



# CARL WARREN & COMPANY

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## THIRD PARTY CLAIMS ADMINISTRATION CONTRACT

THIS AGREEMENT, entered into effective **July 1, 2015** by and between **Authority for California Cities Excess Liability (ACCEL)** hereinafter called "ACCEL," and **CARL WARREN & COMPANY**, hereinafter called "CARL WARREN," is for certain services as outlined in connection with the duties and responsibilities of administering a program of self-insurance.

### WITNESSETH

WHEREAS, ACCEL has undertaken to self-insure and is in need of a qualified third party to whom to delegate the responsibilities and duties of administering said partially self-insured commercial general liability insurance program (the "Self Insurance program"), and

WHEREAS, CARL WARREN is engaged in the supervision and administration of programs for commercial general liability self-insurance,

NOW, THEREFORE, ACCEL and CARL WARREN mutually understand and agree as follows:

#### **1. GENERAL**

CARL WARREN shall: (a) supervise and administer the Self-Insurance program for ACCEL; (b) represent ACCEL in all matters related to the investigation, adjustment, processing, supervision and resolution of liability claims for money damages asserted by third parties against ACCEL (and other participants in the program as specified); and (c) provide to ACCEL during the Term (as defined below) all the services more particularly set forth hereinafter.

#### **2. INVESTIGATIVE SERVICES**

CARL WARREN shall provide complete investigative and analytical services including, but not limited to: (a) receipt and examination of all reports of accidents, incidents, claims or cases which are or may be the subject of such claims reported by ACCEL to CARL WARREN; and (b) the investigation of such accidents, incidents, claims or cases where examination warrants such investigation or when requested by ACCEL, such investigation to include on-site investigation, photographs, interviewing of witnesses, determination of losses and other such investigative services necessary to determine liability and loss.

#### **3. SETTLEMENT AUTHORITY**

CARL WARREN will promptly notify ACCEL in writing of any claim which, excluding administration, adjusting, defense, all amounts payable to CARL WARREN hereunder, and other costs and expenses, is reasonably expected in CARL WARREN'S opinion to result in total settlement payments in excess of the settlement authority limit that is agreed upon by ACCEL and CARL WARREN (the "Authority Limit"). Such Authority Limit shall be set forth in an addendum to this Agreement, substantially in the form attached hereto as Exhibit A, and which is referred to herein as the "Payment Guidelines". Such Payment Guidelines



will be binding on the parties, and incorporated into this Agreement, when executed by both parties. From time to time during the Term, the Payment Guidelines may be adjusted by mutual agreement of the parties, with each revised Payment Guidelines superseding any previously adopted Payment Guidelines and becoming binding on the parties, and incorporated into this Agreement, when executed by both parties.

#### **4. CLAIMS ADJUSTMENT SERVICES**

CARL WARREN shall provide complete claims adjustment services on each accident or incident that may be the subject of a claim against ACCEL which is reported to CARL WARREN by ACCEL. Such services shall include, but not be limited to (a) the maintenance of a claim file on each potential or actual claim reported to CARL WARREN; (b) whenever its investigation results in a determination that ACCEL has sustained a liability to a third party, CARL WARREN shall process any such claim or potential claim for settlement in accordance with ACCEL'S instructions for settlement of such claims, as set forth in the Payment Guidelines; and (c) obtaining all release agreements or proofs of loss on settlement of any claim or potential claim.

#### **5. ADMINISTRATIVE SERVICES**

CARL WARREN shall provide the following administrative services: (a) assignment of a ACCEL Account Adjuster to ACCEL; (b) providing ACCEL with electronic access to all reported claims during the term of this Agreement, indicating the status of each reported open claim assigned to CARL WARREN, the details of each such claim, the outstanding reserves for each claim and details of all claim payments; and (c) periodic review and adjusting of reserves on all open claims. Account specific reports and attendance at meetings (including round trip travel) shall be provided by CARL WARREN.

#### **6. LEGAL SUPPORT SERVICES**

CARL WARREN shall provide the following legal support services on each claim wherein the claimant has commenced litigation: (a) Upon notification by ACCEL that litigation has been filed on an open claim, CARL WARREN shall notify ACCEL and, in accordance with ACCEL'S instructions, ACCEL'S excess insurance carrier and/or excess reporting authority, pool or group (the "excess entity") and/or trial attorney assigned by ACCEL to handle the case and provide such excess entity and/or trial attorney with all information and files concerning claim; (b) maintain liaison with ACCEL'S excess entity and/or trial attorney and provide such investigation services as are required by such attorney during pre-trial and trial stages; and (c) assist ACCEL'S excess entity and/or trial attorney with discovery and other legal processes.

