



## AGENDA

**LEGEND:** A - Action may be taken  
I - Information  
1 - Included  
2 - Handout  
3 - Separate  
4 - Verbal

**JPA:** ACCEL CLAIMS COMMITTEE MEETING

**DATE/TIME:** Thursday, September 1, 2022 at 10:00 AM

**LOCATION:** Teleconference

Link: <https://alliantinsurance.zoom.us/j/92162714098?pwd=UUYva0IUSZINkIHd2QyaEIwdSsyQT09>

Meeting ID: 921 6271 4098

Passcode: 012049

Dial: (669) 900-6833

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***In accordance with the requirements of the Brown Act, notice of this meeting must be posted in publicly accessible places, 72 hours in advance of the meeting, at the office of ACCEL's Secretary.***

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*Per Government Code section 54954.2, persons requesting disability-related modifications or accommodations, including auxiliary aids or services in order to participate in the meeting, are requested to contact Alliant Insurance Services at (415) 403-1400, 24 hours in advance of the meeting. Access to some buildings may require routine provision of identification to building security. However, ACCEL does not require any member of the public to register his or her name, or to provide other information, as a condition to attendance at any public meeting and will not inquire of building security concerning information so provided. See Government Code section 54953.3.*

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- MEMBER** • City of Anaheim, 201 South Anaheim Blvd., Suite 503, Anaheim, CA 92805  
**LOCATIONS** • City of Bakersfield, 1600 Truxtun Ave., 5<sup>th</sup> Floor, Bakersfield, CA 93301  
**VIA TELE -** • City of Burbank, 275 E. Olive Ave., Burbank, CA 91510  
**CONFERENCE** • City of Santa Cruz, 333 Front St, Suite 200 Santa Cruz, CA 95060  
• City of Santa Monica, 1685 Main Street, Room 131, Santa Monica, CA 90401

**PAGE**

**A. CALL TO ORDER**

**B. CONSENT CALENDAR**

(A)

3-4

- 1 1. Approval of Minutes for the May 25, 2022 Claims Committee Meeting  
*The Committee will review these minutes and will take action to approve or give direction.*

**C. REPORTS**

**1. CLAIMS COMMITTEE'S REPORT**

- 5 1 a) Election of Claims Committee Chair (A)

*The Claims Committee annually convenes to elect the Claims Committee Chair. Action may be taken or direction given.*

6-39

- 1 b) Claims Administration Renewal Contract (A)

*The Claims Committee will review the proposed renewal contract for Claims Administration with George Hills. Action may be taken to make a recommendation to the Board or direction given.*

40-56

- 1 c) Proposed Changes: ACCEL Claims Reporting and Handling Policy and Procedure (A)

*The Committee will discuss proposed changes. Action may be taken to provide a recommendation to the Board or direction given.*



3 d) **CLOSED SESSION – Pursuant to Gov’t Code 54956.95** (A)

*Members will review the following Closed Session items and may take action or give direction.*

- i. Reservation of Rights Letters
- ii. Crawford v. Bakersfield
- iii. Okamoto v. Bakersfield
- iv. Ramirez/Segura v. Bakersfield
- v. Lohman v. Mountain View
- vi. Rios v. Ontario
- vii. Tomaszewski v. Santa Barbara
- viii. Jones v. Anaheim

**D. PUBLIC COMMENTS** (I)

4 *The public is invited at this point to address the Committee on issues of interest to them.*

**ADJOURNMENT**



**MINUTES OF THE  
ACCEL CLAIMS COMMITTEE  
MEETING**

Item No. B.1  
Claims Committee  
September 1, 2022

**Wednesday, May 25, 2022 at 2:00 PM**

**LOCATION:  
TELECONFERENCE**

Link: <https://alliantinsurance.zoom.us/j/97375986772?pwd=bDZ4YktDTUNCdTdaYTM1NzY2cm1jdz09>

Meeting ID: 973 7598 6772

Passcode: 808718

Dial: (669) 900-6833

**MEMBERS PRESENT:**

Tracey Matthews, City of Anaheim  
Jena Covey, City of Bakersfield  
Oles Gordeev, City of Santa Monica  
Charlotte Dunn, City of Visalia

**MEMBERS ABSENT:**

Betsy McClinton, City of Burbank

**GUESTS AND CONSULTANTS:**

Ben Oram, George Hills Company  
David Tratuz, George Hills Company  
Conor Boughey, Alliant Insurance Services  
Lorissa Huey, Alliant Insurance Services

**A. CALL TO ORDER**

Tracey Matthews called the meeting to order at 2:03 PM.

**B. Consent Calendar**

**B1. Approval of Minutes for the May 10, 2022 Claims Committee Meeting**

A motion was made to approve the consent calendar.

**MOTION:** Jena Covey      **SECOND:** Charlotte Dunn      **MOTION CARRIED**



	Tracey Matthews	Jena Covey	Betsy McClinton	Oles Gordeev	Charlotte Dunn
Aye	X	X		X	X
Nay					
Abstain					

**C. REPORTS**

**C1. Claims Committee’s Reports**

**C1a. ACCEL Claims Reporting and Handling Policy and Procedure**

**C1ai. Proposed Changes**

**C1aii. Review Attorney Rates**

Ben Oram, George Hills proposed a new section called, “Settlement Authority Process” to the Claims Reporting and Handling Policy and Procedure.

The Committee did not want to make a recommendation to the Board to approve the new section.

The Committee agreed that there needs to be language that outlines the steps of ACCEL’s current process to settle a claim. The ACCEL Bylaws state that the Board has authority to settle claims. This item will be agendized at the next Claims Committee Meeting.

Conor Boughey reminded the Committee that the Board adopted language stating ACCEL Members are advised to request approval from the Claims Committee for any attorney rates excess of \$400/hour. Conor asked the Committee to review if this rate is still appropriate and the Committee agreed.

Direction was given to the Program Administrators to change the word “reasonability” to “reasonableness” in the fourth paragraph of Section VII. Claims Reimbursement Requests.

No reportable action took place.

**D. PUBLIC COMMENTS - No public comments were made.**

**ADJOURNMENT**

Tracey Matthews adjourned the meeting at 2:27 PM.



**Item No. C.1.a**  
**Claims Committee**  
**September 1, 2022**

### **Election of Claims Committee Chair**

**ISSUE:** The Claims Committee annually elects a Committee Chair. The Committee Members are:

- Tracey Matthews, City of Anaheim (*Current Chair*)
- Jena Covey, City of Bakersfield (*Current President*)
- Betsy McClinton, City of Burbank (*2018-20 Past Chair*)
- Ross Brandon, City of Santa Cruz
- Oles Gordeev, City of Santa Monica (*Past Chair*)

**RECOMMENDATION:** Staff recommends the Committee discuss and take action to elect a new Claims Committee Chair.

**FISCAL IMPACT:** No financial impact is expected from the recommended action.

**BACKGROUND:** The Executive Committee annually appoints Members of the Board to serve on Committees in July. Each year the Claims Committee elects a Chair, most recently held by Tracey Matthews. From 2020-21, Oles Gordeev was the Chair. From 2018-20, Betsy McClinton was the Chair. In 2017-18, the Chair was Charlotte Dunn, City of Visalia. Prior to Charlotte, Deb Hossli from the City of Santa Monica served as Committee Chair.

### **ARTICLE VI** **COMPOSITION AND DUTIES OF COMMITTEES**

The operation of the Authority shall be overseen by four standing committees: Executive, Underwriting, Finance, and Claims. ACCEL Member Alternates may be appointed to serve as members of the Underwriting, Finance and Claims Committees, but not as Chairperson.

**ATTACHMENT:** None.



**Item No. C.1.b**  
**Claims Committee**  
**September 1, 2022**

### CLAIMS ADMINISTRATION RENEWAL CONTRACT

**ISSUE:** At the June 2022 Board Meeting, John Chaquica, George Hills (GH) presented a PowerPoint to the Board about ACCEL's current contract with GH. The Board requested that GH propose a new contract with a new term of January 1 for three years with two additional one-year periods to extend and outline the impacts on contract pricing and service options to have Ben Oram, David Trautz, and the addition of Neil Callahan and a senior adjuster.

From that meeting, the Board delegated authority to the Claims Committee to evaluate the proposed contract with GH and make a recommendation to the Board at the October 2022 Long Range Planning and Board Meeting. George Hill was directed to send the contract to Tracey Matthews, Claims Chair by August 1, 2022. John Chaquica sent the contract to Committee Chair Tracey on 7/26/2022.

**RECOMMENDATION:** The Claims Committee may take action to make a recommendation to the Board or provide direction regarding the contract and services between ACCEL and George Hills.

#### Additional Consideration:

**In favor:** ACCEL's current agreement with GH expires July 1, 2023. For the Committee's consideration, GH has presented an option to execute a new agreement sooner, in order to restructure the service team and align the goals of ACCEL with the contract in place for Claims Administration. A vote in favor of executing a new agreement prior to expiration of the current agreement would mean that ACCEL is seeking a contract modification, and should review the four optional structures on page 4 of 32 of the proposed GH contract.

**Against:** If the Committee is not in favor of amending the services received from GH, no action is currently needed. The current contract is in place through July 1, 2023 and the option to renew that is most similar to the current structure is Option 1.

# ACCEL

## Authority for California Cities Excess Liability

c/o Alliant Insurance Services, Inc.  
Corporation Insurance License No. 0C36861  
560 Mission Street, 6th Floor, San Francisco, CA 94105



**FISCAL IMPACT:** The existing contract includes the following compensation:

### 5. PRICING

ACCEL agrees to pay the following claim handling and service fees for RMS's services:

#### 1) Annual Fee

July 1, 2020 to June 30, 2021:	\$103,991 FLAT FEE, prepaid quarterly.
July 1, 2021 to June 30, 2022:	\$106,196 FLAT FEE, prepaid quarterly.
July 1, 2022 to June 30, 2023:	\$108,448 FLAT FEE, prepaid quarterly.

#### 2) Travel Budget *(for Mediations and Member on-site Meetings)*

The Following maximum for expenses related to travel for Mediations and special Member requested Meetings, (subject to the terms of the ACCEL Travel and Reimbursement Policy).

July 1, 2020 to June 30, 2021:	\$14,000
July 1, 2021 to June 30, 2022:	\$15,000
July 1, 2022 to June 30, 2023:	\$16,000

#### 3) 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, RMS will propose a time and expense fee schedule which will require approval by the Claims Committee.

The proposed agreement contains four service options, ranging in price between \$185,000 and 275,000 depending on the service team structure. For comparison to the fees above, Committee members should include the Annual Fee and Travel Budget.

**BACKGROUND:** Effective July 1, 2020, the Claims Administration Contract with Risk Manager Services (RMS) was assigned to George Hills and Company (GH). The contract continues for three years ending June 30, 2023.

**ATTACHMENT:** Proposed ACCEL Claims Administration George Hills Contract.

**CLAIMS ADJUSTING AND ADMINISTRATION**  
**SERVICE CONTRACT BETWEEN**  
**THE AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY**  
**AND GEORGE HILLS COMPANY, INC.**

This Contract is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by and between the AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY (hereinafter "ACCEL"), and GEORGE HILLS COMPANY, INC., (hereinafter "GH").

