

**Northeast Association Management, Inc. (NEAMI)
Program Agreement for Third Party Administration Services**

THIS AGREEMENT dated as of July 6, 2016 is entered into by and between Northeast Association Management, Inc. ("NEAMI") and **Horseheads Central School District** (the "Customer") for administrative services to be provided by NEAMI in connection with the Customer's obligation to secure and provide worker's compensation for and to its employees.

WITNESSETH:

WHEREAS, the Customer desires to engage NEAMI to provide Worker's Compensation Law claims administration services for certain "tail claims" that have arisen prior to **January 1, 1997**;

WHEREAS, this Agreement does not apply to claims arising after **January 1, 1997**;

WHEREAS, this Agreement is not a contract of insurance;

NOW THEREFORE, the parties hereby agree as follows:

- (1) **Term.** This agreement shall be effective **July 1, 2016** and shall continue in force for one year, unless earlier terminated.
- (2) **Services.** During the term of this Agreement, NEAMI shall provide the Customer with third-party claims administration services with respect to all existing indemnity and medical worker's compensation claims and all Worker's Compensation Board awards that have arisen prior to **January 1, 1997** (collectively, "Tail Claims"). To that end, NEAMI will, as appropriate:
 - a. Process Tail Claims and the disbursement of "Benefit Payments" (as defined below) pursuant to such claims to claimants and providers entitled to such payments from the Customer within the timeframe required by the Worker's Compensation Law;
 - b. Contract with CorVel Corporation or another third party for review of medical bills and with PMSI or another third party for pharmacy benefit management services, at the sole cost and expense of the Customer;
 - c. Pay Worker's Compensation Board awards within the timeframe required by the Worker's Compensation Law, provided that the Customer advances the funds required and approves such payments in accordance with the requirements of Section 6 below;

July 6, 2016

- d. Promptly advise the Customer of Worker's Compensation Board decisions related to each Tail Claim;
 - e. Recommend to the Customer whether to request a modification, rescission or review of an award or decision of the Worker's Compensation Board, a panel of the Board, an Administrative Law Judge issued after a hearing and after the exhaustion of administrative remedies, recommend whether to file a judicial appeal. For other administrative decisions approved by an Administrative Law Judge, NEAMI may initiate a challenge if it reasonably believes necessary;
 - f. in the event of a factual error in an administrative decision, NEAMI may seek correction without the Customer's prior approval
 - g. Cause all required forms to be prepared and filed;
 - h. Contact the injured employee or employees, as appropriate;
 - i. retain and supervise legal counsel on behalf of and at the sole cost and expense of the Customer necessary for the prosecution or defense of any litigation. Choice of counsel is subject to the prior approval of the Customer, which approval shall not be unreasonably withheld or delayed;
 - j. Attend compensation hearings.
- (3) **Fees.** For each Tail Claim, the Customer shall pay an annual fee as set forth in Schedule A, attached hereto (the "Administration Fee"). In addition to the Administrative Fee, the Customer shall pay all costs and expenses related to the administration of Tail Claims, including, but not limited to the fees of CorVel Corporation and PMSI, attorney fees and disbursements, court reporter services and transcripts, deposition charges and transcripts, fees for service of process, court costs, courier/express mail, appeal bonds, printing costs related to trials and appeals, witness and expert fees, medical examinations and review, laboratory costs, engineering fees, independent adjustor fees, surveillance, photography and similar costs and expenses reasonably incurred and related to the investigation and defense of claims or the protection and collection of subrogation rights of the Customer (collectively, the "Allocated Loss Adjustment Expenses").
- (4) **Payment of Benefit Payments.** In addition to paying the Administration Fee and the Allocated Loss Adjustment Expenses, the Customer shall be responsible for the payment of all benefits to claimants, providers and other vendors related to all Tail Claims (the "Benefit Payments").
- (5) **Invoicing and Processing of Payments.**
- a. **Administration Fee.** The Administration Fee shall be billed for each Tail Claim on an annual basis and shall be due in full within thirty (30) days of issuance.
 - b. **Allocated Loss Adjustment Expenses.** See Section 6 below.

c. Benefit Payments. See Section 6 below.