#### **7. TERM OF AGREEMENT**

The term of the Agreement (the "Term") shall commence on July 1, 2015 and continue ONE YEAR, unless terminated earlier as provided in Section 15 herein.

ACCEL shall have an option to extend this Agreement for four additional one-year periods, exercisable by ACCEL by notifying CARL WARREN of such extension prior to the anniversary date. This Agreement shall have an anniversary date each July 1st, for the purpose of reviewing pricing (Section 11) and optional extensions. This Agreement supersedes and replaces all previous Agreements or contracts.

#### **8. SCOPE OF WORK**

a. ACCEL hereby engages CARL WARREN to provide ACCEL the services described in detail in the



Scope of Services attached hereto as Exhibit B.

b. Additional services may be requested and ordered through the issuance of a written amendment to this Agreement. All written amendments for professional services must be completed and signed by both parties prior to proceeding with services.

## **9. KEY PERSONNEL**

It is the intent of both parties to this Agreement that CARL WARREN shall make available the professional services of Mr. Tim Thompson (Litigation Manager), Ms. Kelly Ogle (Account Manager) and Mr. Brandon Schlenker ( Assistant Vice President), who shall administer all work under this Agreement and shall coordinate directly with the members of ACCEL and its Board of Directors. Should such personnel become unavailable to perform services for ACCEL, CARL WARREN agrees to replace, as soon as practical, such personnel with personnel of comparable skills and experience as determined by ACCEL's evaluation and subject to ACCEL's right of refusal for any reason. CARL WARREN will notify ACCEL of any change in Key Personnel within 48 hours of the Key Personnel being unavailable to perform their duties for ACCEL. Any substitution of key personnel must be mutually agreed upon and made in writing by the parties. The Agreement shall be amended to reflect any changes, subject to and contingent upon, the approval of the Board of Directors.

## **10. CHANGE IN OWNERSHIP OR CONTROL**

CARL WARREN shall notify ACCEL and ACCEL's Program Administrator, in writing, of any change in ownership or control of CARL WARREN's firm. Change of ownership or control of CARL WARREN's firm constitutes a material change in circumstances, and the Authority may, on thirty (30) days written notice, terminate this Agreement. An election by Authority to continue the Agreement will require amendment to the Agreement, upon such terms as the parties may agree.

## **11. PRICING**

ACCEL agrees to pay the following claim handling and service fees for CARL WARREN'S services:

### **A. Annual Fee**

The annual fee for services is \$82,000 including mileage, prepaid quarterly. The annual fee can be renegotiated annually due to unforeseen claim volume during the preceding term.

### **B. Special Handling**

Certain claim files may not be considered part of the annual Service Fee. These will be files that the Claims Committee authorizes as Special Handling, and will be billed on a time and expense basis. Special Handling claims are those approved by the Claims Committee to have additional file charges applied due to above normal service necessary in the management of the claim. These additional expenses will be allocated to the claim file. If Special Handling is approved, CARL WARREN will propose a time and expense fee schedule which will require approval by the Claims Committee.

The above fee schedule for the services does not include "Allocated Expenses", defined to mean customary and usual costs and expenses incurred and/or paid by CARL WARREN on ACCEL'S behalf in connection with the investigation, adjustment, settlement or defense of a claim. Such costs and expenses include, but are not limited to, professional photography, police reports, independent medical examinations, professional engineering services, laboratory services, bulk copy jobs, private investigators, legal costs and fees and work



performed by accountants. CARL WARREN shall charge ACCEL for non-staff investigators or adjusters when, in the opinion of CARL WARREN, such assistance is necessary and reasonably related to the monetary exposure. Allocated Expenses do not include the fees payable to CARL WARREN pursuant to the fee schedule in this Section 11, nor the salaries, wages or benefits paid to CARL WARREN'S employees or office and other overhead expenses associated with the performance of the services hereunder by CARL WARREN. ACCEL agrees to pay for the cost of all reasonable and supportable Allocated Expenses incurred in connection with the services under this Agreement.