GH is a California Corporation doing business as licensed, independent insurance adjusters and administrators, with John Chaquica, Chief Executive Officer, responsible for contract compliance, terms and corporate governance. Chris Shaffer, Chief Operating Officer, shall oversee the daily operations. The company's corporate office is located at P.O. Box 278, Rancho Cordova, California, 95741, telephone, (916) 859-4800.

ACCEL is a joint powers authority formed under the laws of California located at 560 Mission Street, 6<sup>th</sup> Floor, San Francisco, CA 94105, telephone (415) 403-1400.

IT IS HEREBY AGREED by and between the parties signing this contract as follows:

**1. GENERAL**

CLIENT is desirous of availing itself of liability and property claims adjusting and administration services. GH is a Third-Party Claims Administrator handling self-insured claims and is ready to and capable of performing such services. As such, GH may act as a representative of the ACCEL when directed for the investigation, adjustment, processing, and evaluation of general liability, motor vehicle, and potential money damage claims or incidents filed by third parties against the ACCEL, or against parties for whom the ACCEL is alleged to be legally responsible, which are premised upon allegations of willful, intentional, negligent, or careless acts and/or omissions ("CLAIMS").

**2. SCOPE OF SERVICES**

GH agrees to provide complete claim handling services on each accident or incident, as directed by ACCEL. Each CLAIM will be subject to the Scope of Services and Client Expressed Authority and Limitations form, attached hereto as Exhibit A. ACCEL shall determine the scope of services to be provided by GH by signing the Scope of Services and Client Expressed Authority and Limitations for each Contract. The Scope of Services and Client Expressed Authority and Limitations form shall be the controlling document for the scope of claims adjusting services to be provided by GH for ACCEL and may be amended as needed during the Contractual period.

**3. DENIAL, COMPROMISE, OR SETTLEMENT OF CLAIMS**

It is agreed that ACCEL has granted \$0 authority to GH for the purpose of compromising, settling, and paying any claims against ACCEL being handled by GH. GH will issue payment for legal expenses as defined in the Client Expressed Scope of Work form. Prior approval to compromise or settle any claim or pay any expense will be obtained from the designated claims officer or employee on matters exceeding the authority granted above.

#### **4. FILE RETENTION**

GH shall serve as the custodian of the client's data, for documents related to each of the claims subject to this agreement only, and as such shall electronically retain all related records through the life of this contract. Upon termination of this contract, GH shall transfer all of the data pertaining to all claims, either to the ACCEL or to a recipient designated by the ACCEL, within 30 days of termination. ACCEL and GH may agree via a separate signed agreement to retain records and/or data for a longer period of time, but in the absence of such separate agreement, GH will remove all data received, held, used, or stored in relation to George Hill's performance pursuant to this contract, from its system after 30 days from termination.

#### **5. CONFIDENTIALITY**

All data, documents, discussions, or other information developed or received by or for GH in PERFORMANCE of this contract are confidential and not to be disclosed to any person except as authorized by ACCEL or ACCEL's designee, or as required by law.

#### **6. CONFLICT OF INTEREST**

In the event GH receives a claim from the ACCEL in which there arises a "conflict of interest," GH shall immediately notify ACCEL. ACCEL may then, at their expense choose to hire another well-qualified claim firm to handle that particular claim to a conclusion. GH covenants that it presently knows of no interest, direct or indirect, which would conflict in any manner with the performance of services required under this contract.

#### **7. CLIENT RESPONSIBILITY**

ACCEL agrees to the following:

- 1) ACCEL shall cooperate with GH as reasonably necessary for GH to perform its services.
- 2) ACCEL shall ensure its members' compliance with claims reporting and handling requirements in all applicable memorandums of coverage, policies, and procedures.
- 3) ACCEL agrees to provide direction to GH as requested regarding particular project requirements.
- 4) ACCEL shall identify a primary contact person(s) for an account as well as for billing and loss run submission. In addition, ACCEL shall be responsible for reporting all changes in the primary point of contact to GH.
- 5) ACCEL shall be responsible for reporting to GH all Bodily Injury Claims in addition to all other items noted in Attachment B to this Agreement "Medicare, Medicaid, and SCHIP Extension Act of 2007 (MMSEA)."
- 6) ACCEL shall be responsible for updating GH on any changes to coverage/policy language; including limits, retentions/deductibles and coverage changes by April 30 of each year.

- 7) ACCEL shall obtain any necessary consent in the collection of any ACCEL data that is transmitted to a third party (i.e., lawyer, actuary, or auditor). ACCEL shall provide GH with reasonable assurances that it has the necessary consent to transmit ACCEL data to a third party. ACCEL acknowledges that the claims data may contain confidential and/or protected health information (“PHI”). In the event ACCEL authorizes and directs GH to provide claims data to a third party, ACCEL will indemnify, defend and hold harmless GH from and against all claims, damages, losses and expenses, including court costs and reasonable attorneys’ fees, arising out of or resulting from:(i) any action against GH that is based on any negligent act or omission of ACCEL or a third party in transmitting and/or disclosing the PHI and/or claims data; or (ii) the violation of any state or federal statute, ordinance, or regulation by ACCEL or a third party in transmitting and/or disclosing the claims data.

## **8. COMPENSATION, FEES AND EXPENSES**

The following compensation, fees and expenses, shall be paid in consideration for the services provided by GH as described in this Contract at Section 2 – Scope of Services. This Section shall remain in force and services provided during the entire term of this Contract, unless otherwise amended pursuant to Section 21 of this Contract.

The amounts to be paid pursuant to this Contract are detailed in two distinct areas of services:

First, “Fees for Claims Administration Services,” (subsection “A” below)

Second, “Additional Reimbursable Costs and Expenses,” (subsection “B” below)

The Fees and Costs/Expenses pursuant to both subsections “A” and “B” will be billed together monthly in a standard invoice format utilized by GH. Additionally, if ACCEL elects any optional services identified subsections “C” or “D” below, all additional amounts will also be billed together monthly where applicable.

### **1) Fee Options for Claims Administration Services**

- a. **Time and Expense:** The GH Claims team will charge time to each claim using 1/10th of an hour increments for each task performed on a claim. The time and further descriptions of each task shall be stated on each monthly invoice. The current hourly rates are:

Litigation Manager: \$185/hour\*

Supervisor: \$121/hour\*

Adjuster: \$97/hour\*

Claims Processing: \$80/hour\*

b. Time and Expense with a cap.....

*\*Fee options are subject to the Annual Fee Escalator described below.*

1) c. **Annual Fixed Fee.** In exchange for the services provided under this Contract by GH, CLIENT shall pay to GH the following Annual Fixed Fee(s).

**The following options for a fixed fee are provided to ACCEL based on the level of services requested:**

**Option 1: Current configuration with the following staff which carries a working capacity of 190 litigated files:**

Claims Processor: Patti Schneiders

Claims Supervisor: David Trautz

Litigation Manager: Benjamin Oram, Esq.

Fixed Fee	
Year One	\$200,000

**Option 2: Standard GH configuration with the following staff which carries a working capacity of 225 litigated files:**

Claims Processor: Patti Schneiders

Sr. Claims Adjuster: TBD

Claims Supervisor: David Trautz

Litigation Manager: Benjamin Oram, Esq.

Fixed Fee	
Year One	\$185,000

**Option 3: Current configuration with the following staff which carries a working capacity of 240 litigated files:**

Claims Processor: Patti Schneiders

Claims Supervisor: David Trautz

Litigation Manager: Benjamin Oram, Esq. (30-50% of claims)

Litigation Manager: Neil Callahan, Esq. (30--50% of claims)

Fixed Fee	
Year One	\$275,000

**Option 4: Maximum configuration with the following staff which carries a working capacity of 260 litigated files:**

Claims Processor: Patti Schneiders

Sr. Claims Adjuster: TBD

Claims Supervisor: David Trautz

Litigation Manager: Benjamin Oram, Esq. (50% of claims)

Litigation Manager: Neil Callahan, Esq. (50% of claims)

Fixed Fee	
Year One	\$260,000

**2) Additional Reimbursable Costs and Expenses**

- a. **Annual Administration Fee:** \$15,000 which is billed annually at the beginning of the Agreement period and thereafter upon the anniversary of the Agreement.
- b. **Mileage – Adjuster:** Mileage is paid at the IRS rate.
- c. **MMSEA:** There is a one-time setup fee of \$300 and a \$500 annual reporting fee. which are paid directly to ExamWorks, for the performance of CMS reporting.
- d. **Claims Related Travel Expenses:** GH will separately charge for any travel expenses in connection with attendance at mediations, settlement conferences, trials, Board/Committee meetings, etc. This will be subject to prior approval and that actual expenses will be submitted with receipts on a monthly basis.

- e. **System Access Fee:** Access to the claims management information system, "CMIS", carries a cost of \$1,500 annually. That cost is included in the annual administration fee and includes the setup and management of up to five (5) "read only" user accounts. "Read/write" access to the system can be obtained for an additional fee.
- f. **iMetrics Report Fee:** There will be no charge for our iMetrics business intelligence reports with executive in-person debriefs.
- g. **Custom Reports:** Additional charges for custom reporting shall be defined as, requiring a third-party programmer for three hours or more and is client specific.
- h. **Catastrophic Fees:** GH recognizes that there are events that are unanticipated and catastrophic. When such events occur, it requires additional hours for the handling of such claims. As such, to preserve the quality and efficiency of service for which we are known, GH proposes that should any one catastrophic event occur resulting in five or more claimants, or two or more claimants with their own attorneys, ACCEL shall be billed at the current hourly rate for all services as identified below. Catastrophic Fees under this section only apply to clients which have selected a "Fixed Fee" or "Time and Expense with a cap" payment options.

If required by this section, the GH Claims team will charge time to each claim using 1/10th of an hour increments for each task performed on a claim. The time and further descriptions of each task shall be stated on each monthly invoice. The current hourly rates are:

Litigation Manager:	\$185/hour*
Supervisor:	\$121/hour*
Adjuster:	\$97/hour*
Claims Processing:	\$80/hour*

- i. **Annual Fee Escalator:** The Annual Fixed Fee and all hourly rates in this Contract shall be adjusted at the beginning of each of the remaining years of the term by the lesser of, 5% or in accordance with the changes in the Consumer Price Index (CPI-U) for all Urban Consumers for the Western Region using the most recently published annual percentage change, but in any event such increase shall not be less than 3%.
- j. **General File:** A general administrative file shall be established and maintained to track effort related to services necessary to fulfill our contractual obligations and not otherwise associated with a claim.

**3) First Party Subrogation Fees**

In the event that a member of ACCEL elects to utilize the First Party Subrogation Services defined in the Scope of Work.

**4) Optional Services**

GH employs "in-house" attorneys which have vast experience in claims and litigation handling, problem resolution, issue identification and investigation, and advice and consultation, for all types of claims and issues which may arise for a public entity. Should the special circumstance arise whereby CLIENT requests additional services by a GH attorney, including those identified in the list below, the services will be provided on a time and expenses basis and at the rate of \$185.00 per hour, billed using 1/10th of an hour increments for each task performed on a claim or issue. The fees charged for these services will be in addition to any other compensation defined in this

Monitoring Counsel

Outside General and Special Counsel

Trial/Mediation/Board Meeting Attendance

Legal Training and Seminars

GH can also provide Professional and Financial Services related to risk management and loss prevention in alignment with the scope of services for the same rate referenced above.