(6) Customer Benefit Payments and Allocated Loss Adjustment Expenses. The Customer shall select and notify NEAMI in writing whether it will fund its obligations by wire transfer or cash advance as follows:

a. If paying by wire transfer, upon execution of this Agreement, the Customer shall wire to NEAMI the sum of \$400, representing the estimated sum of Benefit Payments and Allocated Loss Adjustment Expenses to be made during a 30 day period (the "Deposit"). NEAMI will maintain the Deposit in a bank account. At any time during the term of this Agreement, NEAMI may adjust the amount required for the Deposit. In the event of an increase in the Deposit, or if any of the Deposit is used to cover the Customer's obligations contained in this Agreement, the Customer shall promptly replenish the Deposit by wire transfer. In the event of a decrease in the estimated Deposit, NEAMI shall return the excess to the Customer.

i. Approval and Processing of Benefit Payments and Allocated Loss Adjustment Expenses. Not less than seventy-two (72) hours prior to the deadline for mailing checks and not less than forty-eight (48) hours prior to actual mailing, NEAMI shall provide the Customer with a check register for each check run drawn on such bank account. Within 48 hours, the Customer shall review the check register and notify NEAMI of its approval in writing. If satisfactory to the Customer, the Customer shall wire to NEAMI sufficient funds to cover all payments reflected in the register. NEAMI will not make any payment unless the Customer has approved and deposited sufficient funds to cover such payments. If the Customer is unable to timely advance such funds to NEAMI, NEAMI will draw on the Deposit to cover the Customer's obligations. The Customer shall be identified on each check as the insurer.

b. If paying by cash advance, upon execution of this Agreement, the Customer shall deposit with NEAMI the sum of \$1,100, representing the estimated sum of Benefit Payments and Allocated Loss Adjustment Expenses to be made during the first 90 days of this Agreement. That sum shall be deposited in a separate bank established by NEAMI. At any time during the term of this Agreement, NEAMI may adjust the estimated sum of Benefit Payments and Allocated Loss Adjustment Expenses to be made during a ninety (90) day timeframe. In the event of an increase in such estimate, the Customer shall promptly forward such difference to NEAMI. In the event of a decrease in such estimate, NEAMI will hold the excess funds to be applied to future Benefit Payments and Allocated Loss Adjustment Expenses, and future contributions of the Customer will be reduced accordingly. On a monthly basis, the Customer shall advance to NEAMI a sum equal to one-third of the then current 90 day Benefit Payment and Allocated Loss Adjustment Expenses estimate.

- i. **Approval and Processing of Benefit Payments and Allocated Loss Adjustment Expenses.** Not less than seventy-two (72) hours prior to the deadline for mailing checks and not less than forty-eight (48) hours prior to actual mailing, NEAMI shall provide the Customer with a check register for each check run drawn on such bank account. The Customer will then have forty-eight (48) hours to notify NEAMI of its approval in writing. NEAMI will not make any payment unless the Customer has approved and has deposited sufficient funds to cover such payments.
- (7) **Customer Compliance with Worker's Compensation Law.** In entering this Agreement, the Customer does not assign or delegate any responsibility it has under the Worker's Compensation Law, including without limitation, its obligation to provide compensation to its employees and all reporting and record retention obligations it may have. NEAMI neither accepts nor assumes any such responsibility in whole or in part. The Customer is responsible for all fines and penalties issued in connection with its obligations under the Worker's Compensation Law.
- (8) **Settlement of Tail Claims.** All settlements require Customer approval unless otherwise agreed to in writing by the Customer and NEAMI.
- (9) **Indemnification.** NEAMI shall not incur any liability with respect to any of the Customer's obligations. The Customer hereby indemnifies, defends and holds harmless NEAMI, its subcontractors and their respective affiliates, owners, partners, members, officers, directors, shareholders, agents and employees from and against any and all claims, liabilities, damages and expenses of any kind, including reasonable attorney's fees and disbursements (collectively, "Losses") except to the extent such Losses are solely caused by NEAMI's gross negligence or willful misconduct. The Customer's obligations under this paragraph shall survive the expiration or earlier termination of this Agreement.
- (10) **Obligations of Customer.** The Customer shall cooperate fully by supplying any information needed or helpful to defend any action and any other information NEAMI may request. If another servicer is currently holding Customer funds related to its Worker's Compensation obligations, the Customer shall direct such servicer to either refund such funds, or advance such funds directly to NEAMI. Upon request of NEAMI, the Customer shall attend hearings and trials, and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of all suits or proceedings. The Customer shall arrange so that all claims and all related inpatient and outpatient provider bills of any type, as well as all other correspondence that is received relating to Tail Claims are sent directly to NEAMI. Any costs and expenses incurred by the Customer in the fulfillment of these obligations shall be the direct responsibility of the Customer. The obligations contained in this paragraph shall survive the expiration or earlier termination of this Agreement.