Charges for non-file-related professional services performed at the specific request of ACCEL will be billed on an as quoted basis.

## **12. DATA PROCESSING**

- a. The following standard services are included in this services provided pursuant to this Agreement - claims data electronically for up to three recipients and access to mycarlwarren.com for up to three users. For security purposes, access to mycarlwarren and any subscriptions will automatically terminate at the end of twelve (12) months. ACCEL shall be responsible for notifying CARL WARREN to renew user subscriptions and access or to substitute users.
- b. Additional users or recipients shall be charged on a per person basis at an annual fee of \$250.
- c. Special reports, new reports and data feeds can also be requested. They are subject to a cost per quote at a rate per project or per hour once the scope has been agreed upon. CARL WARREN does not possess any interest, title, lien or right to any client data or records. Therefore, upon termination of the contract, CARL WARREN is relieved of all obligations to provide data processing services to ACCEL and will deliver to ACCEL all data and records in a readily available excel or PDF format. If a different format is desired by ACCEL, CARL WARREN will provide it to ACCEL at an agreed upon and reasonable cost and timeline.

## **13. ACCEL'S RESPONSIBILITIES**

ACCEL shall provide CARL WARREN with copies of all relevant documents upon request and without charge and shall make available any ACCEL employee for interviews by CARL WARREN at reasonable times concerning any investigation of a claim or incident pursuant to this Agreement.

CARL WARREN shall bill ACCEL and furnish ACCEL with invoices for services rendered in accordance with the fee schedule set forth in the Agreement. Each invoice will include the claim or other matters for which a fee is being charged and the amount of the associated fee for that claim or matter. All sums due hereunder shall be paid by delivery of ACCEL'S check, or wire transfer to CARL WARREN'S offices located at the address set forth herein, within sixty (60) days following the invoice date. If any amount invoiced is in dispute, ACCEL shall pay the undisputed amount and notify CARL WARREN within sixty (60) days after the invoice date of the disputed portion; failure by ACCEL to deliver written notice to CARL WARREN of dispute with regard to any portion of an invoice within such time frame shall be deemed acceptance of the entire invoice by ACCEL. Fees not paid in full within sixty (60) days of the invoice date (excluding any good faith disputed amount for which ACCEL has delivered a written notice of dispute in accordance with this Section 13), at CARL WARREN'S option, will be subject to per annum interest at the lower of (i) 5% or (ii) the maximum interest rate permitted by applicable law, calculated from the due date to the date payment is received by CARL WARREN. For invoices not paid in full within



sixty (60) days of the invoice date, CARL WARREN will notify ACCEL of such failure to pay and if ACCEL does not cure such failure in full (excluding any good faith disputed amount for which ACCEL has delivered a written notice of dispute in accordance with this Section 13) within ten (10) business days after the date of such notice (the “cure period”), CARL WARREN may, without waiving any other rights or remedies to which it may be entitled, as of the first business day following the cure period, immediately limit access to data, suspend and/or terminate this Agreement, and/or seek collection of all amounts due, including by sending outstanding invoices to a collection agency. ACCEL will reimburse any costs and expenses (including, but not limited to, the fees of a collection service and reasonable attorneys’ fees) incurred by CARL WARREN to collect any amount that is not paid when due.

#### **14. CONFLICT OF INTEREST**

In the event a claim or incident is reported to CARL WARREN by ACCEL and it is determined that the actual or potential claimants therein are also clients of CARL WARREN, then CARL WARREN shall immediately notify ACCEL of such potential conflict of interest so ACCEL may have the option to choose an independent investigator and adjuster.

#### **15. CANCELLATION OF AGREEMENT**

- a. Voluntary Termination. This Agreement may be terminated at any time by either party, without cause, by giving the other party not less than sixty (60) days prior written notice of such termination.
- b. Termination for Cause. This Agreement shall terminate at the election of ACCEL or CARL WARREN if the other party breaches any material provision of this Agreement and fails to cure such breach within ten (10) business days after written notice thereof is given to the party, or in the event the breach is not capable of being cured within such ten (10) business day period, the breaching party has not commenced good faith efforts to cure such default within ten (10) business days and continued thereafter in good faith to diligently pursue the completion of such cure. Failure of ACCEL to comply with Section 13 ACCEL’S RESPONSIBILITIES shall qualify as cause under this Section.
- c. Termination by CARL WARREN. CARL WARREN may also terminate this Agreement pursuant to Section 21(f).
- d. In the event of termination or expiration of this Agreement, CARL WARREN will assist ACCEL in arranging a smooth transition to another third party claims administrator, including, but not limited to, providing ACCEL with copies of all products, files, records, computations, claims files, studies and other data prepared or obtained in connection with this Agreement, which copies shall become the permanent property of ACCEL. Except for this transition assistance, CARL WARREN’s obligation to provide services to ACCEL will cease at 12:01 a.m. upon the effective date of termination or expiration.