**NOTE:** These services are traditionally Time and Expense, however an annual fee can be considered.

**9. PAYMENT SCHEDULE**

GH will submit its invoices to ACCEL monthly, and payment shall be made by ACCEL, within a reasonable period of time, not to exceed thirty (30) days from the date of the invoice.

**10. ELECTRONIC FUNDS TRANSFER OR DIRECT DEPOSIT**

GH has determined that the most efficient and secure default form of payment for goods and/or services provided under Contract with ACCEL shall be Electronic Funds Transfer (EFT) or direct deposit, unless an alternative method of payment is deemed appropriate by both GH and ACCEL and agreed to in writing.

GH will submit a direct deposit authorization request via to ACCEL with banking and vendor information, and any other information that the ACCEL determines is reasonably

necessary to process the payment and comply with all accounting, record keeping, and tax reporting requirements.

At any time during the duration of the Contract, GH may submit a written request for an exemption to this requirement. Such request must be based on specific legal, business or operational needs and GH will explain why the payment method designated by the ACCEL is not feasible and an alternative is necessary.

## **11. TERM AND TERMINATION**

Term: The term of this contract shall be for three (3) years commencing on September 1, 2022 and remaining in full force and effect through and including August 30, 2025. Either party may terminate this contract for any reason upon issuing a ninety (90) day written notice to the other party pursuant to section 20 of this Contract. ACCEL, at its sole discretion, may exercise two options to extend this Agreement for one year for each option by notifying GH of such extension(s) at least 30 days prior to the anniversary date. ACCEL, at its sole discretion, may also simultaneously exercise both one year options for a combined two year extension. The terms and condition of any extension under this paragraph will be mutually agreed upon by the parties at the time of extension.

Termination for Convenience: ACCEL may at any time and for any reason terminate this Agreement upon ninety (90) days written notice to GH pursuant to section XVIII of this Contract. Notice shall be deemed served on the date of mailing. Upon receipt of such notice, GH shall discontinue services at the end of the 90-day period in connection with the scope of services of this Agreement. Upon such termination, GH shall be entitled to payment from ACCEL for services completed and provided through the date of termination, per Section VIII.

Termination Costs: If termination takes place in less than five (5) years from start of term, ACCEL may be subject to a fee, not to exceed \$2,500, intended to cover costs associated with outgoing data conversion, transition and contract close out.

Upon completion of data conversion and return of data back to ACCEL (electronic and/or hard copy), GH will destroy any remaining files.

## **12. FAIR EMPLOYMENT**

It is the policy of GH to provide fair and equal treatment to all staff members. GH is an Equal Opportunity Employer and does not discriminate in any way against any person on the basis of age, race, sex, color, national origin, national ancestry, physical disability, medical condition, mental disability, religion, creed, marital status, sexual orientation, gender identification, gender expression, use of family care leave or any other classification deemed protected by law.

## **13. INDEPENDENT CONTRACTOR**

In performing claims administrative services herein agreed upon, GH, and all GH employees, shall have the status of an independent contractor of the ACCEL and shall not be deemed to be an officer, employee, or agent of ACCEL.

#### **14. INDEMNIFICATION**

GH will defend, indemnify, and hold harmless ACCEL from and against all claims, demands, actions, or causes of action arising directly or indirectly from the negligent action, conduct, or failure to act by GH personnel ("Indemnity Event"), except that indemnity under this section does not apply with respect to any claim, demand, action, or cause of action arising out of the sole negligence or willful misconduct of the ACCEL. This right to indemnity shall not cover any claims in which there is a failure to give GH prompt and timely notice, within thirty (30) days of notice received by the ACCEL which implicates this provision, but only if and to the extent that such failure materially prejudices the defense of such claims. For an Indemnity Event, the maximum amount recoverable by ACCEL against GH for damages and costs (inclusive of attorneys' fees) is limited to the insurance policy limits, of the policy which covers the Indemnity Event held by GH, in place at the time of the Indemnity Event.

ACCEL will defend, indemnify, and hold harmless GH, and/or employees of GH, from and against all claims, demands, actions, or causes of action, which may arise, from the action, conduct, or failure to act by ACCEL. In any cases subject to this indemnity provision, wherein GH, or any employee of GH, is named in a filed or verified complaint simply by virtue of the fact it is the CLAIMS ADMINISTRATION firm, or an employee thereof, on a given claim, the ACCEL will defend GH, and/or its employees, at no cost to GH or its employees.

#### **15. INSURANCE**

GH shall obtain, keep and maintain insurance, and provide ACCEL with Certificates of Insurance duly executed by an authorized representative of insurance company or companies authorized to transact business in the State of California, which shall evidence that the GH has in full force and effect:

- 1) Commercial General Liability coverage applying to bodily injury, personal injury, and property damage with limits of \$1,000,000 per occurrence;
- 2) Professional Liability coverage with limits of \$3,000,000 per Claim/Annual Aggregate;
- 3) Workers' Compensation coverage with limits as required by California statutes and regulations; and
- 4) Fidelity Coverage for theft of ACCEL property in the amount of \$1,000,000 per loss.

GH shall include ACCEL as an additional insured under the Commercial General Liability insurance referenced above by endorsement or policy wording.

GH will provide thirty (30) days written notice, prior to the cancellation or reduction in insurance coverage will be provided.

#### **16. EMPLOYEE SOLICITATION**

During the period of this contract, and for a period of one (1) year thereafter, GH agrees not to solicit for employment any ACCEL employee contacted during the performance of

this contract. During the period of this contract, and for a period of one (1) year thereafter, ACCEL agrees not to solicit for employment, or employ either directly or by contract, any employee of GH contacted by the ACCEL during the performance of this contract.

#### **17. PERMITS, LICENSES, CERTIFICATES**

GH, at GH's sole expense, shall obtain and maintain during the term of this Contract, all permits, licenses, and certificates required in connection with the performance of services under this Contract, including appropriate business license.

#### **18. ARBITRATION**

GH and ACCEL agree that in the event of any dispute with regard to the provisions of the Contract, the services rendered or the amount of GH's compensation and the dispute cannot be settled through informal negotiation, the parties agree first to try in good faith to settle the dispute by mediation before resorting to arbitration. The parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to JAMS, or its successor, for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS, or its successor, for final and binding arbitration. Either party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The parties agree that they will participate in the mediation in good faith and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session. The mediation may continue after the commencement of arbitration if the parties so desire. Any arbitration arising out of or related to this Agreement shall be conducted in accordance with the expedited procedures set forth in the JAMS Comprehensive Arbitration Rules and Procedures as those Rules exist on the effective date of this Agreement, including Rules 16.1 and 16.2 of those Rules. In any arbitration arising out of or related to this Agreement, the arbitrator shall award to the prevailing party, if any, the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration.

#### **19. FORCE MAJEURE CLAUSE.**

GH shall be relieved of any liability if unable to meet the terms and conditions of this Agreement due to any "Act of God", natural disasters such as earthquake or fires, floods, riots, epidemics, pandemics, including COVID-19 regulations or restrictions issued by federal, state or local governmental authorities, strikes, or any act or order which is beyond the control of GH, provided GH takes all reasonable steps practical and necessary to effect prompt resumption of its responsibilities hereunder.

## **20. NOTICES**

All notices to GH shall be sent via certified U.S. Mail, postage prepaid, to the following address:

**GH**

George Hills Company  
Attn: John Chaquica, CEO  
P.O. Box 278  
Rancho Cordova, CA 95741.

All notices to the ACCEL shall be personally served or mailed, postage prepaid, to the following address:

**Client:**

Jena Covey, President  
ACCEL  
1600 Truxtun Ave., 3<sup>rd</sup> Floor  
Bakersfield, CA 93301

**Copy to:**

Conor Boughey  
ALLIANT  
560 Mission Street, 6<sup>th</sup> Floor  
San Francisco, CA 94105

This subsection only, regarding Notices, may be amended unilaterally by either party by and through the mailing of new or amended contact information to the other party via certified U.S. Mail at any time.

## **21. AMENDMENT**

GH and ACCEL agree that the terms and conditions of the Contract may be reviewed or modified at any time. Any modifications to this Contract, however, shall be effective only when agreed to in writing by both the ACCEL and GH, excepting only, modifications to the contact information to which Notices shall be sent under subsection XVIII.

## **22. CONTRACTOR NOT A PUBLIC OFFICIAL**

Neither GH, nor any employee of GH, is a "public official" for purposes of Government Code §§ 87200 et seq. GH conducts research and arrives at conclusions, provides advice, recommendation, or counsel independent of the control and direction of the ACCEL or any official of the ACCEL, other than normal contract monitoring. In addition, GH possesses no authority with respect to any ACCEL decision beyond these conclusions, advice, recommendation, or counsel.

## **23. ENTIRE CONTRACT**

GH and ACCEL agree that this contract constitutes the entire contract of the parties regarding the subject matter described herein and supersedes all prior communications, contracts, and promises, either written or oral.

**24. TIME OF ESSENCE**

Time is of the essence in respect to all provisions of this Contract that specify a time for performance: provided, however that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Contract.

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
John E. Chaquica, CEO  
GEORGE HILLS COMPANY INC.

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
NAME, TITLE  
AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY

DRAFT

## ATTACHMENT A

### **SCOPE OF SERVICES AND CLIENT EXPRESSED AUTHORITY AND LIMITATIONS UNDER THE CONTRACT**

This Attachment A is intended to provide the scope of services and specific service expectations in the Service Contract, that would not otherwise require revision during the contract period, and which may differ from or elaborate upon our Client Service Profile. Services to be provided by GH on behalf of ACCEL may include all or some of the following,

#### **I. PERSONNEL**

##### **A. Litigation Manager**

- 1) Claim and Litigation Management: Directs handling on claims with significant exposure, sensitive issues, and/or those with a high profile as agreed upon by the parties. Attends mediations and settlement conferences as appropriate to represent the interests of ACCEL. Provides advice and counsel on matters from the date of the incident through conclusion of the matter.
- 2) Coverage by ACCEL: Reviews claims and cases reported to ACCEL by its member entities to identify potential coverage issues under the applicable ACCEL memorandum of coverage. Where a formal coverage opinion appears necessary, the Litigation Manager will communicate with ACCEL's General Counsel regarding the need for an opinion and provide information as requested.
- 3) Excess Insurance: Reviews claims and cases reported to ACCEL for compliance with coverage requirements of excess or reinsurance carriers retained by ACCEL for the benefit of its members. Reviews correspondence from excess carriers and provides guidance on proper response by ACCEL.
- 4) Advice and Counsel: Reviews claim handling policies and procedures for compliance and issue identification. Reports to ACCEL on issues arising from members, claim and litigation handling, settlements, and appeals. Attends Claim Committee meeting quarterly to report on cases with significant development. Attends Board of Director's meeting quarterly to report on cases with significant development. Reports on other cases of significance as appropriate and relevant. Prepares Quarterly Litigation Reports and Closed Session Reports as necessary.

