

SELF-INSURED CLAIMS ADMINISTRATION AGREEMENT

This Self-Insured Claims Administration Agreement ("Agreement") is made and entered into by and between **City of Commerce** ("Client") and **Keenan & Associates** ("Keenan") as of **July 1, 2016** ("Effective Date"). Client and Keenan are also referred to individually as a "party" and collectively as the "parties."

RECITALS

- A. Client has established a self-insured Workers' Compensation Program for the benefit of its employees ("Program").
- B. Keenan is a specialty insurance services provider with special expertise in the insurance and services needs of California school districts, municipalities, health care providers and their related entities and, as such, is qualified to provide the services described in this Agreement and other services that Client may request from time to time.
- C. Client has requested that Keenan perform claims administration functions for the Program as described herein.

AGREEMENT

The parties agree as follows:

1. **TERM:**

The term of this Agreement is from **July 1, 2016** through **June 30, 2019** ("Term") unless extended or terminated earlier as provided herein.

2. **KEENAN RESPONSIBILITIES AND SCOPE OF SERVICES:**

- A. Keenan shall provide Client with the services described in Exhibit A and Exhibit A-1 ("Services") for all new and currently open Workers' Compensation claims.
- B. The relationship of the parties shall be that of independent contractor and each party shall at all times remain responsible for its own operational and personnel expenses. Under no circumstance shall any employee of one party look to the other party for any payment or the provision of any benefit, including without exception, workers' compensation coverage. Except as may be expressly set forth in or contemplated by this Agreement, neither party shall have the right to act on behalf of the other, or to bind the other to any contract or other obligation.
- C. Keenan's services are limited to the specific obligations described herein. Client shall remain responsible for all other aspects of the Program. Keenan shall not provide any legal, tax, or accounting service, advice, or opinion, and under no circumstances are the Services to be



construed or interpreted as representing any such advice or opinion. It is Client's responsibility to seek the counsel of its own attorney on all legal issues and to consult with its own tax and accounting experts on all tax, accounting, financial matters relating to its operations, including without limitation, the establishment, implementation and operation of its Program.

- D. Keenan shall comply with all applicable state and federal Laws and regulations and obtain and maintain all necessary licenses, registrations, and/or permits necessary for the performance of its duties under this Agreement.
- E. Keenan reserves the right to engage independent contractors and/or subcontractors to assist it in performing the Services. The use of such individuals shall not relieve either party of any of its duties under this Agreement.

3. **CLIENT'S DUTIES AND RESPONSIBILITIES:**

- A. Client, subject to the specific Services set forth herein, shall retain all final authority and responsibility and expenses incidental thereto unless specifically assumed by Keenan hereunder, and Keenan is authorized to act on behalf of Client in connection with the Program only as expressly stated in this Agreement. Client shall retain final authority and responsibility and expenses incidental to the management of the Program and is responsible for all aspects of the Program except for the Services to be provided by Keenan under this Agreement.
- B. Client shall provide Keenan with all applicable information in a timely manner so that Keenan can fulfill its obligations under this Agreement. Client represents and warrants that all information provided to Keenan shall be complete, accurate and timely and that Keenan may rely upon such information without further investigation or review. Client understands and agrees that such information has not been audited by Keenan and that Client shall remain liable for its accuracy.
- C. Client shall provide Keenan with timely access to such information and individuals including its outside advisors and consultants as may be necessary for Keenan to perform the Services. Meetings, telephone calls, and other necessary communications shall be scheduled at the mutual convenience of the parties and their representatives. Keenan shall not be responsible for any delay in its performance that results from the failure of Client or any person acting on behalf of Client to make available any information or individual in a timely manner.
- D. Client shall fund a claims payment account from which all claims payments and loss adjustment expenses shall be paid. The account shall be established and funded in accordance with written procedures to be established by the parties. Under no circumstance will Keenan be required to advance any funds for the payment of claims.
- E. To the extent Keenan requires the assistance of Client's staff or any third parties who are assisting, advising or representing Client to fulfill its obligations hereunder, Client shall have its staff and these third parties assist Keenan.