#### **16. DISPOSITION OF FILES ON TERMINATION OF AGREEMENT**

- a. All files on each claim shall be property of ACCEL.
- b. In the event of expiration of the Agreement, non-renewal thereof, or cancellation, CARL WARREN shall bill ACCEL, subject to the rates quoted in Section 11 herein above, for work completed by CARL WARREN on each claim. Upon receipt of payment of outstanding invoices, CARL WARREN shall



promptly forward all completed and pending claim files to ACCEL unless ACCEL requests CARL WARREN to continue to process any files on a time and expense basis as provided for in the CARL WARREN'S standard rate schedule at the time such services are rendered.

## **17. HOLD HARMLESS**

- a. ACCEL'S Indemnification Obligation. ACCEL agrees it will indemnify, defend and hold harmless CARL WARREN and its affiliates, and their respective officers, directors, employees, agents, attorneys, shareholders, and their successors and assigns (collectively "CARL WARREN Indemnity"), from and against any loss, claim, damage, cost or expense, including but not limited to reasonable attorney's fees and costs, that such CARL WARREN Indemnity may incur arising out of, in connection with, or in any way related to the performance of CARL WARREN'S duties and obligations under this Agreement except claims solely resulting from or arising out of:
- (i) acts of CARL WARREN performed in bad faith or failures to act occurring as a result of CARL WARREN'S negligence resulting in a breach of CARL WARREN'S duties and obligations under this Agreement; or
  - (ii) acts of CARL WARREN which exceed the authority granted to it by ACCEL under this Agreement; or
  - (iii) acts or failures to act of CARL WARREN which are not in compliance with lawful written instructions issued by ACCEL to CARL WARREN provided such instructions are consistent with the scope, objectives and terms of this Agreement.
- b. CARL WARREN'S INDEMNIFICATION OBLIGATION. CARL WARREN agrees it will indemnify, defend and hold harmless ACCEL and its respective affiliates, and their respective officers, directors, employees, agents, attorneys, shareholders, and their successors and assigns (collectively "ACCEL Indemnity"), from and against any loss, claim, damage, cost or expense, including but not limited to reasonable attorney's fees and costs, that such ACCEL Indemnity may incur solely resulting from or arising out of:
- (i) acts of CARL WARREN performed in bad faith or failures to act occurring as a result of CARL WARREN'S negligence resulting in a breach of CARL WARREN'S duties and obligations under this Agreement; or
  - (ii) acts of CARL WARREN which exceed the authority granted to it by ACCEL under this Agreement; or
  - (iii) acts or failures to act of CARL WARREN which are not in compliance with lawful written instructions issued by ACCEL to CARL WARREN provided such instructions are consistent with the scope, objectives and terms of this Agreement.
- c. Limitations on CARL WARREN's Indemnity Obligations. CARL WARREN'S indemnification obligations set forth in this Agreement shall apply only to the extent such obligations solely relate to or solely arise in connection with claims serviced by CARL WARREN during the Term and under the scope of this Agreement.
- d. Survival of Obligations. The obligations of the parties set forth in this Section 17 shall survive termination of this Agreement.

## **18. INSURANCE**



During the performance of service hereunder, CARL WARREN shall maintain at least the following insurance coverage:

- a. Personal Injury, Bodily Injury and Property Damage Liability Insurance including coverage for General Liability, Contractual Liability and Auto Liability including owned automobiles and non-owned automobiles with at least a Five Million Dollar (\$5,000,000) limit of liability per occurrence.
- b. Workers' Compensation Insurance as required by applicable state laws for all employees engaged in service under this AGREEMENT.
- c. Errors and Omissions Insurance in the amount of not less than Five Million Dollars (\$5,000,000).

These policies of Insurance:

- a. May contain a deductible amount not to exceed Fifty Thousand Dollars (\$50,000) per claim.
- b. Evidence of Coverage will be provided to ACCEL annually.

