

RESOLUTION NO. 08 22 2024K

A RESOLUTION AUTHORIZING AN AGREEMENT WITH BSAI SERVICES, PROVIDING FOR THIRD-PARTY ADMINISTRATOR SERVICES.

WHEREAS, the City of O'Fallon and the City's broker, Gallagher Risk Management Services, Inc., recommended the renewal of the contract for third-party administrator services between the City of O'Fallon and BSAI Services Administrators, Inc.; and

WHEREAS, the City's broker believes it makes sense to enter into an agreement to continue to provide third-party administrator services on the insurance lines of coverage; and

WHEREAS, City staff recommends approval of this Resolution;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF O'FALLON, MISSOURI, AS FOLLOWS:


SECTION 1: The City Council approves on behalf of the City an agreement with BSAI Services Administrators, Inc. for third-party administration services in substantial conformity with the terms shown on Exhibit A attached hereto and incorporated herein by this reference as if set out here in full, together with such changes therein as shall be approved by the officers of the City executing same which are consistent with the provisions and intent of this legislation and necessary, desirable, convenient or proper in order to carry out the matters herein authorized. The City Administrator and other appropriate City officials are hereby authorized to execute the Agreement and such additional documents and take any and all actions necessary, desirable, convenient or prudent in order to carry out the intent of this legislation.

PASSED BY THE CITY COUNCIL FOR THE CITY OF O'FALLON, MISSOURI, THIS 22ND DAY OF AUGUST, 2024.

Attest:


Bess Bacher, City Clerk




Presiding Officer

RESOLUTION NO. 08 22 2024K

APPROVED BY THE MAYOR FOR THE CITY OF O'FALLON, MISSOURI, THIS 22ND DAY OF AUGUST, 2024.



Bill Hennessy

Bill Hennessy, Mayor

Attest:

Bess Bacher

Bess Bacher, City Clerk

Approved as to Form:

Kevin M. O'Keefe

Kevin M. O'Keefe, City Attorney

THIRD-PARTY ADMINISTRATOR AGREEMENT

MULTIPLE LINES – PUBLIC ENTITY

This THIRD-PARTY ADMINISTRATOR AGREEMENT (“Agreement”) is effective the 1st day of July, 2024 (“Effective Date”), by and between Brentwood Services Administrators, Inc., a Tennessee corporation with principal offices located at 214 Centerview Drive, Suite 350, Brentwood, Tennessee 37027 (“BSAI”), and the City of O’Fallon, Missouri a municipality with principal offices located at 100 North Main Street, O’Fallon, Missouri 63366 (“Client”) (each a “Party” and collectively, the “Parties”).

In consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree for themselves, their successors, and assigns as follows:

I. TERM AND APPOINTMENT

- A. Term.** This Agreement shall commence on the Effective Date and will terminate at 12:01 a.m., Central Time, on the 1st day of July, 2027, unless extended or earlier terminated as provided herein (“Term”). The Term of this Agreement shall be automatically extended for consecutive one (1) month terms (“Holdover Period”) until a Party provides thirty (30) days’ written notice of termination to the other Party or a new Agreement is entered into between the Parties. During the Holdover Period, all annual fees, minimums, and maximums in Exhibit C will be applied on a pro rata basis and BSAI may increase the fees listed in Exhibit C by providing thirty (30) days’ written notice to Client of such rate increases.
- B. Appointment.** Client represents and warrants that it has purchased various insurance policies for the State(s) of Missouri. BSAI is authorized as a third-party administrator, and Client hereby engages BSAI, as its third-party claims administrator to adjust claims under the Program. BSAI accepts the engagement to provide the third-party administrator services.

II. DUTIES AND RESPONSIBILITIES OF BSAI

- A. Services.** BSAI shall, during the term of this Agreement, provide the “Services,” specified herein, consisting of:
1. Claims services, as set forth in Exhibit A attached hereto and incorporated herein by reference; and
 2. Loss control services, when applicable, as set forth in Exhibit B attached hereto and incorporated herein by reference.

All such services shall be provided by BSAI using its reasonable efforts, in conformance with the industry standard of performance, and in compliance with all applicable laws, rules, regulations, and regulatory advisory opinions.

