARTY'S EMPLOYEES, DIRECTORS, OFFICERS, OR SUBCONTRACTORS.

## VII. REPRESENTATIONS AND WARRANTIES

A. Mutual Representations and Warranties. Each party represents and warrants to the other party that: it is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation or organization; it has the full right, power, and authority to enter into this Agreement, and to perform its obligations hereunder; and when executed and delivered by both parties, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

B. Performance Warranty. The Claim Administration further represents and warrants to CLIENT that it will perform all services under this Agreement in a professional and workmanlike manner in accordance with industry standards and practices for similar services, and shall devote adequate resources to meet its obligations under this Agreement.

C. Licenses. The Claim Administrator warrants that it and its adjuster employees now have all licenses necessary to perform the services described in this Agreement. The Claim Administrator agrees it and specifically the adjusting employees who are assigned to the CLIENT's account will maintain during the Term any such necessary licenses. In the event that the Claim Administrator's license expires or terminates, for any reason, the Claim Administrator shall immediately notify the CLIENT and this Agreement shall automatically terminate as of the date of such licenses expiration or termination, unless within ten (10) days from the date the CLIENT receives notice of the license expiration or termination from the Claim Administrator, the CLIENT agrees, in writing, to modify the provisions set forth in this Paragraph.

D. DISCLAIMER OF WARRANTIES. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO SERVICE PROVIDED UNDER THIS AGREEMENT.

## VIII. DISPUTE RESOLUTION

A. Arbitration. The Parties agree to meet and confer in good faith to resolve any disputes (*e.g.*, regarding the Agreement's existence, interpretation, validity, or termination) that may arise between them under this Agreement. If such disputes cannot be resolved informally within twenty (20) days or such other reasonable period of time, the Parties may agree to submit the dispute(s) to binding arbitration. Following the expiration of the meet and confer period required above, such arbitration may be initiated by either party making a written demand for arbitration on the other party. There shall be one arbitrator. The Parties shall mutually agree upon an arbitrator. Should the Parties not agree, the Parties shall request a list of five qualified arbitrators from the American Arbitration Association, and the parties shall select the arbitrator by lot from the names submitted. The arbitrator shall be impartial and shall be a licensed claims person or an attorney admitted to practice in the State of California, who during the 24 months immediately preceding the nomination has devoted 75% of his or her practice to the defense of employers before the California Department of Labor and Industrial Relations. The arbitrator shall conduct the arbitration in accordance with the Rules of the

American Arbitration Association then in effect. The Parties agree that this Agreement will be interpreted and enforced pursuant to the laws of the State of California. The decision of the arbitrator shall be final and reduced to writing. The judgment of the arbitrator will be accompanied by a written statement of the basis for such judgment, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Any such arbitration shall take place in Sacramento, California. The Claim Administrator and the CLIENT shall bear the cost of arbitration equally between them, and each shall bear and pay their own attorneys' fees and costs.

B. Venue. Any suit, action or proceeding by or against either Party, including any proceeding to compel arbitration, to confirm the arbitration award, or to enforce any remedy available to either Party, shall be brought in the appropriate court in the State of California, City and County of Sacramento, or in the United States District Court Northern District of California, and each of the Parties submits and consents to the non-exclusive jurisdiction of either of such courts for the purpose of any such suit, action or proceeding. Process in any suit, action or proceeding may be served by registered or certified mail addressed to the Party at its last known address.

## **IX. CONFIDENTIALITY**

A. Confidential Information Defined. During the performance of this Agreement, a Party may provide to the other Party information orally, in writing or by electronic means (whether through secured access through their respective internal websites, systems networks, and/or databases or otherwise), that is confidential and/or proprietary information ("Confidential Information"), including, but not limited to: (i) business and financial data, technical data, manuals, forms, records, methods, product information, strategic plans, potential and existing strategic partner information, sales and marketing information, and other information necessary for Claim Administrator to perform its duties; (ii) trade secrets and other intellectual property, and software applications or components thereof, including the source code, whether developed in-house or otherwise owned by either of the Parties; and (iii) personally identifiable consumer information and nonpublic personal information of the CLIENT's employees, customers, and consumers. For purposes of this Section, the Party providing Confidential Information is referred to as the "Disclosing Party" and the Party receiving Confidential Information is referred to as the "Receiving Party".

B. Restrictions on Use. The Receiving Party shall maintain such Confidential Information as confidential and shall use reasonable efforts to ensure that it shall be used only for the purposes contemplated in this Agreement. The Receiving Party shall not disclose or release any Confidential Information to any entity or person other than its employees and representatives on an as-needed basis without the express written consent of the Disclosing Party or as may be required by law or court order.