##### **B. Claims Supervisor**

- 1) Claims Handling: Reads, analyzes, and oversees all work performed by Claims Adjuster and Claims Processor including Investigative Services, Liability and Claim Handling Services, and Litigation Support Services, as defined herein. Provides input and guidance to Claims Adjuster and Claims Processor on all services. Ensures compliance with claims handling guidelines established by ACCEL. Responds to inquiries from excess carriers. Participates in meetings, calls, and conferences with defense counsel, GH claims team, excess carriers, and ACCEL or member personnel to determine strategy for claims handling.
- 2) Excess Insurance: Reviews claims and cases reported to ACCEL for compliance with coverage requirements of excess or reinsurance carriers retained by ACCEL for the benefit of its members. Reviews correspondence from excess carriers and provides guidance on proper response by ACCEL.
- 3) Advice and Counsel: Attends Claims Committee and Board of Directors meetings when requested. In preparation for Claims Committee and Board of Directors meetings, reviews ACCEL Loss Runs and Quarterly Litigation Reports for current status of all

claims in conjunction with Litigation Manager and Sr. Claims Adjuster. Determines cases to be reviewed at each meeting. Reviews Estimated Loss Payments with Litigation Manager for most current status. Produces documents to ACCEL for use in meetings including Loss Runs, Quarterly Litigation Reports, and Closed Session Reports as necessary.

**C. Sr. Claims Adjuster**

- 1) Claims Investigation: Performs initial Investigative Services to determine nature of claim and relevant facts and evidence at issue. Communicates with member, or member TPA as appropriate, to collect reports, documents, and evidentiary information, relevant to the claim for analysis of potential exposure.
- 2) Claims Handling: Regularly and consistently communicates with member, or member TPA as appropriate, defense counsel, GH team, and excess carriers to determine status on all claims reported, convey information, reports and documents, to all involved persons and entities. Maintains claim file and plan of action for all claims. Ensures compliance with excess reporting requirements and cooperation with excess adjusters.

**D. Claims Processor**

- 1) Receives all claims as reported by ACCEL members and sets up claim in CMIS.
- 2) Maintains claim files during pendency of action through close as instructed by Claims Adjuster.
- 3) Coordinates with Claims Adjuster and Supervisor regarding handling of claims, processing of invoices, document review and storage.

**II. SERVICES INCLUDED IN THE CONTRACT**

**A. General Administrative Services**

Throughout each year GH performs numerous functions which support claims administration on behalf of the Client, but do not include any claims handling, and are performed by non-claims personnel. Additionally, in the first year of a new client there are several "on-boarding" services that are general and administrative in nature. Below is a list of such services which are included within the terms of this Contract:

- 1) Access to CMIS and training.
- 2) A monthly listing of open claims, showing expense categories, reserves, and total incurred.
- 3) Monthly claim summary reports.
- 4) Providing loss run data and required reports.
- 5) Providing annual reports to outside agencies.
- 6) Filing of regulatory reports (such as 1099, W-9, etc.).
- ~~7) Establish and maintain a trust fund to pay indemnity and expenses that may be due on claims. The amount to be maintained in the trust fund shall be determined by ACCEL.~~
- ~~8) If the trust fund is not set up with the GH preferred bank—California Bank & Trust, there may be an additional set-up fee (other banks processes can be extraordinarily time consuming).~~
- ~~9) New bank account set up (signature cards, test checks, online access, set up bank in CXP).~~
- ~~10) Discussion and agreement on the Approval process.~~

- 11) ~~Process checks weekly.~~
- 12) ~~Submit positive pay if applicable/monitor positive pay (review daily emails from bank for exceptions).~~
- 13) ~~Maintain a copy of all checks drawn by GH to pay claims and claims related expenses.~~
- 14) ~~Submit monthly check registers of all transactions made for the period.~~
- 15) ~~Monitor account balance, prepare replenishment requests as needed (customize request for each client's need).~~
- 16) ~~Monthly bank reconciliation (prepared and sent to CLIENT).~~
- 17) ~~Special reports that requested to go with billing invoices (by member, claim type, etc.).~~
- 18) ~~Payment of invoices that are pass-throughs (i.e., invoices for medical record copies, ExamWorks, etc.).~~
- 19) Certificates of insurance as required by the Contract.

**B. Investigative Services**

- 1) Receipt and examination of all reports of accidents or incidents from ACCEL members pertaining to reported claims to assess liability in general and potential damages.

**C. Liability and Claim Handling Services**

- 1) Promptly set up a claim file upon receipt of the claim and maintain a claim file on each potential or actual claim reported.
- 2) Assess and evaluate the nature and extent of each claim and establish claims reserves for indemnity and legal expense.
- 3) Any bodily injury claim that is being pursued shall be indexed. Notice only matters or precautionary bodily injury claims that are not pursued do not need to be indexed.
- 4) Support litigation activity through active communication with members of ACCEL and their employees, claim administrators, defense counsel, and all other relevant persons as instructed.
- 5) Report claims to the excess insurer in compliance with excess carrier's reporting requirements and coordinate with the excess insurer on a claim's progress in accordance with the excess insurer's reporting requirements.
- 6) Maintain records on any such claim and notify ACCEL when ACCEL member is about to exhaust the Self-Insured Retention.
- 7) Obtain settlement agreements and releases upon settlement of claims
- 8) Perform periodic reviews, as needed, of ACCEL files and claims as well as statutory requirements to ensure compliance including excess insurance related requirements.
- 9) To the extent there is privileged information or PHI shared between agencies, which is subject to protection under HIPAA, GH shall implement all necessary measures in compliance with the Act and will execute a Business Associates Agreement (BAA).

**D. Litigation Support Services**

Upon notification to ACCEL by any member that litigation has been filed on an open or reported claim, or where a claim is reported to ACCEL with litigation ongoing, GH will:

- 1) Work cooperatively with ACCEL, members and/or their respective TPAs, defense counsel which has been selected and retained by the member, and will assist

defense counsel in litigation defense efforts as requested by the member or defense counsel, and approved by ACCEL.

- 2) Obtain and maintain a Litigation Plan and Budget.
- 3) Cooperate with and assist defense counsel assigned to litigation of open claims and provide such investigative services as directed during pre-trial and trial stages.
- 4) At the request of the ACCEL, attend mediation and/or mandatory settlement conferences on behalf of ACCEL.
- 5) Review and evaluate case evaluations, correspondence and status reports forwarded to GH by counsel, members, or the respective members' TPAs.
- 6) Regularly discuss, review, and analyze investigation, discovery, and case strategy with counsel, the member, and/or the respective member TPAs.
- 7) Cooperate with counsel as a team with an open communication approach on each case to obtain the most economical and best result for the ACCEL.
- 8) Where a member has submitted a claim for reimbursement from ACCEL, GH will review legal bills, invoices, and evidence supporting the members claim for reimbursement, and will submit a claim to ACCEL with a recommendation on reimbursement.
- 9) Provide to ACCEL analysis of each case, potential exposure and value, efforts by defense counsel and a recommendation on case resolution options including settlement, trial and/or appellate action if necessary.

#### **E. Reports and Procedures**

- 1) Within thirty (30) days of assignment, or sooner if practicable, required, or requested, GH will provide ACCEL with a report pursuant to specified claims handling instructions, showing name(s) of claimant(s), type of claim, date of loss, comments on liability, reserve recommendations, settlement recommendations, and other pertinent information. Subsequent to the initial thirty (30) day report, GH will report as often as warranted by any important change in status but no longer than every ninety (90) days until the claim closes unless extended diary is appropriate.
- 2) All original reports, documents, and claim data of every kind or description, that are prepared in whole or in part by or for the GH in connection with this contract shall be ACCEL's property and constitute the GH's work product for which compensation is paid. A copy of all reports, documents, and claim data of every kind or description that is in whole or in part by or for the ACCEL is the property of GH. Additional copies of original reports, documents, and data requested by ACCEL will be at ACCEL's expense in accordance with this contract.
- 3) GH agrees that ACCEL have access and the right to audit and reproduce any of the GH's relevant records to ensure that the ACCEL is receiving all services to which the ACCEL is entitled under this Contract or for any purpose relating to the Contract.

#### **F. Data**

- 1) Utilize GH's claims management system—CXP (ClaimsXpress), or a substantially similar equivalent with comparable features and functionality. ACCEL will be provided "read-only" access to the claims system. "Read-write" access may be obtained at the ACCEL's additional expense.
- 2) Record all claim information including all financial data.

- 3) Provide ACCEL and broker Read only on-line access to the claims data system (up to five users), if desired by ACCEL.
- 4) Provide monthly standard loss run and check register.
- 5) Provide annual claims data report upon request. Written authorization and/or a Business Associate Agreement may be required for confidential information protected by HIPAA.
- 6) Provide assistance to ACCEL in developing customized reports when requested (may require additional charge).
- 7) Arrange for electronic file conversion for any open and closed claims at the direction of ACCEL.

#### **G. Claim Review Meetings**

GH shall, on a mutually agreed periodic basis, meet with Client to review and discuss the ACCELS claims inventory and claims results of specified periods and delivery of services by CLAIM ADMINISTRATOR. GH will also provide a written claims inventory formatted consistent with the needs of ACCEL for reviewing claims.

#### **H. Third Party Subrogation Services**

- 1) GH personnel are well versed in the identification, handling, and pursuit of subrogation claims arising out of CLAIMS which are the subject of this Contract. Included within this contract, GH will perform the following functions:
- 2) Identify potential opportunities to recover from persons, businesses, and entities other than the ACCEL.
- 3) Prepare and file a claim with each identified entity.
- 4) As applicable, tender defense to or seek recovery from any identified entity.
- 5) With the assistance of counsel, prepare and file any necessary litigation required to effect the claim of recovery on behalf of the ACCEL
- 6) Manage litigation related to such claims made to other person, businesses or entities

#### **J. First Party Subrogation Services**

GH is a claim administration firm experienced in the handling of first party subrogation claims and is ready and capable of performing such services on behalf of any public entity. For any claim in excess of \$1,000, any ACCEL member may utilize the first party subrogation services of GH. To the extent that such services are utilized by any ACCEL member, the fee to be paid to GH for such services will be taken from the recovery obtained by GH on behalf of the respective member. Any additional fees associated with this services shall be paid directly by ACCEL or the ACCEL member. Nothing in this section, or arising out of the services provided by GH to any ACCEL member under this section, is intended to, or shall actually, make any ACCEL member an intended third party beneficiary to this Contract since any consideration paid in exchange for said services will be paid solely by the ACCEL member which utilizes the services provided by GH under this section. GH does not handle subrogation claims with a value of less than \$1000.

Should any ACCEL member entity desire to utilize the First Part Subrogation Services provided herein, the member entity will execute the agreement attached hereto as Attachment A-1.

### III. CLIENT EXPRESSED AUTHORITY AND LIMITATIONS

The list immediately below contains numerous services provided in this Contract for which GH requests the ACCEL expressly establish authority and/or limitations, on the ability of GH to act on behalf of the ACCEL. The ACCEL will check the appropriate box establishing the authority of GH to act or the limitation as to that authority.

#### INVESTIGATION:

- George Hills will conduct all investigations
- ACCEL member entities will conduct all investigations
- ACCEL will direct GH on each claim as to who performs investigations

*In the event the Client or other agency conducts any investigation, GH shall review for completeness.*

**Retention of Vendors** (appraisers, translators, copy services, Independent Adjuster, IME's, Surveillance, etc.):

- Must be preauthorized by ACCEL
- Does not need preauthorization

#### REJECTION OF CLAIMS:

ACCELS position regarding rejections (*e.g., if entity so dictates, a claim will be rejected for insufficiency*). Check all that apply.