- B. General Administration.** BSAI agrees to:
1. provide such clerical, secretarial, and administrative support, including necessary equipment and supplies, as may be necessary for the day-to-day compliance of the contractually agreed upon duties of BSAI in accordance with this Agreement;

2. periodically, but no less than quarterly, render an accounting to Client detailing all claims and related transactions performed by BSAI pertaining to the Program;
 3. maintain for itself general liability, automobile liability, workers' compensation, fidelity bond, and errors and omissions insurance coverage, as may be customary in the industry, but in no event less than required by law nor less than the maximum amount of the waiver of sovereign immunity under Section 537.610 RSMO; and
 4. maintain all applicable licenses required by the states in which it is administering claims and providing Services.
- C. Other States.** Client represents and warrants that BSAI is not obligated to provide Services in any states or jurisdictions not listed in Section I (B), without prior written agreement by BSAI to provide Services in such states or jurisdictions.

III. DUTIES AND RESPONSIBILITIES OF CLIENT

- A. Fees.** Client shall pay to BSAI the fees set forth in Exhibit C, attached to this Agreement and incorporated herein by reference. Exhibit C may be modified by BSAI annually during a Holdover Period upon thirty (30) days' written notice to Client.
- B. Other Expenses.** Client shall bear responsibility for all other expenses related to the Program, except for expenses directly relating to the performance by BSAI of its obligation under this Agreement. Client acknowledges and warrants that BSAI is not responsible for expenses such as, but not limited to:
1. program insurance premium;
 2. premium taxes;
 3. assessments;
 4. claim and loss payments;
 5. Allocated Loss Expense (as defined in Exhibit D attached to this Agreement and incorporated herein by reference); and
 6. Any other expense associated with the servicing of Client's Program which is not specifically delegated to BSAI under this Agreement.
- C. Bank Accounts.** Client may elect to maintain a claims fund bank account. If Client elects to maintain a claims fund bank account, Client must maintain adequate funds available from which BSAI may draw from at any time for claims, loss, and Allocated Loss Expense payments. Alternatively, Client may direct BSAI to open and maintain a separate trust claims fund bank account on behalf of Client. If a BSAI-owned account is utilized, Client must ensure adequate funding is provided and maintained from which BSAI may draw from at any time for claims, loss, and Allocated Loss Expense. Under either account type, Client acknowledges and warrants that BSAI will not process payments until adequate funding is established. Client will bear the cost of all expenses, fines, penalties, interest, and any other monies owed arising from inadequate funding of an account.
- D. Compliance with Law.** Nothing in this Agreement shall be construed as relieving Client of any duty, responsibility, or obligation it has to comply with any law or regulation. Client remains responsible for performing all functions necessary to remain compliant with applicable law.

- E. Client's Additional Duties.** Client shall provide BSAI with claims contact information, notice of any Client specific claims rules and regulations relating the Services provided under this Agreement, and any other information necessary for BSAI to provide the Services under this Agreement. If applicable to the services provided, Client shall provide BSAI with full and accurate information necessary to report to the Centers for Medicare and Medicaid Services, when such reporting is required. Client shall immediately provide notice to BSAI of any change in operation that involves claims in states other than those listed in Section I (B) or if it begins work in any state not listed in Section I (B).
- F. Access to Electronic Information Maintained by BSAI.** Client will be granted access to certain information in electronic format relative to its Program that is maintained by BSAI through BSAI's claims software. As a condition for such access, Client shall have responsibilities relative to the confidentiality and protection of such software and information, as more fully delineated in Exhibit E, attached to and incorporated herein by reference.
- G. Transmission of Insurance Policies.** Client shall transmit a copy of any insurance policies to BSAI within thirty (30) days of the effective date of this Agreement and within thirty (30) days of Client's procurement of such policies to enable BSAI to provide claims information to the insurance carriers in conformance with such insurance policies. Should Client fail to provide an insurance policy within this timeframe, then Client shall defend and indemnify BSAI from any costs, penalties, fines, and other liabilities whatsoever with respect to the handling or late reporting of claims on such insurance policies.