C. Safeguards. The Receiving Party shall implement and maintain appropriate information security policies and procedures with the same care as used by a reasonable person in protecting his or her own Confidential Information, which policies and procedures shall include administrative, technical and physical safeguards designed to: (1) ensure the security and confidentiality of Confidential Information; (2) protect against any anticipated threats or hazards to the security or integrity of Confidential Information; and (3) protect against unauthorized access to or use of Confidential Information. The Claim Administrator further agrees, upon request by the CLIENT, to provide confirmation that such safeguards have been implemented.

D. Data Security Incident. The Receiving Party shall immediately, and in any event within seventy-two (72) hours, notify the Disclosing Party of any unauthorized access, use, disclosure, alteration or theft

involving the Disclosing Party's Confidential Information and shall cooperate with the Disclosing Party to determine any applicable notice requirements. By way of clarification and not limitation, any compilation, aggregations, reports, studies, or analyses generated by the Claim Administrator is expressly permitted under this Agreement and shall not be deemed the CLIENT's Confidential Information and may be used internally by the Claim Administrator solely to assist in making assessments pursuant to this Agreement, and shall not be disseminated.

E. Compelled Disclosure of Confidential Information. If the Claim Administrator is served with a subpoena, court order, or other legal document demanding or requiring the release of Confidential Information, Claim Administrator shall immediately give notice to the CLIENT. The CLIENT shall decide whether to take any legal action in response to any such subpoena, court order, or other legal document and Claim Administrator shall cooperate with and assist the CLIENT (at no cost or expense to the Claim Administrator) in seeking a protective order, moving to quash the subpoena, or otherwise obtaining relief from disclosing Confidential Information. If the CLIENT waives compliance or, after providing the notice and assistance, the Claim Administrator remains required by law to disclose any Confidential Information, the Claim Administrator shall disclose only that portion of the Confidential Information that it is legally required to disclose.

## **X. RELATIONSHIP OF THE PARTIES**

A. Independent Contractor. The Claim Administrator and its employees, in their performance of their duties under this Agreement shall do so as independent contractors, and shall act in compliance with such rules, regulations, or instructions as the CLIENT may prescribe in writing. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. The CLIENT does not, by this Agreement, reserve control over the methods or procedures to be utilized by the Claim Administrator or any of the Claim Administrator's employees, contractors, or vendors. All personnel used to perform the specified services under this Agreement shall be employees, contractors or vendors of The Claim Administrator, and shall not be deemed to be the employees or agents of the CLIENT. The Claim Administrator shall determine the wages, working hours, and other working conditions for its personnel and shall monitor and control the quality of their work performance. The Claim Administrator acknowledges that its personnel have no right, entitlement, or claim against the CLIENT for Social Security benefits, workers' compensation benefits, disability insurance, pension pay, vacation pay, sick pay, or any other employee benefit of any kind.

B. Service Provider Status under California Law. Under the Agreement, CLIENT will provide the Claim Administrator with consumers' personal information so that the Claim Administrator may provide services to the CLIENT. In addition to the confidentiality obligations set forth in the Agreement, the Claim Administrator further agrees that it shall not: (1) sell, rent, release, disclose, disseminate, make available, transfer, or otherwise communicate orally, in writing or by electronic or other means, the personal information of consumers disclosed to it by the CLIENT to another business or third party for monetary or other valuable consideration; (2) retain, use, or disclose such personal information of consumers for any purpose (including for a commercial purpose) other than for the specific purpose of performing the services specified in the Agreement; or (3) retain, use, or disclose such personal information outside of the direct business relationship with the CLIENT. Pursuant to California Civil Code section 1798.140(w)(2)(A)(ii), the Claim Administrator hereby certifies that it understands the restrictions set forth above and it will comply with such restrictions. For purposes of this Section X.B, the following terms shall have the meanings set forth in California Civil Code section 1798.140: business, business purpose, consumer, personal information, sell and third party. The parties

further acknowledge that federal and state laws regarding data security and privacy are rapidly changing and therefore agree to take any necessary action, including amendment of this Agreement if required, to ensure continued compliance with applicable law, including without limitation, California Civil Code section 1798.140(w)(2).