##### Protocols for Rejections

- GH needs authorization
- GH does not need authorization
- GH sends the Rejection
- ACCEL member entities send the Rejection letters
- GH sends out Denial Letter simultaneously with Rejection outlining the reason

#### LITIGATION:

Check all that apply.

- GH will handle litigated claims
  - Full
  - As assigned
  - Check Issuance and Data Input
  - Data Input only
- ACCEL will handle litigated claims inhouse, with GH to capture data into SIMS

- ACCEL will send data to GH weekly
- ACCEL will send data to GH monthly

**Mandatory Settlement Conferences**

- GH always attends
- At ACCEL request only

**Small Claims Actions filed against ACCEL**

- GH always appears
- At ACCEL request only

**Legal Counsel**

- GH must have ACCEL authorization to refer to outside Legal Counsel
- GH does not need ACCEL authorization to refer to outside Legal Counsel
- GH must use ACCEL approved Legal Panel for Attorney selection
- ACCEL does not have an approved Legal Panel for Attorney selection
- All defense counsel assignments to be handled by ACCEL member entities
- GH always sends Litigation Assignment packets to Legal Counsel

ACCEL specific Litigation Guidelines:  Yes  No

ACCEL specific Litigation Referral Form/Letter:  Yes  No

ACCEL specific Litigation Budget Form:  Yes  No

Pay fees for Experts, photocopies, medical records as:  Expense  Legal

**EXCESS REPORTING:**

- GH will report claims to the excess insurer in compliance with excess carrier's reporting requirements and coordinate with the excess insurer on a claim's progress in accordance with the excess insurer's reporting requirements.
- ACCEL will report claims to the excess insurer in compliance with excess carrier's reporting requirements and coordinate with the excess insurer on a claim's progress in accordance with the excess insurer's reporting requirements.

**AUTHORITY LEVELS:**

**Reserve within SIR:**

\$0.00 Other: \$ \_\_\_\_\_ (specify amount)

Adjuster must seek approval from (client contact) to post indemnity reserves above authority level.

**Medical Treatment:**

- Medical Authorizations should only be sent to the claimant once liability is determined to be

adverse to the ACCEL.

Medical Authorizations should go out as soon as it is determined that a BI claim is being pursued.

**CLAIMS EXCEEDING SIR:**

- GH stops tracking activity once the SIR has been reached.
- GH will continue to track all activity at and/or above the SIR. The Excess JPA/Carrier will provide GH with activity documentation above the SIR.
- GH will reserve to Full Value and track recoveries.

**THIRD PARTY SUBROGATION SERVICES:**

- GH is authorized to initiate third party subrogation claims on behalf of ACCEL
- GH must obtain authorization to initiate third party subrogation claims on behalf of ACCEL.

**FIRST PARTY SUBROGATION SERVICES:**

- ACCEL elects to incorporate the first party subrogation services of GH into the contract
- ACCEL authorizes GH to initiate first party subrogation claims on behalf of ACCEL
- ACCEL agrees to the additional compensation payable to GH for its first party subrogation services as follows:

GH shall be entitled to \_\_\_\_\_% of the gross recovery for each claim initiated by GH through its first party subrogation efforts.

ACCEL member entities may utilize services if the member agrees to the terms and conditions stated in Attachment A-1, Subrogation Services.

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
John E. Chaquica, CEO  
GEORGE HILLS COMPANY INC.

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
NAME, TITLE  
AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY

## ATTACHMENT A-1

### SUBROGATION AGREEMENT

This Subrogation Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by and between the [ACCEL Member Entity], hereinafter referred to as "CLIENT", and GEORGE HILLS COMPANY, INC., hereinafter referred to as "GH".

- I. GH does not handle subrogation claims with a value of less than \$1000. For those claims in excess of \$1000, CLIENT may, at CLIENT's own expense:
  - a. Authorize GH to act as a representative of CLIENT for the investigation, adjustment, processing, supervision and evaluation of an ultimate recovery of potential money from damage claims against parties for whom it is alleged to be legally responsible.
  - b. Authorize GH to engage the services of a litigation attorney to consult, review, and determine the best legal strategy available at the time to obtain the best possible result for CLIENT. Upon determination by the attorney that a civil action is in the best interest of CLIENT, GH will notify CLIENT and obtain authorization to pursue recovery in accordance with the recommendations of the litigation attorney.
  - c. While GH is handling a subrogation claim for CLIENT pursuant to the terms of this Contract, the institution of a civil action is determined by CLIENT to be the best course of action, CLIENT may elect to do so at CLIENT's own expense.
    - i. Recall the claim to CLIENT's control so that CLIENT may pursue recovery in a manner to be determined by the CLIENT's attorney to be in the best interest of the CLIENT.
    - ii. In the event CLIENT recalls the claim as indicated above, CLIENT shall be responsible for payment to GH for any and all time and expense incurred by GH's subrogation claim adjuster and/or other subrogation division staff up to the time wherein the claim has been recalled by CLIENT.
- II. CLIENT will pay a Subrogation Fee in the amount of 30% for each and every recovery obtained. The minimum amount to be paid to GH will be \$250 per claim upon recovery. However, GH has the authority to reject any claim for any reason, relieving CLIENT of any fiscal responsibility for rejected claims only.
  - a. Generally, no recovery shall be agreed to involving payment plans if the recovery is less than \$5,000 and/or greater than a one-year term. Exceptions can be made on a case-by-case basis. If a recovery is agreed to exceed this amount and/or length of time, Subrogation fee shall be 45%. In the event a payment plan is authorized and entered into, the subrogation fee will be based upon the total amount of the lien and will be invoiced to the CLIENT upon the entry of the payment agreement. GH will make every attempt to enforce the provisions of the payment agreement with the claimant, but in no way guarantees the fulfillment of the terms of the payment agreement. In the event the terms of the payment

agreement are not fulfilled and warrant pursuit through the small claims process, authority to pursue through small claims will be requested.

- b. Authorize GH to appear in small claims court for recovery of funds. Authority for the pursuit of recovery through small claims will be requested prior to the filing of documents with the court to initiate the small claims action. Each appearance will be an additional fee of \$150. All costs for the handling of small claims court actions, i.e. service of process of documents on the responsible parties, mileage, parking, and toll shall be an additional cost and will be the responsibility of the CLIENT. Additional allocated costs shall be billed separately upon the cost being incurred, such as, but not limited to: skip tracing, service of process, and third-party sub contracted investigation.
- c. GH reserves the right to cease working on any claim whereas information has not been made available to GH within 120 days after GH has submitted the information and/or documentation request to CLIENT, at such time the claim will be closed.
- d. Due to the nature of these services, in that compensation is contingent upon recovery, if the contract is terminated prior to recovery or other closure of any claim, the CLIENT shall pay GH for all expenses and time spent, to date, on any claim(s) currently open and recovery in process. Payment shall be based on the current hourly rate of GH. GH will submit the final invoice within five business days of termination.

### III. General Terms and Conditions

- a. Successors and Assigns.  
All of the rights, benefits, duties, liabilities, and obligations of the parties shall inure to the benefit of, and be binding upon, their respective successors and assigns.
- b. Construction.  
The title and headings of the Sections in this Agreement are intended solely for reference and do not modify, explain, or construe any provision of this Agreement. All references to sections, recitals, and the preamble shall, unless otherwise stated, refer to the Sections, Recitals, and Preamble of this Agreement. In construing this Agreement, the singular form shall include the plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared the Agreement.
- c. Integration.  
This Agreement, and all related documents referred to in this Agreement, constitute the entire Agreement between the parties. There are no oral agreements which are not expressly set forth in this Agreement and the related documents being executed in connection with this Agreement. This Agreement may not be modified, amended, or otherwise changed except by a writing executed by the party to be charged.
- d. Third-Party Rights.

Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the parties and their respective successors and assigns, any rights or remedies.

e. Severability.

If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected.

f. Waivers.

No waiver or breach of any provision shall be deemed a waiver of any other provision, and no waiver shall be valid unless it is in writing and executed by the waiving party. No extension of time for performance of any obligation or act shall be deemed an extension of time for any other obligation or act.

g. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument. The execution of this Agreement shall be deemed to have occurred, and this Agreement shall be enforceable and effective, only upon the complete execution of this Agreement by Seller and Purchaser.

h. Authority of Parties.

All persons executing this Agreement on behalf of a party warrant that they have the authority to execute this Agreement on behalf of that party.

i. Governing Law.

This Agreement shall be governed by and construed in accordance with California law.

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
John E. Chaquica, CEO  
GEORGE HILLS COMPANY, INC.

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
NAME, TITLE  
AUTHORITY FOR CALIFORNIA CITIES EXCESS LIABILITY

**ATTACHMENT B**  
**MEDICARE, MEDICAID, AND SCHIP EXTENSION ACT OF 2007 (MMSEA)**

This law requires liability insurers, self-insurers, no fault insurers and workers' compensation insurers to report certain information to The Centers for Medicare and Medicaid Services (CMS) concerning Medicare beneficiaries. The penalty for failure to comply is \$1,000 per day, per claimant.

George Hills Company, Inc. (GH) has contracted with ExamWorks for Mandatory Insurer Reporting (MIR) for the CLIENT. ExamWorks shall represent the CLIENT—and Responsible Reporting Entity (RRE) to this existing contract and this addendum and will be the designated reporting agent. GH will be responsible for gathering and reporting accurate claims data required by MMSEA to ExamWorks in a timely manner. GH agrees to assume the responsibility for reporting data to ExamWorks to meet all reporting requirements in accordance with MMSEA, on behalf of the RRE; including assuming responsibility for any fines or penalties that are directly caused by GH's non-compliance. GH further agrees to indemnify and hold-harmless, RRE, and staff, for any penalties or fines resulting from GH's direct failure to timely and accurately provide the reporting data to ExamWorks. The above-mentioned obligations to indemnify and hold-harmless shall not be applicable to matters relating to delays caused by RRE or other third parties, or inaccurate data supplied to GH by RRE or other third parties.

By contract with GH, ExamWorks will indemnify and hold GH harmless from and against any claim, damage, fine, loss and expense, arising in connection with, or as a result of, any error, omission, or negligent performance of its obligations as reporting agent, which indemnity will include all reasonable costs of litigation and attorneys' fees incurred. Without in any way limiting the indemnity set forth in this Contract, all work performed by ExamWorks will be done in a professional manner.

GH shall perform the necessary data gathering for RRE and ExamWorks; as such GH shall include in our monthly invoicing the time incurred for such work at our contract hourly rate or will be included in your monthly flat fee or claims adjusting.

ExamWorks will perform the MMSEA Mandatory Insurer Reporting function for GH, and its RREs, shall be charged as an Allocated Expense, as defined in Attachment C, subject to the following. RRE will designate ExamWorks, unless otherwise requested, as its exclusive vendor for all of RRE's "Qualified Referrals" (those claims determined to require Medicare Set Aside (MSA) or a Claim Settlement Allocation (CSA) and RRE will utilize other ExamWorks services related to Medicare Secondary Payer (MSP) compliance identified in their fee schedule.