IV. OWNERSHIP OF BOOKS AND RECORDS

To the extent legally applicable, BSAI shall maintain and retain custody of the books, records, files, and other information ("Client Records") as required to perform the Services. BSAI may destroy any Client Records after seven (7) years of file inactivity, unless ordered by Client, in writing, to continue to maintain said Client Records. Such Client Records may be maintained by BSAI in electronic format. The Client Records shall remain the exclusive property of Client and shall be available for review by Client during business hours, with reasonable written notice, at the premises of BSAI. Client acknowledges that all software, source codes, licenses, and other intellectual property rights that are utilized by BSAI are not the property of Client and remain the exclusive property of BSAI.

If this Agreement is terminated by either Party, Client releases BSAI from any duty and liability for the maintenance and keeping of the Client Records. Client acknowledges that BSAI may, in its exclusive discretion, retain a copy of all Client Records upon termination of this Agreement.

V. TERMINATION

A. Termination for Convenience. During the Term of this Agreement, either Party may terminate this Agreement by providing ninety (90) days' prior written notice of termination to the other Party.

B. Termination for Cause.

1. If any of the following events occur, Client may immediately terminate this Agreement for cause.
 - a. BSAI materially and deliberately misapplies, misdirects, or misappropriates funds or other property received for Client pursuant to this Agreement.
 - b. BSAI materially breaches the terms of this Agreement and BSAI fails to cure such material breach within thirty (30) days of written notice to BSAI of such material breach.
 - c. BSAI files a bankruptcy petition, is placed into bankruptcy, is declared insolvent by a court of competent jurisdiction, or is dissolved.
 - d. Client, based on its reasonable and good-faith belief, is in immediate danger of suffering irreparable harm from the continued operation of this Agreement.
 - e. BSAI or BSAI's executive officers are convicted of:
 - i. a material violation of the insurance laws or regulations of any jurisdiction;
 - ii. any offense constituting a felony in the jurisdiction which committed; or
 - iii. a material violation of any law, which violation would in a material way, negatively reflect on the integrity of BSAI or hinder its ability to perform services required under applicable law.
 - f. BSAI's failure to maintain any license, regulatory approval, or other type of regulatory authorization to perform its obligations under this Agreement.
2. If any of the following events occurs, BSAI may terminate this Agreement for cause.
 - a. Client fails to timely pay any fees in accordance with this Agreement.
 - b. Client materially breaches this Agreement.
 - c. Client files a bankruptcy petition, is placed into bankruptcy, is declared insolvent by a court of competent jurisdiction, or is dissolved.
 - d. BSAI, based on its reasonable and good-faith belief, that it is in immediate danger of suffering irreparable harm from the continued operation of this Agreement.
 - e. Client or Client's executive officers are convicted of:
 - i. a material violation of the insurance laws or regulations of any jurisdiction;
 - ii. any offense constituting a felony in the jurisdiction which committed; or
 - iii. a material violation of any law, which violation would in a material way negatively reflect on the integrity of BSAI or hinder its ability to perform services required under applicable law.
 - f. Client's failure to maintain any license, regulatory approval, or other type of regulatory authorization to perform its obligations under this Agreement.
3. If a Party elects to terminate this Agreement for cause, the terminating Party must provide written notice to the other Party. The written notice must clearly state the alleged cause for immediate termination.

- C. Billing Upon Termination.** BSAI will furnish to Client its final billing for services rendered as soon as practicable following termination of this Agreement. If such billing results in monies due to BSAI, Client shall pay the entire invoice to BSAI within thirty (30) days of the invoice date, unless subject to a good-faith dispute. If such billing results in monies due to Client, BSAI shall pay the entire invoice to Client within thirty (30) days of the invoice date, unless subject to a good-faith dispute.
- D. Transfer of Files Upon Termination.** Client acknowledges that BSAI is not obligated to transfer the Client Records until all outstanding amounts owed to BSAI has been paid, unless required by law.
- E. Client's Options Upon Termination.** Upon termination of this Agreement, Client may:
1. Require BSAI to return all Client Records in BSAI's possession to Client or designated third party within sixty (60) days, with Client paying all costs for the transfer of such Client Records; or
 2. Require BSAI to handle, to conclusion, all claims and other obligations reported during the Term.
- F. Duties Limited to Duration of Agreement.** Client acknowledges and warrants that BSAI will cease performing and have no obligation to carry out the Services upon termination of this Agreement, unless Client elects to have BSAI handle runoff claims pursuant to subsection (E)(2) of this Section, in which case BSAI's obligations is strictly limited to providing the Services for claims reported to BSAI during the Term. In the event Client elects for BSAI to handle runoff claims, this Agreement will remain in effect until all claims are closed.