F. Client understands that Keenan is not providing any legal, tax or accounting services or advice and agrees to seek the counsel of its own attorney on all legal issues or matters and consult with its own tax and accounting experts on all tax and accounting issues and matters relating to the services.

G. Client will comply with all federal, state and local reporting and filing requirements for the Program.

4. **COMPENSATION:**

Client agrees to pay Keenan for the services outlined in Exhibit A at the rates stated in Exhibit B and Exhibit C, all of which are attached hereto and incorporated herein by reference.

5. **CONFIDENTIALITY:**

Keenan shall keep confidential all information concerning Client and its employees possessed by Keenan, regardless of the medium thereof, except information that is generally available to the public. Except as authorized or required by law or in this Agreement, Keenan shall not release any report, any portion thereof, or any result of any investigation it may undertake on behalf of the Client to any person outside of Client's organization without the express written consent of Client.

6. **AUDIT:**

If Keenan is requested to disclose its books, documents or records relating to the services provided under this Agreement, Client shall notify Keenan in writing at least thirty (30) days prior to the inspection and/or disclosure date of the nature and scope of the request and Keenan shall make available all such books, documents or records during Keenan's regular business hours.

7. **FINES & PENALTIES:**

Keenan shall pay any fines and/or penalties levied by regulatory authorities that (i) are imposed as a result of the improper denial of claims and (ii) failed to comply with the administrative rules, regulations and state laws governing Workers' Compensation, provided that such actions were not at the direction of or with the approval of the Client, were not the result of the failure of Client or any individual acting on behalf of Client or claimant to timely provide complete and accurate information needed for the processing of claims, or the failure of the Client to adequately fund the claims payment account. Client shall pay all other fines and/or penalties relating to the Program or otherwise.

8. **INSURANCE:**

Keenan shall procure and maintain, to the extent available on reasonable terms, the following minimum insurance coverages during the Term and shall provide certificates of insurance to Client upon Client's request:

- (1) Workers' Compensation. Workers' Compensation Insurance in conformance with the laws of the State of California and applicable federal laws.
- (2) Bodily Injury, Death and Property Damage Liability Insurance. General Liability Insurance (including motor vehicle operation) with a Two Million Dollar (\$2,000,000) limit of liability for each occurrence and a Two Million Dollar (\$2,000,000) aggregate limit of liability.
- (3) Professional Liability Insurance. Professional Liability Insurance with a Two Million Dollar (\$2,000,000) limit of liability for each occurrence and a Two Million Dollar (\$2,000,000) aggregate limit of liability.
- (4) Cyber Liability/Privacy Insurance. Cyber Liability Insurance with a Two Million Dollar (\$2,000,000) limit of liability for each occurrence and a Two Million Dollar (\$2,000,000) aggregate limit of liability.

9. **INDEMNIFICATION:**

If either party breaches this Agreement, then the breaching party shall defend, indemnify and hold harmless the non-breaching party, its officers, agents and employees against all claims, losses, demands, actions, liabilities, and costs (including, without limitation, reasonable attorneys' fees and expenses) arising from such breach. In addition, if Keenan (i) becomes the subject of a subpoena or is otherwise compelled to testify or (ii) becomes the subject of a claim, demand, action or liability brought or asserted by one of Client's employees, Plan beneficiaries, or Plan vendors ("Third-Party Demand") relating to the Services and such Third-Party Demand is not a direct result of Keenan's negligence or willful misconduct, then Client shall defend, indemnify and hold Keenan harmless from all losses, payments, and expenses incurred by Keenan in resolving such Third-Party Demand.