**ATTACHMENT C**  
**[Not Applicable Unless Requested by Client]**

**PREFERRED METHOD OF CHECK PROCESSING**

1. Selection of Bank

- a)  GH uses CA Bank & Trust
- b)  Clients Choice

Name

Address

Please provide signature cards, sample check, starting check number, name of contact person

2. Trust Balance Desired \$ \_\_\_\_\_

3. Account funding: GH will notify client when the balance falls below required balance

4A. Number of Signatures Required

- a)  One
- b)  Two on all checks
- c)  Two on checks in excess of \$ \_\_\_\_\_

4B. If two signatures are required please specify:

- a)  Both GH
- b)  One GH, one client

GH signers: John Chaquica, CEO; Chris Shaffer, Vice President; Kimberly Santin, Finance Director

5. Accountability

- a) Positive Pay:            Yes             No

**GH recommends positive pay to mitigate the potential for fraud.**

- b) Check Registers:    Yes             No   
Weekly             Monthly

- c)  Statement to be balanced by client, or  
 Statement to be balanced by GH with copies to client

## **ATTACHMENT D ALLOCATED EXPENSES**

Typically, allocated expenses are those expenses that are generated by a claim (by outside vendors other than George Hills) that cannot be foreseen nor included in an agreement. These are generally allocated back to the specific claim file for which the cost was incurred and then charged back to the entity whose claim incurred that cost. In most situations are pass-through costs (with processing fees) for services and/or fees not directly generated by the TPA, but rather by a third-party consultant where the TPA has acted as an agent on behalf of the entity to necessarily outsource services to a third-party consultant and/or miscellaneous fees applicable to the specific claim applied by an outside entity, such as a court or copy service. Below, George Hills has provided a list, by no means an exhaustive list, of typical allocated expenses.

- Fees of outside counsel for claims in suit, coverage opinions, and litigation, and for representation and hearings or pretrial conferences;
- Fees of court reporters;
- All court costs, court fees, and court expenses;
- Fees for service of process;
- CMS reporting costs and fees (ExamWorks);
- Costs of undercover operatives and detectives;
- Costs for employing experts for the preparation of maps, professional photographs, accounting, chemical or physical analysis, or diagrams;
- Costs for employing experts for the advice, opinions, or testimony concerning claims under investigation or in litigation for which a declaratory judgment is sought;
- Costs for independent medical examination or evaluation for rehabilitation;
- Costs of legal transcripts of testimony taken at coroner's inquests, or criminal or civil proceeding;
- Costs for copies of any public records or medical records;
- Costs of depositions and court reporting;
- Costs and expenses of subrogation, (if not George Hills);
- Costs of engineers, handwriting experts, or any other type of expert used in the preparation of litigation or used in a one-time basis to resolve disputes;
- Witness fees and travel expenses;
- Costs of photographers and photocopy services (if not George Hills—our costs for this is included in our rate);
- Costs of appraisal fees and expenses not included in flat fee or performed by others;
- Costs of indexing claimants;
- Services performed outside the TPA's normal geographical regions;
- Costs associated with Medicare Set-Aside analysis and submission or Medicare Conditional Lien negotiation;
- Investigation of possible fraud including SIU services and related expenses; and/or

- Any other similar cost, fee, or expense that is not otherwise included in the TPA's service fees that is reasonably chargeable to the investigation, negotiation, settlement, or defense of a claim or loss or to the protection or perfection of the subrogation rights of the entity, including travel related expenses.

DRAFT

## ATTACHMENT E

### **BUSINESS ASSOCIATE AGREEMENT BETWEEN CLIENT AND GEORGE HILLS COMPANY, INC.**

This Business Associate Agreement (“BAA”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by and between the CLIENT, hereinafter referred to as “CLIENT,” and GEORGE HILLS COMPANY, INC., hereinafter referred to as “GH.”

#### **I. RECITALS**

WHEREAS, on or about DATE, GH entered into a written contract with CLIENT to perform obligations and services related to the handling and administration of general liability claims filed against or with CLIENT.

WHEREAS, the obligations of the Contract require that CLIENT provide to GH date, documents, and information which may contained protected health information (“PHI”) and/or electronic PHI (“ePHI”) within the definition of the Health Information Portability and Accountability Act (“HIPAA”) related to the general liability claims, for the purpose of administering those claims.

NOW, THEREFORE, in consideration of the mutual promises of the parties and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the PARTIES hereto agree as follows:

#### **II. DEFINITIONS**

##### Catch-all definition:

The following terms used in this AGREEMENT shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

##### Specific definitions:

(a) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean GEORGE HILLS COMPANY.

(b) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean CLIENT.

(c) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

### **III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

Pursuant to this agreement GH agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;
- (c) Report to covered entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;
- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;
- (e) Make available protected health information in a designated record set to the GH as necessary to satisfy covered entity's obligations under 45 CFR 164.524;
- (f) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526;
- (g) Maintain and make available the information required to provide an accounting of disclosures to the GH as necessary to satisfy covered entity's obligations under 45 CFR 164.528;
- (h) To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and
- (i) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

### **IV. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

- (a) Business associate may only use or disclose protected health information for the purposes described in the Contract between GH and CLIENT, specifically for the purpose of adjusting and administering the general liability claims filed against CLIENT.
- (b) Business associate may use or disclose protected health information as required by law.

(c) Business associate agrees to make uses and disclosures and requests for protected health information consistent with covered entity's minimum necessary policies and procedures.

(d) Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity [if the Agreement permits the business associate to use or disclose protected health information for its own management and administration and legal responsibilities or for data aggregation services as set forth in optional provisions (e), (f), or (g) below, then add ", except for the specific uses and disclosures set forth below."]

(e) Business associate may use protected health information for the proper management and administration of the business associate or to carry out the legal responsibilities of the business associate.

(f) Business associate may disclose protected health information for the proper management and administration of business associate or to carry out the legal and contractual responsibilities of the business associate, provided the disclosures are required by law, or business associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies business associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(g) Business associate may provide data containing PHI and or ePHI to third party entities for storage, security, and/or aggregation services relating to the claims administration services provided by GH.

## **V. PROVISIONS FOR COVERED ENTITY TO INFORM BUSINESS ASSOCIATE OF PRIVACY PRACTICES AND RESTRICTIONS**

(a) Covered entity shall notify business associate of any limitation(s) in the notice of privacy practices of covered entity under 45 CFR 164.520, to the extent that such limitation may affect business associate's use or disclosure of protected health information.

(b) Covered entity shall notify business associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect business associate's use or disclosure of protected health information.

(c) Covered entity shall notify business associate of any restriction on the use or disclosure of protected health information that covered entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect business associate's use or disclosure of protected health information.

## **VI. PERMISSIBLE REQUESTS BY COVERED ENTITY**

Covered entity shall not request business associate to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by covered entity.

## **VII. TERM AND TERMINATION**

(a) Term. The Term of this Agreement shall be effective as of DATE and shall terminate on DATE or on the date covered entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Business associate authorizes termination of this Agreement by covered entity, if covered entity determines business associate has violated a material term of the Agreement and business associate has not cured the breach or ended the violation within the time specified by covered entity.

(c) Obligations of Business Associate Upon Termination.

Upon termination of this Agreement for any reason, business associate, with respect to protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, shall:

Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal and contractual responsibilities;

Return to covered entity, or destroy, the protected health information that the business associate maintains in any form;

Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;

Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out above under "Permitted Uses and Disclosures By Business Associate" which applied prior to termination; and

Return to covered entity, or destroy, the protected health information retained by business associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal and contractual responsibilities.

(d) Survival. The obligations of business associate under this Section shall survive the termination of this Agreement.

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
John E. Chaquica, CEO  
GEORGE HILLS COMPANY INC.

\_\_\_\_\_  
Date

BY: \_\_\_\_\_  
NAME, TITLE  
CLIENT

DRAFT



**Item No. C.1.c**  
**Claims Committee**  
**September 1, 2022**

**PROPOSED CHANGES:**  
**CLAIMS REPORTING AND HANDLING POLICY AND PROCEDURE**

**ISSUE:** At the last Claims Committee (CC) Meeting, the CC reviewed the drafted proposed language by Ben Oram, ACCEL's Litigation Manager regarding adding new section about the Settlement Authority Process. The intent of this new language is to clarify ACCEL's process regarding Settlement Authority. The Committee did not want to adopt the proposed language.

The Committee agreed that there needs to be language that outlines the steps of ACCEL's current process to settle a claim and it requested that this item be brought back to today's meeting. The attached Policy and Procedure contains proposed changes to outline the current claims settlement authority process.

**RECOMMENDATION:** The Claims Committee may make a recommendation to the Board to adopt the proposed changes or give direction.

**Additional Consideration:**

**In favor:** The proposed changes to the P&P aim to provide more clarity on the process for settling claims in the ACCEL retained layers of coverage. The proposed changes, if approved, outline the responsibility of the Claims Administrator to obtain guidance from ACCEL prior to settlement.

**Against:** If the Committee does not want to adopt the proposed changes to the P&P, this would indicate that ACCEL can remain silent within the Claims Handling P&P, or should consider different language. Currently, the Bylaws require the Claims Committee to present settlement recommendations to the Board prior to agreeing to a final settlement.

**FISCAL IMPACT:** No financial impact is expected from the recommended action.

**BACKGROUND:** In January 2022, the Board approved most recent amendments to the P&P as summarized below:

1. Administrative clean up throughout.
2. Update the role of the claims committee to include the authority to request coverage opinions.



3. Update the reporting guidelines and requirements for the Claims Administrator.
4. Update coverage determinations, adding partial disclaimers of uncovered damages and changing the process for reservations of rights.

At the May 25, 2022 Claims Committee Meeting the Claims Reporting Handling Policy and Procedure (P&P) was discussed. The topics of discussion included:

1. Propose changes by adding a new section about the Settlement Authority Process:
  - Ben Oram, ACCEL's Litigation Manager drafted proposed changes as shown in the redlined P&P attached in that meeting's agenda packet. The intent of this new language is to clarify ACCEL's process regarding Settlement Authority.
2. Review Attorney Rates:
  - In March 2021, the Board adopted language that stated, "*ACCEL Members are advised to request approval from the Claims Committee for any attorney rates excess of \$400/hour. The Claims Committee will review rates for consideration and may take action or provide direction.*"
  - The Claims Committee should review the attorney rates annually to see if it would like to amend or leave as is. At the May 25, 2022 Meeting, the Committee agreed to leave as is.