VI. INDEMNIFICATION AND HOLD HARMLESS

Client and BSAI shall indemnify, defend, and hold harmless the other and each of their members, directors, officers, employees, affiliates, and independent contractors ("Indemnitees") from and against any and all claims, liabilities, losses, damages, judgements, forfeitures, penalties, fines, actions, and other obligations (including reasonable attorneys' fees and expenses) which may be asserted against, imposed upon, or incurred by the other Party and its Indemnitees as a result of, or arising out of, the indemnifying Party's material breach of this Agreement or by reason of the indemnifying Party's intentional or willful misconduct or grossly negligent acts or omissions. BSAI shall not be obligated to indemnify, defend, or hold Client harmless with respect to any actions or omissions based upon the written or oral direction of Client. This Section shall survive termination of this Agreement.

VII. MISCELLANEOUS

- A. Independent Contractor.** The Parties represent and warrant that this Agreement is intended to create and shall create between Client and BSAI an independent contractor relationship, and nothing herein shall create the relationship of partner, joint venture, or any other relationship other than independent contractor.
- B. Entire Agreement.** This Agreement, along with all exhibits, schedules, and addenda to this Agreement which are hereby incorporated by reference into this Agreement as if fully set forth herein, contains

all the terms agreed upon between the Parties with respect to the subject matter hereof and supersedes all prior oral and written communications between BSAI and Client, including, if applicable, any prior written agreements. No modification or amendment of this Agreement shall be valid unless made in writing and fully executed by the Parties.

- C. **Notices.** All notices required herein shall be in writing and sent via certified mail with return receipt requested, or reputable private carrier (Federal Express, DHL, UPS, etc.), with proof of receipt, to the Parties at the following addresses:

If to Client: City of O’Fallon, Missouri
 100 North Main Street
 O’Fallon, Missouri 63366

If to BSAI: Brentwood Services Administrators, Inc.
 ATTN: President
 214 Centerview Drive, Suite 350
 Brentwood, Tennessee 37027

With copy to:

Acrisure, LLC
ATTN: Chief Legal Office
100 Ottawa Avenue, SW
Grand Rapids, MI 49503

- D. **Assignment.** Neither Party is entitled to assign its rights or obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, BSAI may assign this Agreement to an affiliate or engage the services of subcontractors to perform the Services.
- E. **Applicable Law and Venue.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Missouri without giving effect to any choice or conflict of law provision or rule (whether of the State of Missouri or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Missouri. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Missouri in each case located in St. Charles County, Missouri and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. Service of process, summons, notice or other document by hand delivery or certified mail in accordance with this Agreement shall be effective service of process for any suit, action or other proceeding brought in any such court. The Parties irrevocably and unconditionally waive any objection to venue of any suit, action or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