July 6, 2016

- (11) **Electronic Data Interchange and File Transfers.** The parties acknowledge that the Worker's Compensation Board has adopted Claims Electronic Data Interchange Release 3.0, (the "EDI"). Upon execution of this Agreement and continuing for the term thereof, the Customer shall promptly provide to NEAMI or direct any third party to provide to NEAMI all records required by EDI and any other information required by the Worker's Compensation Board. Information shall be provided at the sole cost and expense of the Customer in a form reasonably acceptable to NEAMI. The Customer shall be solely responsible for any fines and penalties incurred as a result of its failure to provide the requested information.
- (12) **Termination of Agreement.** Either party may terminate this Agreement on thirty (30) days' notice to the other party. In the event of nonpayment by the Customer of any amount owed NEAMI; NEAMI may terminate this Agreement immediately upon notice to the Customer. Upon termination, all outstanding invoices rendered by NEAMI shall become immediately payable by the Customer and invoices in respect of services provided prior to termination but for which an invoice has not been submitted shall be payable immediately upon submission of an invoice by NEAMI.
- (13) **Notices.** The parties agree that notices under this Agreement shall be sent by electronic mail or facsimile to the designated contact at the email or facsimile number shown below. Notice sent to the Customer's contact shall constitute notice to the Customer.

If to the Customer:

Attn: Nicole Kerbein
Fax: 607-739-6344
Email: nkerbein@horseheadsdistrict.com
Phone: 607-739-5601

If to NEAMI:

Attn: Paul Jahn
Fax: 1-877-737-6232
Email: pjahn@neami.com
Phone: 518-220-1111

- (14) **Not a Contract of Insurance.** Under no circumstances will NEAMI advance its own funds on behalf of the Customer. NEAMI is not in any way to be deemed an insurer, underwriter or guarantor with respect to any benefits payable under the Customer's Worker's Compensation program.
- (15) **Applicable Law.** The parties agree that this Agreement shall be construed under and governed by the laws of the State of New York.
- (16) **Force Majeure.** NEAMI shall not be responsible for nonperformance or defective or late performance of its obligations hereunder to the extent and for such periods of time as such nonperformance, defective or late performance is due to causes beyond its control and occurring without its fault or negligence, including without limitation, acts of God,

strikes, war (including civil war), acts of any state or government, fire, explosions, the elements, epidemics, quarantine restrictions, blackout, embargo or unusually severe weather.

- (17) **Third Parties.** This Agreement is not intended and shall not be construed to create any rights in any third party.
- (18) **Amendment of Agreement.** This Agreement may not be modified or amended except in writing signed by both parties.
- (19) **Severability.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the remainder of the Agreement, which shall be in full force and effect and enforceable in accordance with its terms.
- (20) **Entire Agreement; Waiver.** This Agreement constitutes the entire agreement between the parties and supersedes all prior understandings between the parties. No waiver or discharge of any breach of this Agreement shall be effective unless it is in writing signed by the party granting such waiver or discharge. Any waiver of any breach of any provision of this Agreement shall not be deemed a waiver of any subsequent breach of any provision of this Agreement.
- (21) **Counterparts.** This Agreement may be executed in multiple counterparts, but all such counterparts shall together constitute a single, complete and fully executed document.

[Signatures Appear on Next Page]

IN WITNESS WHEREOF, the Customer and NEAMI have duly executed this Agreement as of the day and year first above written

Northeast Association Management, Inc.

By:

Horseheads Central School District

By:

Schedule A

Fees

Indemnity Tail Claims \$750 per year per claim

Medical Tail Claims \$750 per year per claim

The above referenced fees are in addition to those costs and expenses referred to in the Agreement.