**ATTACHMENT:** Claims Reporting and Handling Policy and Procedure – Redlined.

# ADMINISTRATIVE POLICY AND PROCEDURE

## SUBJECT: CLAIM REPORTING AND HANDLING

DATE: May 1, 1987

AMENDED DATE: January 20, 2022

REVIEWED DATE: ~~January 11, 2022~~ September 1, 2022

### TABLE OF CONTENTS

- I. Statement
- II. Role of Claims Committee
- III. Role of Claims Administrator
- IV. Reporting Requirements for Member Agencies
- V. Coverage Determinations
- VI. Duty to Disclose a Potential Conflict of Interest
- ~~VI.~~ VII. Settlement Authority Process
- ~~VII.~~ VIII. Claims Reimbursement Requests
- ~~VIII.~~ IX. Claims Audits
- ~~IX.~~ X. Attachments

#### I. Statement

It is the policy of the Authority for California Cities Excess Liability Joint Powers Authority (hereinafter referred to as “Authority”) that:

1. Each Member Agency will report all occurrences, claims, and lawsuits (hereinafter referred to as “claims”) meeting the Authority’s reporting criteria to its Claims Administrator as soon as possible and in accordance with the Authority’s Memorandum of Coverage (“MOC”).
2. Each Member Agency will assume primary responsibility for managing all reported claims filed against the Member Agency. However, the Authority reserves right to associate in or participate with a Member Agency in the negotiation, investigation, defense, appeal, or settlement of a claim subject to the terms and conditions of the Authority’s MOC.
3. The Authority’s Claims Administrator is responsible for notifying the Authority’s excess insurance carriers of all Member Agency claims with the potential to exceed the Authority’s retained limit in accordance with excess carriers’ claims reporting and handling policies. However, each Member Agency is responsible for notifying and complying with all insurance policies unaffiliated with the Authority, and purchased individually by the Member Agency (i.e., Non-Authority purchased coverage).
4. Should a discrepancy arise between this document and the Authority’s MOC, the MOC will govern.

## **II. Role of Claims Committee**

The Claims Committee is composed of Board Members appointed by the Executive Committee and approved by the Authority; the Committee Chair is selected by Committee members. Committee membership shall not meet or exceed a quorum of the Board. The Claims Committee, with support from the Authority's claims management firm, is responsible for the following activities:

1. Monitoring all claims reported by Member Agencies to the Authority to ensure reserves are adequate, defense strategies are sound, coverage issues are promptly identified and communicated to Member Agencies, and excess carriers are promptly notified of claims with potential to exceed the Authority's retained limit;
2. Reporting key developments and/or concerns regarding active claims to the Authority's Board of Directors;
3. Providing recommendations to the Board of Directors on claims and claims matters requiring Authority action, including, but not limited to, coverage determinations, reserve levels, defense strategies, settlement offers, and decisions to try or appeal lawsuits;
4. When appropriate, soliciting and reviewing coverage opinions and other related coverage matters (e.g. reservation of rights letters). The Claims Committee Chair may approve releasing the coverage statement to the Member, to be ratified at the following Claims Committee Meeting;
5. Overseeing the activities of the Authority's claims management firm; and
6. Assisting with the selection of the Authority's claims management firm and claims auditor.

The Claims Committee will meet at least quarterly to fulfill its designated responsibilities.

## **III. Role of Claims Administrator**

The Authority will retain the services of a claims management firm to oversee all claims reported by its Member Agencies. The claims management firm, in turn, will assign a claims administrator to the Authority. The Claims Administrator will serve as the Authority's point of contact for all reported claims and be responsible for fulfilling the scope of work contained in the service contract between the Authority and the claims management firm. The Claims Administrator will notify the excess carriers of claims in accordance with excess carriers' claims reporting and handling policies.

It is the duty of the Claims Administrator to report any claim or occurrence to each excess carrier, without regard to liability, that meets the reporting requirements in each of the excess policies, (e.g. death, traumatic brain injury, paralysis, burns, and other severe injuries, or a reserve of half or more of the retention) or which meet ACCEL's reporting requirements in Section IV below.

#### IV. Reporting Requirements for Member Agencies

1. Member Agencies will report to the Authority's Claims Administrator as soon as possible all events meeting any of the criteria identified below, without regard to liability:
  - a. Claims<sup>1</sup> in which the ultimate net loss is estimated to exceed 25% of the Member Agency's retained limit.
  - b. Claims<sup>1</sup> falling within any of the following classifications:
    - i. one or more fatalities;
    - ii. spinal cord injuries (paraplegic or quadriplegic);
    - iii. amputations;
    - iv. loss of sight or hearing;
    - v. severe burns or disfigurement;
    - vi. serious head injuries;
    - vii. serious loss of use of any body part or function;
    - viii. allegations of sexual misconduct, molestation or similar;
    - ix. long term hospitalization (30 days or more); or
    - x. multiple claims arising out of the same occurrence in which the aggregate ultimate net loss is estimated to exceed 25% of the Member Agency's retained limit.
  - c. Lawsuits or writs involving employment practices liability.
  - d. Any class action lawsuits.
  - e. Demands in excess of \$250,000 arising out of any of the following settings:
    - i. Statutory demand;
    - ii. Post closed discovery (not expert) demand;
    - iii. Mandatory Settlement Conference demand;
    - iv. Mediation demand; or
    - v. Arbitration demand.
2. Member Agencies will ensure that the initial report provided to the Claims Administrator contains a brief description of what occurred, along with all available/relevant documents (e.g., claim, investigative reports, photos, medical reports, etc.) and a reserve recommendation.

Member Agencies will provide the initial report and all future reports to the Authority's Claims Administrator:

George Hills Company  
P.O. Box 278  
Rancho Cordova, CA 95741  
Phone: (855) 442-2357  
Attention: Ben Oram / David Trautz  
[Ben.Oram@georgehills.com](mailto:Ben.Oram@georgehills.com) / [David.Trautz@georgehills.com](mailto:David.Trautz@georgehills.com)  
(916) 269-4108 / (747) 282-2810

<sup>1</sup> See page 1 of this policy – the definition of “claim” includes occurrences, claims, and lawsuits.

Once a reported claim is litigated, Member Agencies will promptly advise the Claims Administrator of legal counsel selection and forward a copy of the lawsuit along with any additional relevant documents available that were not provided with the initial report.

3. Member Agencies will ensure that assigned legal counsel provides the Claims Administrator with a case analysis report (“CAR” – sample attached) or equivalent as soon as reasonably possible after receipt of the lawsuit and status reports every ninety days thereafter or when an action occurs that could change the value of a lawsuit, whichever occurs first. Further, Member Agencies will ensure that status reports are complete and contain sufficient information for the Claims Administrator to properly evaluate the lawsuit and keep the Claims Committee informed of key developments that may require its action. If Member Agencies fail to comply with these requirements, the Claims Administrator will promptly alert the Claims Committee and may request intervention.

## **V. Coverage Determinations**

The Claims Administrator will promptly evaluate all reported claims to determine whether coverage is available under the Authority’s MOC.

If this review reveals a potential coverage issue(s), the Claims Administrator will send the affected Member Agency a partial disclaimer of uncovered damages and provide a copy to the Program Administrator. Upon further review of claim details, the Claims Administrator will request Claims Committee approval to issue a reservation of rights letter that clearly states the basis and justification for the finding; a copy of the letter will be provided to the Program Administrator and each Claims Committee Member. The Claims Chair has Authority to approve the issuance of a Reservation of Rights if circumstances dictate that the Claims Committee may not be able to approve. Any Reservations of Rights approved by the Claims Chair will be presented to the Claims Committee for ratification at the next Claims Committee meeting. The Claims Committee, in turn, will apprise the Board of Directors of all reservation of rights letters issued to Member Agencies and will provide regular status updates until matters resolve. All denials of coverage must be approved by the Authority.

Member Agencies can dispute a reservation of rights letter by contacting the Authority’s Board President and requesting that an item be placed on the next available Board of Directors meeting agenda to discuss the matter. In the event of a conflict (i.e., the Board President’s Member Agency is disputing a reservation of rights letter), the Vice President will assume the Board President’s responsibilities.

## **VI. Duty to Disclose a Potential Conflict of Interest**

Members have a duty to disclose a conflict of interest if a conflict of interest or potential conflict exists.

## **VII. Settlement Authority Process**

As stated in the ACCEL Bylaws Article XI Settlement of Claims:

All claims settlement recommendations shall be presented by the Claims Committee to the Board of Directors for its approval prior to final settlement.

ACCEL's Board will review claims covered by ACCEL's Memorandum of Coverage and take the following steps to review and grant authority to resolve claims:

1. The TPA will review claims for exposure to ACCEL's shared risk layer.
2. Claims which are likely to exceed the member retention and require ACCEL funds to resolve will be brought to the Claims Committee for review.
3. For claims in which an ACCEL reserve is being requested, the claim shall be brought to ACCEL's Board for review and action. If a reserve is approved, the reserve will be posted on ACCEL's loss run and indicates ACCEL's level of approval to resolve the claim.
4. If an opportunity to resolve a claim arises, and the amount is less than the approved reserve, the Claims Committee Chairperson has authority to approve the resolution of the claim. If the claim involves the Chairperson's own city, the President will have authority to approve.
5. If a claim resolution exceeds the Board approved reserve, the claim must be brought back to the Board for further discussion and potential action.
6. Any claim involving ACCEL's funds requires a final report to the Board, informing the Board of the claim resolution and financial impact to ACCEL.
7. Claims payments will be processed in accordance with ACCEL's Accounting Guide.

Confirmation of Authority: Prior to attending a settlement conference, the Claims Administrator should provide written notification to the Member Agency and to the Claims Committee of the settlement plan including the details of the mediation or settlement conference, if applicable, the reserves set by ACCEL, confirmation on the potential target settlement value, and where applicable, confirmation that the remainder of the Member Agency SIR may be tendered in the course of finding a resolution.

## VIII. Claims Reimbursement Requests

For claims that fall under the Policy Year 2015-16 and after, the Authority's MOC allows for a Member Agency to seek reimbursement from the Authority.

When seeking reimbursement Member Agencies are required to provide the Authority's Claims Administrator a summary as well as all invoices and documentation to substantiate the exhaustion of the Member SIR and the amount requested in the claim reimbursement.

The statement above does not change any agreement between the Authority and a Member Agency which allows the Member Agency (such as a flat fee agreement) to provide a summary report of the amount requested as part of the claim reimbursement along with a signed affidavit that all bills have been reviewed for accuracy, appropriateness, and reasonableness.

The Authority will reimburse Members or credit their Self-Insured Retentions (SIRs) for reasonable attorney fees and necessary litigation expenses incurred while managing, investigating, defending or litigating covered claims.

ACCEL Members are required to notify the Claims and Program Administrators regarding any claim in which attorney rates are in excess of \$400/hour. The Program Administrators will agendize the claim for the Claims Committee to review rates for reasonableness. The Committee may take action or provide direction.

- 1) Once prior written authorization is given to settle an excess case, or a judgment puts it into the Authority or other excess layers, the Member or its administrator must submit:
  - a) Copies of all settlement documents, including releases, annuity forms (if structured), and properly filed dismissals.
  - b) Copies of all itemized bills from defense attorneys, claims administrators, expert witnesses and any other cost bills. (*see attached sample billing procedures*)
  - c) Copies of valid evidence of payment properly matched to the bills and settlement documents. Valid evidence of payment can take the form of check copies, data processing runs, Member warrant registers, department payment records, TPA claim payment screen printout, identifying the following:
    - a. Check or warrant number
    - b. Issue date
    - c. Payee
    - d. Paid amount
- 2) A cover letter requesting reimbursement of the net amount after deducting the SIR, must be submitted with the above documentation.
- 3) Once the figures are reconciled, a check request will be made to reimburse the Member in the appropriate amount. When issued this check will be mailed to the Member contact person, with a copy to the claims administrator (if applicable).
- 4) If special circumstances arise, which require exceptions or interpretation, the Program Administrators will agendize for Committee or Board consideration.