C. Non-Solicitation. The CLIENT acknowledges that it may obtain knowledge of or access to employees of the Claim Administrator during the Term. The CLIENT agrees that during the Term of this Agreement and for one (1) year after expiration or termination of this Agreement, the CLIENT will not directly or affirmatively solicit, or induce any other person to solicit, any employee of the Claim Administrator while such employee is employed by the Claim Administrator, to become an employee or contractor of the CLIENT. The CLIENT acknowledges that the Claim Administrator is operationally dependent upon its employees (including employee use of the Claim Administrator trade secrets and other proprietary information), and in the event any of its employees are solicited and hired by the CLIENT or another claim administrator contracting with the CLIENT, the Claim Administrator would incur costs incident to recruiting, hiring, and training a replacement for the solicited employee, in addition to any operational impairment or disruption (and related costs and damages) that might occur between the departure of the solicited employee and the hiring and training of a replacement. This paragraph shall not apply to general, public solicitations, such as advertisements or job postings, which are directed to the public at-large. If the Claim Administrator employee is hired by the CLIENT or a claim administrator contracted by the CLIENT, the CLIENT shall pay the Claim Administrator an amount equal to 125% of such employee's annual the Claim Administrator salary, as liquidated damages. The parties agree that quantifying losses arising from the solicitation of the Claim Administrator employees will be inherently difficult to estimate accurately given the use of the Claim Administrator trade secret and proprietary information and the true extent and duration of the damages may not be able to be estimated. The parties further agree that the above established sum is not a penalty but rather a reasonable measure of damages that would result from the CLIENT's breach of this paragraph, based on the parties' experience within the industry and given the nature of the losses the Claim Administrator might incur in connection with the solicitation of its employees.

## **XI. GENERAL PROVISIONS**

A. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, shall be finally found to be void, invalid, illegal or unenforceable by a court, then notwithstanding that determination, the term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of the Agreement or the application of this Agreement to other situations shall remain in full force and effect. Notwithstanding the foregoing, if any material term or provision of this agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court, then the Parties agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.

B. Entire Agreement. This Agreement, together with the exhibits attached hereto, constitutes the entire agreement between the parties pertaining to its subject matter, superseding all prior and contemporaneous agreements, proposals, letters of intent and memorandums of understanding, and no other representations or understandings of the parties, whether written or oral, shall be binding.

C. Assignment. Neither party may, voluntarily or by operation of law, assign, delegate, or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party. This

Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

D. Force Majeure. Any delay or failure of either party to perform its obligations under this Agreement will be excused to the extent that the delay or failure was caused directly by an event beyond such party's control, without such party's fault or negligence and that by its nature could not have been foreseen by the party, or if it could have been foreseen, was unavoidable (which events may include natural disasters, embargoes, explosions, riots, wars or acts of terrorism, and labor disputes) (each, a "Force Majeure Event"). The affected party shall give the other party prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event, and the anticipated duration. The affected party shall use all diligent efforts to ensure the effects of any Force Majeure Event are minimized and resume full performance under this Agreement as soon as possible.

E. Interpretation. The captions of the various provisions of this Agreement shall not be deemed a part of this Agreement and shall not be construed in any way to limit the content thereof but are inserted herein only for reference and for the convenience of the parties.

F. Governing Law. This Agreement shall in all respects be interpreted, enforced and governed under the laws of the State of California, exclusive of its choice of law rules.

G. Equitable Relief. Each party acknowledges that a breach or threatened breach by a party of Section IX (Confidentiality) would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

H. No Third-Party Beneficiaries. Except as expressly provided herein, no provision of this Agreement is intended to confer any benefit upon any third party and no third party shall have the right to enforce any provision of this Agreement.

I. Amendment and Modification; Waiver. This Agreement, including, without limitation, its schedules attached hereto, may not be modified except in a writing executed by authorized representatives of the parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

J. Effective Date. This Agreement shall be effective as of the date first written above.

K. Notices. All notices or other communications given hereunder shall be in writing and shall be deemed to have been duly given (i) on the date delivered if delivered by personal delivery or by overnight delivery service (such as FedEx); (ii) on the third (3rd) business day after mailing via U.S. registered or certified mail, first class, postage prepaid; or (iii) on the date transmitted by facsimile with confirmation of successful transmission. Any notices or other communications given hereunder shall be addressed as follows, provided that either party may specify a different address by written notice to the other party in accordance with this Section.

If to the Client: Monterey Bay Area Self Insurance Authority  
Alliant Insurance Services  
560 Mission Street  
6<sup>th</sup> Floor  
San Francisco, CA 94105

If to the Claim Administrator: Acclamation Insurance Management Services, Inc.  
10445 Old Placerville Road  
Sacramento, CA 95827  
Phone: (916) 563-1900  
Fax: (916) 563-1919  
Attn: President & Chief Executive Officer

L. Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute but one and the same Agreement.