- F. Mediation.** In the event of an irreconcilable dispute relating to this Agreement, the Parties may proceed to mediation in accordance with the procedures agreed to by the Parties. Each Party shall bear its own mediation costs and expenses, and joint mediation costs and expenses shall be borne equally by the Parties.
- G. Waiver.** No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set out in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- H. Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES. THE PARTIES' RELATIONSHIP WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT IS SOLELY CONTRACTUAL AS DEFINED HEREIN. FURTHERMORE, IN NO EVENT SHALL THE TOTAL LIABILITY OF BSAI TO CLIENT FOR ALL DAMAGES, LOSSES, SUITS AND CAUSES OF ACTION (WHETHER IN CONTRACT OR TORT, INCLUDING BUT NOT LIMITED TO, NEGLIGENCE, INDEMNIFICATION OR OTHERWISE) ARISING FROM THIS AGREEMENT EXCEED \$100,000 OR THE AMOUNT PAID TO BSAI BY CLIENT PURSUANT TO THIS AGREEMENT IN ANY CALENDAR YEAR, WHICHEVER IS GREATER.
- I. Contractual Modification of Statute of Limitations.** Omitted.
- J. Headings.** All headings in this Agreement are for convenience of reference only and shall be disregarded.
- K. Regulatory Compliance.** The Parties acknowledge that it is the Parties' intent that all obligations performed hereunder shall comply with all applicable federal and state laws and regulatory standards.
- L. Interpretation.** The Parties represent that both Parties have participated jointly in the drafting and negotiation of this Agreement. Accordingly, this Agreement will be construed as drafted equally by each Party, with no presumption favoring or disfavoring either Party.
- M. No Third-Party Beneficiaries.** This Agreement is not intended to confer upon any person other than the parties hereto any rights or remedies hereunder. There are no third-party beneficiaries to this Agreement.
- N. Severability.** If any one or more of the provisions contained in this Agreement is, for any reason, held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability does not affect any other provisions of this Agreement. The court or tribunal which holds such provision to be invalid, illegal, or enforceable is empowered by the Parties to amend the terms of this Agreement to give

effect to the intentions of the Parties, as reflected in the struck provision, to the greatest extent possible.

- O. Privacy and Confidential Information.** The Parties shall comply with all applicable statutes, regulations, and directives relative to the privacy of policyholder and claimant health and financial information.

“Confidential Information” is information concerning the internal processes or condition of BSAI whether in oral, written, electronic, graphic, or other format, including without limitation: (a) information regarding BSAI’s, or BSAI’s corporate affiliates’, financial condition or performance, business operations, plans, strategies or techniques, pricing, past or current BSAI information, systems or system strategies, and marketing and distribution plans, methods or techniques; (b) any other information that is marked “confidential,” “proprietary,” or similar words, or that is summarized in writing as being confidential prior to, or promptly after, disclosure to the other Party; (c) all related research and data; (d) all designs, ideas, concepts, intelligence, engineering, techniques, processes, methodologies, and technology embodied in any of the foregoing; and (e) any administrative structure designed to facilitate or enhance the Parties’ relationship.

Client shall keep all Confidential Information confidential and shall not, directly or indirectly, disclose such Confidential Information to any affiliate or third party; hold BSAI’s Confidential Information in strict confidence; and safeguard the Confidential Information in accordance with industry standards and no less than Client safeguards its own information.

Notwithstanding the foregoing, nothing herein shall prevent any disclosure of Confidential Information required by applicable law, regulation, or judicial process.

The confidentiality obligations set out in this paragraph shall survive the termination of the business relationship between the parties and the termination of this Agreement.

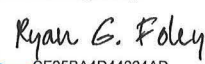
- P. Force Majeure.** A Party is not liable for failure to perform the Party's obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane, epidemic, pandemic, or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout, or interruption or failure of electricity, telecommunication, or third-party software service. If a Party asserts force majeure as an excuse for failure to perform the Party's obligation, then the nonperforming Party must take reasonable steps to minimize delay or damages.
- Q. Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, and all of which will constitute one and the same agreement. This Agreement may be executed and delivered by facsimile transmission, electronic mail, or other electronic means and shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.
- R. Federal Work Authorization Compliance.** BSAI shall comply and satisfy the requirements of Sec. 285.530.2 RSMo. 2016 by signing a certificate of compliance.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective on the Effective Date.

City of O'Fallon, Missouri

Brentwood Services Administrators, Inc.

By: 

DocuSigned by:
By: 
CF258A4D44224AD...

Title: City Administrator

Title: Executive Vice President

Date: 08/22/2024

Date: 8/19/2024 | 12:11 PM EDT



EXHIBIT A
CLAIMS SERVICES

In accordance with Section II of the Third-Party Administrator Agreement (“Agreement”), this Exhibit is attached to and is incorporated within the Agreement between Brentwood Services Administrators, Inc. (“BSAI”) and City of O’Fallon, Missouri (“Client”).

