

**Penser North America Inc.**  
Service Agreement

THIS AGREEMENT, made and entered into this 11<sup>th</sup> day of May, 2017 between **Penser North America Inc.**, a Washington Corporation, hereinafter called "Service Company" and **City of Longview**, hereinafter called "Employer."

WITNESSETH THAT:

WHEREAS, "Service Company" is in the business of providing advice, claims adjusting, administrative assistance and services as an independent contractor to the Washington Self-Insured Employers subject to Workers' Compensation law as defined, and

WHEREAS, "Employer" desires to employ "Service Company" as the claims administrator for its self-insured workers' compensation claims.

THEREFORE, in consideration of the promises, covenants and obligations of the parties hereinafter set forth, it is agreed as follows:

1. **The Term:** The term of this agreement shall be for a period of 36 months, commencing July 1, 2017 through June 30, 2020, and renewing annually thereafter, unless agreement is changed by written consent of both parties, or agreement is terminated per the termination provision in # 6 below.

The term of this agreement can be extended upon mutual agreement of both the "Employer" and "Service Company." The extension of the agreement will be reviewed in a ninety (90) day window prior to the expiration of the agreement.

Any component of this agreement may be revised by either the "Service Company" and/or "Employer" for consideration, and must be mutually agreed upon, in writing, prior to the revision taking effect. Any revised agreement must be signed by both the "Service Company" and "Employer."

2. **The Scope:** During the period of this agreement, "Service Company" shall represent and act for the employer in matters pertaining to the liability of the "Employer" for claims based on events which occur during the term of this agreement under the "Employer's" Self-Insured Workers' Compensation Program governed by Title 51 of the Industrial Insurance Laws of the State of Washington. The "Service Company" shall devote its best efforts in the conduct of its duties hereunder. Such duties shall be the following:

- a) Receive notice of and create files on each claim reported and maintain these files for the “Employer”.
- b) Make contact and document attempts to contact the employee, the employee’s supervisor or the “Employers” personnel manager, and the authorized treating physician or that physician’s office on all new claims.
- c) Investigate pursuant to customary and proper claims practices as required to determine their validity and compensability.
- d) Administer each claim under the laws and rules of the applicable jurisdiction.
- e) Establish and maintain reserve valuations for each claim.
- f) Determine proper benefits due on compensable claims under the law of the jurisdiction applicable to the claim.
- g) Pay benefits, medical bills and bills for all claims related services in a timely manner, out of the “Employers” funds.
- h) Coordinate returning the injured worker to work through the “Employers” return to work program.
- i) Arrange for bill review, independent investigators, medical evaluations, vocational consultants, defense attorneys, disability rating specialists or other third party services to the extent deemed necessary by “Service Company” to process and evaluate any claim.
- j) Provide adequate advanced notice to the “Employer” of hearings, mediations, arbitrations or settlement conferences.
- k) Obtain “Employers” approval of all settlements.
- l) Provide loss statistical, claims and check register reports as requested by “Employer” on a predetermined basis. Including monthly check register. Also provide training to “Employer” staff to access information from “Service Company” database, on an as needed basis.
- m) Maintain and provide client pertinent data on all claim payments.
- n) Respond timely to any inquiry, or requests from the Department of Labor, or other regulatory agency, client, claimant, agent, broker, or other interested party.
- o) Complete for the “Employer”, the State annual, quarterly and supplemental benefit reports. Provide other information as necessary to the “Employer” to

maintain compliance with any applicable laws included but not limited to filing IRS Form 1099 annually.

- p) Complete any other regulatory reports as required for the “Employer.”
- q) Maintain and updated claim log as required by the Department of Labor and Industries.
- r) Identify and pursue subrogation claims.
- s) Report to excess carriers as required by their policies.
- t) Notify the “Employers” primary insurer who is excess of its self-insured retention or the “Employers” broker of all claims in which claims costs may exceed the “Employers” self-insured retention. “Service Company” will rely only upon information provided by the “Employer” to identify the appropriate excess insurer(s) as well as the criteria for identifying claims to be reported to the excess insurer.
- u) Capture and maintain all data necessary to comply with the requirement of section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA), and report to Medicare as required by MMSEA. “Service Company” will indemnify and hold harmless “Employer” from any penalties imposed under MMSEA that are related to a claim administered by “Service Company” under this contract.