10. **LIMITATION OF LIABILITY:**

Notwithstanding anything to the contrary in this Agreement, in no event shall Keenan be liable for any punitive damages, lost profits or revenues, fines, penalties, taxes or any indirect, incidental or consequential damages incurred by Client, its officers, employees, agents, contractors or consultants whether or not foreseeable and whether or not based in contract or tort or otherwise, arising out of or in connection with this Agreement even if advised of the possibility of such damage. Client further agrees that Keenan's liability under this Agreement shall be limited to, and shall not exceed, the amount of insurance coverage outlined in this Agreement.

11. **DISPUTE RESOLUTION:**

- A. In the event of any dispute arising out of or relating to this Agreement, such dispute shall be resolved by submission to binding arbitration before Judicial Arbitration & Mediation Services ("JAMS") or ADR Services, at the claimant's choice, in Los Angeles County,



California, before a retired judge or justice. If the parties are unable to agree on a retired judge or justice, the selected arbitration service (JAMS or ADR Services) will select the arbitrator.

- B. In any such arbitration, the parties shall be entitled to take discovery in accordance with the provisions of the California Code of Civil Procedure, but either party may request that the arbitrator limit the amount or scope of such discovery, and in determining whether to do so, the arbitrator shall balance the need for the discovery against the parties' mutual desire to resolve disputes expeditiously and inexpensively.
- C. The prevailing party in any action, arbitration, or proceeding arising out of or to enforce any provision of this Agreement will be awarded reasonable attorneys' fees and costs incurred in that action, arbitration, or proceeding, or in the enforcement of any judgment or award rendered.

12. **TERMINATION:**

- A. Either party may terminate this Agreement upon the occurrence of any of the following events:
 - (5) Upon 60 days written notice by either party;
 - (6) The breach of this Agreement by either party if the alleged breach is not cured within 30 days of receiving notice of the breach from the non-breaching party;
 - (7) The dissolution or insolvency of either party;
 - (8) The filing of a bankruptcy petition by or against either party (if the petition is not dismissed within 60 days in the case of an involuntary bankruptcy petition); or
 - (9) If either party interprets the application of any applicable law, rule, regulation, or court or administrative decision to prohibit the continuation of this Agreement or cause a penalty to either party if the Agreement is continued.
- B. If Client requests that Keenan continue to provide services under this Agreement after its expiration, Keenan may agree to provide services and the Agreement shall be extended on a month-to-month basis until terminated by either party. In such case and where appropriate, compensation shall be paid to Keenan as agreed between the parties to the Agreement.
- C. Keenan shall return claim files, loss reports, payroll information and other documents and materials relating to the services provided under this Agreement to Client within a reasonable time after termination.
- D. Upon termination of this Agreement, Keenan shall be entitled to payment only for the pro-rata portion of the Term during which services were provided. Any monies paid to Keenan in excess of this pro-rata amount shall be refunded to the Client.



13. **SOLICITATION OF EMPLOYEES:**

During the Term, and for a period of twelve (12) months following any termination or expiration of the Agreement, neither party shall solicit the employment or engagement of any employee or agent of the other party that interacted directly with the soliciting party; provided, however, the foregoing provision shall not prevent either party from soliciting for employment or employing an employee who responds to general solicitations or advertisements in periodicals including newspapers and trade publications, so long as such solicitations or advertisements are not specifically directed at the employee(s) of the other party.

14. **MARKETING:**

Keenan may use Client's name in its representative client list. Keenan shall obtain Client's written consent before using Client's name for any other purpose.

15. **OTHER RELATIONSHIPS:**

- A. Client understands that Keenan or its affiliates may provide Client with other services or insurance coverage not provided in this Agreement and receive compensation related to such other services including, without limitation, loss control services, joint powers administration, insurance brokerage services, obtaining other reinsurance coverage for Client, claims administration, investigative services, financial processing and other related services.
- B. Client also understands that Keenan or its affiliates may provide services for others entities that also participate in the Program and that Keenan may be separately compensated for those additional services. Such services may include, without limitation, providing similar services for other members of the Program or providing other services for insurers or reinsurers under the Program.