## **19. RELEASE OF INFORMATION**

CARL WARREN shall not make public information releases or otherwise publish any information obtained or produced by it as a result of, or in connection with, the performance of services under this Agreement without the prior written authorization from the ACCEL.

## **20. AUDITS**

The CARL WARREN'S files shall be made available for audits at any time upon reasonable notice. Reasonable notice shall be defined as thirty (30) days or as otherwise agreed by the parties. If special retrieval or shipment of the requested files is necessary, ACCEL shall reimburse CARL WARREN at cost. The CARL WARREN reserves the right to reject an auditor proposed by ACCEL if the proposed auditor may gain an unfair competitive advantage over CARL WARREN by conducting such an audit.

## **21. MISCELLANEOUS**

- a. Governing Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of California.
- b. Amendments, etc. Neither this Agreement nor any of the terms hereof may be amended, changed, waived, discharged or terminated except by an instrument in writing signed by both of the parties hereto.
- c. No Waiver. No delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any waiver on the part of any party hereto of any such right, power or privilege, or any single or partial exercise of any such right, power or privilege, preclude any further exercise thereof or the exercise of any other right, power or privilege.
- d. Severability. If any part of this Agreement is contrary to, prohibited by or deemed invalid under, any applicable law of any jurisdiction, then such provision shall, as to such jurisdiction, be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, without invalidating the remainder hereof or affecting the validity or enforceability of such provision in any other jurisdiction.
- e. Independent CARL WARREN. At all times during the term of this Agreement, CARL WARREN shall be deemed to be an independent CARL WARREN to ACCEL acting in the capacity as ACCEL'S agent subject to the limited authority granted herein. Nothing contained in this Agreement shall be deemed to



create the relationship of employer and employee, partners, or joint ventures between ACCEL and CARL WARREN. CARL WARREN shall not act as an insurer, nor shall it be ultimately financially responsible for payment or satisfaction of Claims or causes of action against ACCEL.

- f. Current Law & Regulation. This Agreement is entered into with the understanding that existing Federal, State or other jurisdictional regulations will remain in effect for the duration of this Agreement. ACCEL agrees that should administrative or other costs of service provided hereunder be substantially increased as a result of modifications in existing law, enactment of new legislation, or promulgation of new administrative guidelines, CARL WARREN service fees may be renegotiated during the Agreement term. If revised fee agreements cannot be reached, CARL WARREN may terminate this Agreement, at its option, after sixty (60) days written notice to ACCEL.
- g. Counterparts. This Agreement may be executed simultaneously in two counterparts, each of which when so executed and delivered shall be deemed an original, but both of which together shall constitute one and the same instrument, and all signatures need not appear on any one counterpart. A facsimile, telecopy or other reproduction of this Agreement may be executed by any party and delivered by such party by facsimile or other electronic transmission (including e-mail), and such execution and delivery shall be considered valid, binding and effective for all purposes.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their duly authorized representatives as of the day and year first written above.

(CARL WARREN)

(ACCEL)

**CARL WARREN & COMPANY**

**AUTHORITY FOR CALIFORNIA  
CITIES EXCESS LIABILITY**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**ANY ALTERATIONS TO THIS CONTRACT WILL RENDER THE CONTRACT NULL AND VOID.  
THE PRICING QUOTED IN THIS CONTRACT WILL REMAIN EFFECTIVE FOR THIRTY (30)  
DAYS FROM THE INCEPTION DATE LISTED ON THIS CONTRACT AFTER WHICH TIME THE  
CONTRACT WILL BE RECINDED.**



# CARL WARREN & COMPANY

## EXHIBIT A

### FORM OF PAYMENT GUIDELINES

These Payment Guidelines are entered into between **CARL WARREN & COMPANY** (the "Contractor") and **ACCEL** (the "Principal") pursuant to that certain Third Party Claims Administration Contract (the "Agreement"), dated as of **July 1, 2015** between Contractor and Principal, and is incorporated in, and subject to, the Agreement.

**Authority Limit: \$0.00**

**Other Payment Procedures:**

None

These Payment Guidelines will become binding on Contractor and Principal on the date that they have been executed by each such party as set forth below.

(CONTRACTOR)

(PRINCIPAL)

**CARL WARREN & COMPANY**

**ACCEL**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_