### 3. The “Service Company” will:

- a) Provide Unallocated Claims Services. Unallocated Claims Services are defined as all normal administrative, investigative and adjustment services relating to a specific accident or occupational disease, including, but not limited to: supervision of and timely issuance of checks for workers’ compensation claims and mandatory vocational rehabilitation obligations to workers under the Workers’ Compensation Laws as they become due and prior to delinquency; maintenance of all records required by the Workers’ Compensation Laws or any agency charged with their enforcement, including records of all claims; statistical services; documentation of all payment requests for workers and vendors, preparation and filing on or before the applicable due date of all reports, statements or other documents required under the workers’ compensation laws; coordination with the Department of Labor and Industries if required. All such activities shall be carried out pursuant to the term of this agreement by “Service Company”.

4. The “Employer” agrees:

- a) To pay to “Service Company” the fees outlined in this agreement.
- b) Establish a checking account for the Workers’ Compensation expenditures and fund as necessary to insure sufficient amounts are present to pay all check issued by the “Service Company”.
- c) Provide the “Service Company” excess insurance reporting requirements for all years covered by claims administration.
- d) Forward promptly to the “Service Company” all reports of industrial injuries or occupational diseases and worker’s notices, complaints and correspondence relating to such claims.

5. BOTH PARTIES AGREE:

- a) All claims and related files generated by “Service Company” as a result of its activity under this agreement shall remain at all time the property of the “Employer” with the exception of any supporting data required by “Service Company” to make such accounting to “Employer” as required in this agreement. “Service Company” will retain claims for three years following date of closure. Thereafter, files will be returned to “Employer” or forwarded to such location as may be designated by Employer for continued storage. Upon “Service Company’s” request, closed claim files will be retrieved for additional administration as may be required.
- b) Any notice required or permitted to be given under this agreement shall be sufficient if given in writing and by registered or certified mail to “Employer” or to “Service Company” as the addresses first set forth below or to any other address of which written notice of change has been given.

6. TERMINATION PROVISION:

- a) Either party may terminate this agreement for any reason upon (90) days written notice to the other party.
- b) Upon termination of service by written notice, a final accounting will be made of the fees payable to “Service Company” and any funds belonging “Employer” or its designated representative.

- c) Upon termination by written notice and as soon as reasonably practical, "Service Company" will turn over all claims files and ancillary work products on those claims to "Employer or its designated representative. At a cost to be negotiated at the time of termination, "Service Company" may continue to administer existing claims at the request of "Employer".

Upon termination of this agreement, whether by expiration at the end of a term, non-renewal, notice of termination, discontinuance of "Employers" self-insurance program or otherwise, "Employer" will assume any and all responsibility for adjusting and administration of all claims covered by this agreement unless "Employer" and "Service Company" have entered into a separate written agreement prior to the effective date of the termination for "Service Company" to continue administration of the claims.

## 7. CONFIDENTIALITY:

It is understood and agreed that all statistical, financial and personnel data relating to "Employer" or any of its employees provided to "Service Company" by "Employer", or any employee thereof, pursuant to this agreement, and all trade secrets (as defined under Washington law) and information concerning employees or business operations of Employer otherwise acquired by Service Company, is confidential, and "Service Company" and its employees, agents and directors shall keep such information in the strictest confidence and shall not disclose to any other person or entity any confidential information concerning Employer, its employees or business operations, except to the extent necessary to perform the services to be rendered hereunder.

## 8. ASSIGNMENT:

Neither this agreement, nor any part thereof, shall be assignable by "Service Company", whether by operation of law or otherwise, without the prior written consent of "Employer". Any attempted assignment without such prior written consent shall be null and void.

## 9. SERVICE FEES:

**Transition Fees** (paid in full at the time of takeover)

- One time-takeover fee for file conversion, tape transfer, and management of future reopened claims: **\$3,500 flat fee**

- For the assumption and future management of all claims incurred prior to the transition date and open at the time of transfer: **\$3,000 flat fee**

### **Ongoing Claim Administration**

Penser North America Inc. will invoice the following ongoing administration fee structure: **\$21,600 base annual fee** for the handling of up to 45 new arising claims in the policy year. For each new claim over 45, there will be a \$350 per claim charge. The Claim Administration period will be July 1<sup>st</sup> through June 30<sup>th</sup> annually for purposes of counting claim numbers.