16. **GENERAL:**

- A. This Agreement and its recitals and related exhibits and amendments (incorporated into this Agreement by this reference) contains the entire understanding between the parties related to the subject matter covered by this Agreement and supersedes all prior and collateral statements, presentations, communications, reports, agreements or understandings, if any, related to such subject matters.
- B. All terms of this Agreement (other than Keenan's obligation to perform services and Client's obligation to pay for such services) shall survive the expiration or termination of this Agreement.
- C. Notwithstanding any provision herein to the contrary, this Agreement is made for the benefit of the parties and not for the benefit of any third party. Enforcement of any remedy for breach of this Agreement may only be pursued by the parties to this Agreement.



- D. No modifications or amendments to this Agreement shall be binding unless in writing and signed by authorized representatives from both parties.
- E. Any provision determined by a court of competent jurisdiction to be partially or wholly invalid or unenforceable shall be severed from this Agreement and replaced by a provision that is valid and enforceable and that comes closest to legally expressing the intention of such invalid or unenforceable provision.
- F. Neither party shall be liable or deemed to be in default for any delay or failure in performance under this Agreement resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery or supplies, vandalism, strikes, or other work interruptions or any similar or other cause beyond the reasonable control of either party. However, both parties shall make good faith efforts to perform under this Agreement in the event of any such circumstances.
- G. All payments and invoices are due and payable upon presentation by Keenan. In the event Client fails to pay any invoice within thirty (30) days of presentation, Keenan shall be entitled to receive interest on such outstanding invoice from the date of presentation at the rate of (a) 1½ percent per month or (b) the maximum interest rate permitted by applicable law, whichever is lower. Keenan has the right to suspend performance of its Services if any balance remains unpaid for more than sixty (60) days from the date of the invoice.
- H. All notices hereunder shall be in writing and shall be deemed to have been duly given upon (1) delivery, or (2) when mailed by registered or certified mail, postage prepaid and properly addressed to the party, or (3) on the second business day after sending by fax and receiving confirmation of fax receipt. Notices shall be sent to the parties at the address or fax number indicated in the signature section below unless written notice of a different address or fax number is previously given. If a notice given to Keenan relates to a legal matter or dispute, a copy should be sent to Keenan's Legal Department at Keenan's main office located at 2355 Crenshaw Blvd., Ste. 200, Torrance, CA 90501, fax (310) 533-0573.

This Agreement may be executed in counterparts and by fax signatures. Each person signing this Agreement on behalf of a party represents and warrants that he or she has the necessary authority to bind such party and that this Agreement is binding on and enforceable against such party.

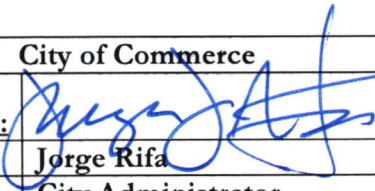
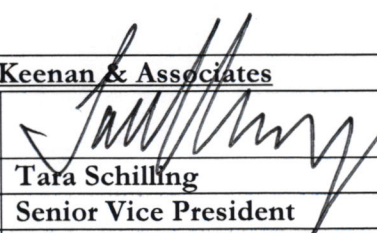
City of Commerce		Keenan & Associates	
Signature:		Signature:	
By:	Jorge Rifa	By:	Tara Schilling
Title:	City Administrator	Title:	Senior Vice President
Address:	2535 Commerce Way	Address:	2355 Crenshaw Blvd. Ste. 200
	Commerce, CA 90040		Torrance, CA 90501
Attention:	Mike Casalou	Attention:	Doug McKibbin



EXHIBIT A SERVICES

Keenan shall perform the following services:

1. Claims Administration.

- A. Determine liability for claimed injuries and illnesses in accordance with California Workers' Compensation Laws.
- B. Review and process all claims in accordance with rules and regulations established by the California Department of Self-Insurance Plans.
- C. Establish files containing medical and factual information on each reported claim together with complete accounting records and maintain them in accordance with statutory time requirements.
- D. Compute and pay temporary disability benefits to injured or ill employees based on earnings information and authorized disability periods.
- E. Determine nature and extent of permanent disability and arrange for informal disability rating whenever possible to avoid Workers' Compensation Appeals Board litigation.
- F. Explain to and assist employees in completing necessary forms for permanent disability ratings.
- G. Review, compute and pay informal ratings, findings and awards, life pensions, and compromise and release settlements.
- H. Maintain and establish reserve estimates for each reported claim.
- I. Arrange for and supervise necessary investigation to determine eligibility for compensation benefits and/or liability of negligent third parties.
- J. Handle excess reinsurance claims on Client's behalf, complying with conditions of the reinsurance contract. Submit billings and collect paid losses in excess of self-insurance retention.
- K. Arrange and supervise rehabilitation services where appropriate.
- L. Pay claims and loss adjustment expenses in accordance mutually agreed upon, written claims payment guidelines established by Client and/or Keenan, as applicable.
- M. Use reasonable efforts to maintain the designated claims examiner's claim inventory so it does not exceed 150 active open indemnity files at any given time.



2. **Medical Administration.**

- A. If Client participates in the Medical Provider Network (“MPN”) which the State of California approves, then Keenan will select, with Client’s approval, a medical provider panel of general practitioners, specialists, hospitals and emergency treatment facilities to which injured employees should be referred. The panel will be reviewed and updated on at least an annual basis. Keenan will work with Client to formulate medical provider panels in order to derive maximum benefit from legislative (SB 899) medical control changes.
- B. Authorize, review and monitor medical treatment required for injury or illness claims. Audit and pay medical expenses through PRIME, Keenan’s medical management and Bill Review program. PRIME services will be billed separately to the Claim File. See Exhibit C.
- C. Maintain close contact with Client and/or treating physicians to ensure employees receive proper medical treatment and are returned to full employment at the earliest date.
- D. Arrange for medical-legal opinions in disputed cases and confer with medical examiners, Client and legal counsel when needed.
- E. Consult with Client in cases where an injury residual might involve restriction and/or retirement potential.

3. **Legal Administration.**

- A. Recommend defense attorneys to the Client; receive Client’s written approval and acceptance of counsel. Counsel shall, once accepted by Client, defend Client’s interest in all cases that are subject to litigation before the Workers’ Compensation Appeals Board and the courts. All attorney fees shall be considered part of the loss adjustment expenses and shall be paid from the client’s claim’s account.
- B. Work closely with counsel in preparing defense of litigated cases.
- C. Keenan will also work closely with claimants and Client’s legal counsel to informally dispose of litigated cases.
- D. Work closely with counsel in an effort to protect and preserve Client’s interests in potential subrogation cases.
- E. Attend, when appropriate, and as agreed in advance by the parties, Workers’ Compensation Appeals Board hearings on behalf of Client.

4. **Risk Management Services.**

- A. Review and update Client on Workers’ Compensation benefits, rules and regulations, and legislative issues.

- B. Communicate with injured employees telephonically or in writing to assist them in resolving problems that arise from injury or illness claims.
- C. Meet quarterly with Client to review best practice policies and procedures, recommend areas for improvement and assist Client in implementing improvements.
- D. Produce ad hoc reports as needed to provide meaningful loss analysis to aid in risk management program development and tracking.

5. **Statistical.**

- A. Report to Client monthly status of claim payments and reserves on an individual basis and in the aggregate.
- B. Report to Client quarterly loss analysis of claims filed by frequency and severity.
- C. Provide quarterly PRIME (medical management and bill review) reports detailing savings and fees.
- D. Assist in the preparation of all reports required by the State of California or other government agencies relating to Workers' Compensation claims.