## **IX. Claims Audits**

All Member Agencies are required to complete an annual claims audit. Such audits will be conducted by a qualified outside audit firm recommended by the Claims Committee and approved by the Authority. The cost of the audits will be shared equally by Member Agencies.

The Claims Auditor will issue a written report summarizing the findings and recommendations for each Member Agency. This report will be presented and approved by the Authority's Board of Directors at a regular Board meeting. The Authority may require a Member Agency to formally respond to an audit finding contained in the report. A Member Agency shall submit its response to the Authority within sixty days of the request.

## **X. Attachments**

- 1) Sample CAR and Budget Form
- 2) Sample Billing Procedures

**APPENDIX 1  
CASE ANALYSIS REPORT**

**Caption of Lawsuit:** \_\_\_\_\_

**Court:** \_\_\_\_\_

**Court Case Number:** \_\_\_\_\_

**Date Suit Filed:** \_\_\_\_\_

**Date of Service:** \_\_\_\_\_

**Fast Track?** \_\_\_\_ Yes \_\_\_\_ No

**Excess TPA Claim Number:** \_\_\_\_\_

**Date of Loss:** \_\_\_\_\_

**Primary TPA Claim Number:** \_\_\_\_\_

**I. PARTIES**

**A. Plaintiffs:**

**B. City and City-Related Defendants:**

**C. Third-Party and Other Defendants:**

**II. TRIAL DATE AND OTHER IMPORTANT DATES**

**III. JURISDICTION AND EVALUATION**

**IV. TRIAL JUDGE AND EVALUATION**

**V. EVALUATION OF COUNSEL**

**A. Plaintiff's Attorney's Name and Evaluation:**

**B. City's Defense Attorney's Name:**

**C. Co-Defendants' Attorneys' Names and Evaluations:**

**VI. STATEMENT OF FACTS**

**VII. INJURIES**

**VIII. SPECIAL DAMAGES**

**A. Medical Expenses:**

**1. Past:**

**2. Future:**

**B. Loss of Earnings:**

**1. Past:**

**2. Future:**

**C. Other (specify);**

**IX. LIABILITY ALLEGATIONS**

- A. Plaintiff's Contentions:**
- B. Defenses:**
  - 1. Legal Defenses:**
  - 2. Factual Defenses:**
- C. Plaintiff's Expert Witnesses and Opinions:**
- D. Defense Expert Witnesses and Opinions:**

**X. VERDICT EXPOSURE**

- A. Chances of Defense Verdict:**  
[Note: a percentage number shall be provided.]
- B. Gross Verdict Range as to all Defendants:**
- C. Potential Offsets and Credits:**
- D. Net Verdict Range to City after Offsets, Credits and Allocation of Fault:**
- E. Plaintiff's Attorney's Fees (if applicable):**
- F. Punitive Damages (if applicable):**

**XI. SETTLEMENT HISTORY**

- A. Last Demand:**
- B. Last Offer:**
- C. History of Settlement Negotiations:**

**XII. RECOMMENDATIONS OF COUNSEL**

- A. Reasonable Settlement Value:**
- B. Proposed Litigation Strategy:**
- C. Other Recommendations:**

**XII. BUDGET**

- A. Fees and Costs Invoiced to Client as of the Date of this Report:**
- B. Fees and Costs from this Date to Trial:**
- C. Fees and Costs of Trial:**
- D. Initial Case Budget:**
- E. Experts' Fees and Costs to Date:**

**F. Experts' Fees and Costs through Trial:**

**G. Litigation Budget Summary Form (see Attachment 1):**

**XIII. MISCELLANEOUS**

**A. Does Complaint Conform to the Tort Claim Filed?**

**(If not, specify differences)**

**B. Is Indemnification, Subrogation, or Contribution Available?**

**(If so, specify by whom, and in what amounts)**

**Attachment**

**1 – Litigation Budget Summary Form**

# ATTACHMENT 1 -- LITIGATION BUDGET SUMMARY FORM

Name of Attorney: \_\_\_\_\_ Case Name: \_\_\_\_\_

**Est Hrs / Cost**

1. **Preliminary Activity**  
(Review File, Interview Witnesses, Case Analysis, Litigation Plan, Budget)
2. **Initial Pleadings**  
(Answer, Cross-Complaint, Demurrer)
3. **Fact Finding – Information Gathering**  
(Document Review, Research, Strategy Development, Sub Rosa, Travel)
4. **Discovery**  
(Interrogatories, Depositions [by individual], Other Requests)
5. **Law & Motion and Pre-Trial Activity**  
(Motions [specify], Arbitrations, Settlement Conferences, Mediations, Court Hearings, Pre-Trial Reports)
6. **Experts**  
(Identify Each Expert [if known] and Area of Expertise)
7. **Documentation – Administrative Support**  
(Correspondence, Copies, Faxes, Other Costs)
8. **Trial Activity**  
(Trial Preparation, Trial Attendance, Briefings, Exhibits, Post-Trial Report)

**TOTAL** \_\_\_\_\_

**BUDGET SUMMARY:**

1. Preliminary Activity	\$
2. Initial Pleadings	\$
3. Fact Finding-Information Gathering	\$
4. Discovery	\$
5. Law & Motion and Pre-Trial Activity	\$
6. Experts	\$
7. Documentation – Administrative Support	\$
8. Trial Activity	\$

**TOTAL**

\$ \_\_\_\_\_

**SUBMITTED BY:**

**Defense Counsel:**

\_\_\_\_\_ Date: \_\_\_\_\_

Signature

\_\_\_\_\_

Printed Name

## **SAMPLE DEFENSE COUNSEL GUIDELINES – Billing Procedures**

### **BILLING PROCEDURES**

All invoices are to be submitted on a [monthly/quarterly] basis and directed to [name of person or position to whom invoices should be sent]. Billings that do not comply with the billing guidelines will not be paid. Payment of any bill by the [entity name and/or the TPA] does not constitute a waiver of the [entity name's] right to question, dispute, obtain reimbursement, compromise, or request repayment or future credit, for any bill or invoice previously paid.

Invoices for counsel fees and expenses should be submitted [monthly/quarterly], within thirty (30) days of the end of the billing period. Final invoices should be submitted within thirty (30) days from receipt of a filed Dismissal. Defense Counsel is responsible for obtaining all outstanding invoices from outside vendors, including experts, before submitting the final bill. Receipts must be submitted for all travel and other expenses.

Firm staffing on all cases should be as limited as possible. Absent prior approval, the [entity name] will not pay for more than one (1) attorney performing the same task. For example, the [entity name] will not pay for two (2) or more attorneys to attend the same deposition. Work should be assigned to those individuals who are most appropriate for the task in terms of their competency and experience.

There should be no more than two (2) attorneys and one (1) paralegal performing work on a case at any given time. Other firm personnel may occasionally have to work on a case due to job departures, vacations, illnesses, schedule conflicts, etc., but this is the exception, not the rule. [Entity name] will not pay for “training” time for new attorneys or “learning” time or “orientation” time as new billers become involved in a matter and are learning the facts and issues. If a firm has summer associates, their time should not be billed to a case without first being approved by the [entity name and/or TPA]

#### **A. Invoices**

Invoices should accurately itemize, in detail, all work performed on a matter. Each invoice must include the following:

- Law firm name and address
- Date of the bill
- Law firm tax identification number
- The TPA and/or entity claim number
- Plaintiff(s) name(s)
- Each billing entry must state the name or initials of the timekeeper who performed the work, the date the work was performed, the hours billed, a detailed description of the services performed, and the total amount billed for that entry
- Attorneys and paralegals should bill actual time spent in increments, no greater than 1/10<sup>th</sup> of an hour for each entry
- Summarize at the end of the bill, the number of hours for each specific biller

- Summarize at the end of the bill the totals for fees, costs, and experts
- Narrative or block/bundled billing is not permitted
- Final bills should be clearly marked
- Invoices must reflect activity for only one (1) case
- Billing entries should be listed chronologically in order of occurrence and not sub-divided by individual or task
- If a number of different tasks are undertaken in one day, each task must be separately identified with a specified time for performing that task, e.g., “telephone conference with John Doe (.30); Attend conference with Jane Doe (1.20), etc.”
- Entries regarding telephone conferences must specify the participants and the subject matter discussed

Vague descriptions such as “work on file,” “telephone call,” “conference,” and “research,” without further explanation, are not acceptable.

Vendor invoices (e.g. experts, mediators, photocopy services, court reporters, and others) in an amount up to [insert amount here] dollars (\$XXXX) per case should be paid by the law firm and included with the monthly attorney billing. Defense Counsel must review and approve all vendor invoices.

## **B. Maximum Allowable Charges and Travel**

The following guidelines are provided regarding maximum allowable charges:

- The [entity name] will only pay the actual cost incurred for reasonable expenses without any markups.
- A firm may conduct necessary and appropriate research up to five (5) hours per case without prior approval by the [entity name and/or its TPA].
- Photocopy costs should not exceed ten cents (\$0.10) per page. Firms are expected to limit the making of photocopies and, wherever cost effective, to use the resources of designated copy services. Billing entries for photocopies must provide the number of copies made, the per page rate, and the total amount billed.
- Mileage should be billed at the applicable Federal rate at the time of travel. The invoice should state the number of miles actually driven.
- Telephone and Fax: Actual long distance charges only. No charges for an incoming fax and no per-page fax charge.
- Air travel is limited to coach or economy rate. Receipts for airfare should allow a reviewer to identify the fare as economy/coach class.
- Rental cars are acceptable only if such vehicles are the most economical means of accomplishing necessary business. Reimbursement is limited to the mid-size class.
- Incidentals, such as movies, alcohol, and entertainment are not allowed.
- Travel time shall be pro-rated if the travel includes time spent on non-[entity name] business.

### **C. Disallowed Charges**

In addition to items listed above in sections A and B, the [entity name] will not reimburse for the following:

- Local telephone calls and all cellular phone charges.
- Routine postage, such as the U.S. Postal Service rates for letters. Any necessary extraordinary postage charges (such as certified mail, overnight service, or oversized packages) must be delineated on the bill with an explanation of the nature and purpose of the charge. Any postage charges that are not explained will not be reimbursed.
- File opening, file organization, or other administrative charges.
- Interoffice conferences between members of the firm, including assigning files or tasks to members of the firm.
- Case administration (e.g. reviewing status of assignments given to associates and paralegals; directing associates, paralegals, or secretaries; preparing or reviewing bills).
- Clerical tasks (e.g. transcription, pulling files, photocopying documents, arranging for copying, labeling documents for production, communication with court clerks, updating master case caption, preparing proofs of service, indexing pleadings, faxing).
- Meals, except in conjunction with out-of-town travel (alcohol will not be reimbursed in conjunction with any travel).
- Routine legal research, including issues considered to be common knowledge among reasonably experienced counsel in the local jurisdiction.
- All work customarily performed by secretaries and other administrative personnel including but not limited to, photocopying, date stamping documents, scanning documents, transcription, retrieving files, indexing pleadings, updating case captions, making travel arrangements, calendaring, and preparing bills/invoices.
- Subscription services (e.g. Westlaw, Lexis-Nexis, or other legal database charge).
- Responding to requests from [entity name and/or TPA] and/or their auditors relating to case file management and/or billing issues.