The base fee will be billed on a monthly basis: **\$1,800 per month**

The base annual fee will adjust starting in year 3. Starting July 1<sup>st</sup>, 2019, it is agreed that the annual base fee will increase using the Consumer Price Index, for Urban Wage Earners and Clerical Workers (CPI-W) for Portland/Salem. The rate for year 3 will be set using the Over The Year Percent Change, Annual Average for the previous calendar year (2018). This percentage will not exceed 3 percent, regardless of the Annual Average Percent Change.

Both Indemnity claims and medical only claims in excess of the 45 new arising claims in a policy period will be billed at the rate of \$350 per claim. This rate will not change for the entire duration of this agreement.

Penser North America Inc. does not have a fee schedule except what fees that have been outlined in the original RFP submission dated October 19<sup>th</sup>, 2016. All cost containment services for individual claims are paid under the appropriate claim and to the appropriate vendor.

### **Ongoing Administration Services include:**

- Claim management services: self -insured claims
- Management information services (including on-line access)
- Client services
- Quarterly and annual report filing assistance
- E-mail access
- Monthly loss reports
- Annual report
- All other claims management services as outlined in attached request for proposal dated October 19<sup>th</sup>, 2016.

Cost containment services utilized by outside vendors are billed to their respective claim files and is not part of the per claim price.

Loss control services are not included in the above ongoing claims administration pricing. Loss control can be negotiated at discounted rates.

10.    IMDEMNIFICATION:

“Service Company” shall indemnify and hold harmless “Employer” and its directors, officers, employees and volunteers against any loss or damage suffered as a result of a claim, demand or legal action to the extent resulting from the negligent act or omission of “Service Company” employees while acting within the scope of their duties, including reasonable attorney fees and expenses “Employer” incurred in defending such claim, demand or legal action, except when such acts or omissions arose from or were related to the “Employer’s” instructions, practices, procedures, or administration of a claim.

“Service Company” will indemnify and hold harmless “Employer” from any and all loss which the “Employer” may be subjected as a consequence of the willful misconduct or negligent acts or omissions of “Service Company” and/or its employees, agents or directors in connection with fulfilling its obligation under this agreement.

“Employer” will indemnify and hold harmless the “Service Company” from any and all loss incurred by the “Service Company” and/or its employees arising out of the willful misconduct or gross negligent acts or omissions of “Employer”.

11.    INSURANCE REQUIREMENTS:

The “Service Company” shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the “Service Company”, its agents, representatives, or employees.

“Service Company” shall obtain insurance of the types and coverage described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.
2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap independent contractors and personal injury and advertising injury. The Public Entity shall be named as an additional insured under the Consultant’s Commercial General Liability insurance policy with respect to the work performed for the Public Entity using an additional insured endorsement at least as broad as ISO CG 20 26.
3. Workers’ Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability insurance appropriate to the Consultant's profession.

"Service Company" shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.
3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

"Service Company" shall furnish the "Employer" with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the "Service Company" before commencement of the work.

The "Service Company" shall provide the "Employer" with written notice of any policy cancellation within two business days of their receipt of such notice.

Failure on the part of the "Service Company" to maintain the insurance as required shall constitute a material breach of contract, upon which the "Employer" may, after giving five business days notice to the "Service Company" to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the "Employer" on demand, or at the sole discretion of the "Employer," offset against funds due the "Service Company" from the "Employer."

12. GOVERNING LAW:

This agreement shall be construed under and governed by the laws of the State of Washington.

13. ENTIRE AGREEMENT:

This entire agreement between the parties is set forth herein. This agreement supersedes and invalidates all previous agreements, both written and oral. It may not be amended orally and neither party shall be bound by any modification unless made in writing and signed by an authorized representative of the parties. No term or condition of this agreement shall be deemed to have been waived nor shall there be an estoppel to enforce any provisions of this agreement, except by a

statement in writing signed by the party against whom enforcement of the waiver or estoppel is sought.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by the persons authorized to act in their respective names.

Signed this 11th day of May, 2017

**“Employer”**  
**City of Longview, Washington**

By: David M. Campbell

Signature: \_\_\_\_\_

Title: City Manager  
Date: May 11<sup>th</sup>, 2017

**“Service Company”**  
**Penser North America Inc.**

By: Phil Valdens

Signature: \_\_\_\_\_

Title: President  
Date: May 11<sup>th</sup>, 2017