EXHIBIT A-1
MEDICARE SECTION 111 SERVICES

1. It is acknowledged and agreed that Client is the Responsible Reporting Entity ("RRE"), as defined by the Center for Medicare Services ("CMS"), for any liability or workers' compensation claim settlement or payment made by Client to a claimant. This includes payments made within the Client's Member Retained Limit ("MRL") or deductible.
2. Keenan shall act as Client's reporting agent for the preparation and submission of all reports ("Reports") required under Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007 ("Section 111") with respect to those settlements and payments of claims for which Keenan acts as claims administrator, and for which Client is deemed to be the RRE.
3. Keenan shall prepare and file the Reports in accordance with the requirements of all applicable, laws and regulations, and the directives of CMS and/or any other government agency that has, or may be granted the authority to require, direct, or control the preparation and/or filing of the Reports.
4. Client shall timely provide Keenan with all information necessary for the preparation and filing of the Reports. Keenan shall have no liability to Client for any penalty or fine that is assessed against Client for a failure to file a timely, accurate and/or complete Report if such failure was the result of the failure Client or any of its respective employees, representatives or agents to provide Keenan with all information necessary to file a timely, accurate, and complete Report.
5. Keenan shall not issue a payment to a claimant until it has received from the claimant, or the claimant's representative, all necessary claimant information that is required for the filing of a Report.
6. Keenan, as Client's manager and claims administrator, shall have no responsibility to file any Report for any settlement or payment for which Client is not the RRE.
7. Members shall at all times be responsible for their own Section 111 compliance in situations where they are the RRE. This includes, without limitation, the determination of whether or not a Report must be submitted, as well as the preparation and filing of all Reports.
8. When the total payment for a claim exceeds Client's MRL/deductible, Keenan will submit a Report only for that portion of the claim that is paid from the Client's MRL/deductible. The insurer or other entity paying the remaining amount is responsible for reporting for the amount in excess of that paid by the Client.
9. Keenan shall not file a Report for any claim unless it has been engaged by Client to act as the third party administrator for such claim.



EXHIBIT B
COMPENSATION

1. Client agrees to pay Keenan, for services rendered under this Agreement, a total fee of:
 - A. **\$18,750, payable in full on July 1, 2016.**
 - B. **\$30,000, payable in full on July 1, 2017.**
 - C. **\$35,000, payable in full on July 1, 2018.**
2. All payments and invoices are due and payable upon presentation by Keenan. In the event Client fails to pay any invoice within thirty days of presentation, Keenan shall be entitled to receive interest on such outstanding invoice from the date of presentation at the rate of (a) 1½ percent per month or (b) the maximum interest rate permitted by applicable law, whichever is lower.



EXHIBIT C



A Keenan Solution

Fee Schedule - Effective July 1, 2015

(Subject to change upon notice)

MANAGED CARE SERVICES

Early Intervention Initial Assessment / Triage \$50 / Hour

Total Case Management \$98 / Hour

- PPO Channeling
- 4 PT Contact
- Initial Evaluation
- RTW Plan
- Medical Care Evaluation
- Written/Case Management Action Plan

Utilization Review \$110 / Referral

Physician Advisor \$200 / Referral

- Medical Necessity Determination
- Physician-to-Physician Contact

Specialty Physician Review \$375 / Hour

- Specialty match required
- Appeals

STOP (Pharmacy Review) \$300 / Hour

- Peer-to-Peer Contact
- Management of Opioid Use
- Written Treatment Plan / Recommendations

BILL REVIEW SERVICES

Price bills to State Fee Schedules 10% of Savings

- \$10,000 per bill cap regardless of savings

PPO Network Access 24% of Savings

- \$10,000 per bill cap regardless of savings
- Retrospective Network Capture
- Preferred Vendor Pricing (Ancillary Services)

MPN Access \$1.50 per MPN bill

- Care Concierge™ Medical Access Assistant
- Physician Based Outcome Analytics

Pharmacy Benefit Management 20% of Savings

Negotiations 24% of Savings

Complex Bill Review by Physician 24% of Savings

eBill Access No Charge to Client

State Reporting Administrative Fee No Charge to Client