*[Signatures on Following Page]*

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be executed by their duly authorized representative as of the Effective Date.

**MONTEREY BAY AREA SELF INSURANCE AUTHORITY**

DocuSigned by:  
By: Jamie Goldstein 2/14/2023  
08F95DF2E8BA4AC...

Name: Jamie Goldstein

Title: MBASIA Board President

**ACCLAMATION INSURANCE MANAGEMENT SERVICES, INC.**

By: Dominic Russo 2/14/23

Name: Dominic Russo

Title: President & CEO

**LIST OF SCHEDULES**

Schedule A	Program Scope and Territory
Schedule B	Claim Administration Procedures and Authority
Schedule C	Claims Service Fees

**SCHEDULE A  
SCOPE AND TERRITORY**

Program Administrator: Acclamation Insurance Management Services, Inc.

Class of Business: Workers' Compensation

Territory: State of California

**SCHEDULE B**  
**CLAIM ADMINISTRATION PROCEDURES AND AUTHORITY**

The CLIENT and AIMS maintain the performance standards outlined in the Client Service Guidelines and/or AIMS' Best Practices Manual, which is incorporated herein by reference and is made part of this Agreement as if fully set forth herein.

**SCHEDULE C  
CLAIM SERVICE FEE AND OTHER FEES**

**The Claim Administrator (AIMS) Fees**

The CLIENT agrees to pay and the Claim Administrator will accept as full compensation for claim services provided under this Agreement the claim service fees as set out below.

The Claim Administrator's "flat annual fee" for the Claims Administration Services includes the handling of all current open claims, new indemnity claims, and new medical only claims during the life of the Agreement.

The flat annual fee is based upon the current open claims (approximately 210 open claims with approximately 125 identified as indemnity claims, approximately 65 identified as future medical claims and approximately 20 identified as medical only claims).

Should there be a 5% increase/decrease in open claims during any period of the Agreement due to significant change in the number of employees, and/or as a result of a catastrophic event, then both the Claim Administrator and the CLIENT will negotiate, in good faith, a reasonable fee increase/decrease fee adjustment based on any revised required staffing.

**Claim Administrator's flat annual fees:**

<b>Year One</b>	<b>\$ 207,950.60*</b>
<b>Year Two</b>	<b>\$ 218,348.13*</b>
<b>Year Three</b>	<b>\$ 227,082.06*</b>
<b>Year Four</b>	<b>\$ 233,894.52*</b>
<b>Year Five</b>	<b>\$ 240,911.35*</b>

*\* Annual cost of living adjustment of 10%, 5%, 4%, 3% and 3%.*

The total annual flat fee proposed above contemplates handling all claims activity in a 12-month period (claims already open at the beginning of the 12-month term and any new claims reported during the 12-month term). The annual fee will be invoiced in 12 equal monthly amounts, in arrears, with payment terms of net 30 days.

## Medical Management Services Utilizing Allied Managed Care, Inc. (AMC) Fees

### AMC PRICING AND BILLING – FEE FOR SERVICES

- On a monthly basis, the Contractor will invoice for all services included in the Fee for Service. The invoice will include a report by claim number, employee name and date and type of service provided.
- Below are the fees for services.

Service	Pricing	Notes
Utilization Review	\$95.00	Flat Rate
Peer Review	\$225.00	Flat Rate
TCM	\$95.00	Hourly
FCM	\$120 .00	Hourly
Bill Review – Per bill plus PPO	\$8.50 per bill	
Bill Review – Specialty	10% of savings	Cap at \$5,000K
PPO	Blue Cross	26% of savings
EDI Billing	\$1.00 per bill	Pass through
MPN	\$1,500.00 per month	
Call Center/Injury Reporting	\$165.00 per call	Resulting in WC Claim Filed

### IX. ALLIED MANAGED CARE MEDICAL PROVIDER NETWORK

- 1<sup>st</sup> Year Pricing - \$15,500.00 per year/\$1,292.00 per month (regardless of claim volume). This includes Certification from State & Enrollment Notices to all employees. Complete monitoring of the MPN for State Compliance and reporting with toll free access/assistance for employers and injured employees and all services listed under the no charge services.
- 2<sup>nd</sup> + Year(s) Pricing - \$12,200.00 per year/\$1,017.00 per month (regardless of claim volume). This includes the continued monitoring of the MPN including updating the website.