- A. BSAI shall use reasonable efforts to provide to Client certain claims services necessary for the day-to-day servicing of the Program. The obligation to provide such services is limited to “Qualified Claims” herein defined as claims made under Client’s Program that are:
1. reported to BSAI by Client during the Term and occur in a state in which BSAI is appointed to handle claims on behalf of Client under Section I (B) of the Agreement;
 2. old claims previously reported to BSAI by Client pursuant to a previous third-party administrator agreement; or
 3. old claims that have been serviced by a previous administrator and which BSAI has agreed to assume servicing responsibility for provided such claims are in a state in which BSAI is appointed to handle claims on behalf of Client under Section I (B) of the Agreement.
- B. BSAI shall:
1. service, review, investigate, adjust, and process Qualified Claims;
 2. establish claims reserves for each Qualified Claim and provide periodic review of claims reserves to reflect changes in claims reserves;
 3. acknowledge to Client, in writing, the receipt of all Qualified Claims, on an as-agreed basis;
 4. acknowledge to Client, in writing, all Qualified Claims that have been closed, on an as-agreed basis, with such acknowledgement containing the closure date and the amount paid;
 5. acknowledge to Client, in writing and on an as-agreed basis, the receipt of all lawsuits, with such acknowledgement containing the assigned defense firm and a copy of the complaint or bill filed. As litigation proceeds, BSAI shall keep Client apprised, to the extent reasonable, of discovery request deadlines, depositions, conferences, and trials;
 6. provide a narrative report to Client on any Qualified Claims where the total reserves exceed Two Hundred Fifty Thousand Dollars (\$250,000.00);
 7. prepare and maintain an electronic claim file for each Qualified Claim with the file open, during BSAI’s normal business hours, for inspection and copying by Client and its agents, servants, employees, and officers, at Client’s expense upon written request;
 8. prepare, maintain, and file all records and reports that may be required by any state regulatory agencies in connection with BSAI’s handling of Qualified Claims, as instructed by Client;
 9. coordinate the assignment of and provide utilization management services and case management services on Qualified Claims needing, within BSAI’s reasonable discretion, such services. Charges for such services are Allocated Loss Expense, and thus Client shall make payment for all such expenses in addition to the claims service fees delineated in Exhibit C. BSAI may utilize the services of a subcontractor or an affiliate, with Client’s written consent, to perform all or a portion of such services. Client acknowledges that BSAI or its affiliate may be compensated for its administrative expense in connection with the provision of such services. Periodically, the rates charged for these services may be adjusted;

10. provide medical provider bill review services to reduce the bill to the fee schedule or reasonable and customary amounts, as applicable, at the rate set forth in Exhibit C. Further reductions on the bill to reflect preferred provider organization (PPO) savings and other types of savings below the fee schedule or reasonable and customary amounts will also be provided for the percentage of savings fee set forth in Exhibit C. Furthermore, BSAI may procure, on Client's behalf, drug utilization review services, pharmaceutical PPO network services, durable medical equipment bill review services, durable medical equipment PPO services, home health care services, and home health care PPO network services. Charges for all services delineated in this paragraph are Allocated Loss Expense, and thus Client shall make payment for all such expenses in addition to the claims service fees delineated in Exhibit C. BSAI may utilize the services of a subcontractor or an affiliate, with Client's written consent, to perform all or a portion of such service. Client acknowledges that BSAI or its affiliate may be compensated for its administrative expense in connection with the provision of such services. Periodically, the rates charged for the services may be adjusted;
11. coordinate the assignment of and provide translation, transportation, surveillance, and investigation services on Qualified Claims needing, within BSAI's reasonable discretion, such services. Charges for such services are Allocated Loss Expense, and thus Client shall make payment for all such expenses in addition to the claims service fees delineated in Exhibit C. BSAI may utilize the services of a subcontractor or an affiliate, with Client's written consent, to perform all or a portion of such services. Client acknowledges that BSAI and its affiliate may be compensated for its administrative expense in connection with the provision of such services. Periodically, the rates charged for the services may be adjusted;
12. recommend panel physicians, as required or permitted by law, and assist in the implementation of the services such panel physicians provide;
13. investigate and, where appropriate, refer to defense counsel, subrogation possibilities and subsequent injury fund recovery possibilities. For all subrogation and subsequent injury fund recoveries, BSAI is entitled to a percentage of the recovery as set forth in Exhibit C. Charges for all subrogation and subsequent injury fund recoveries are Allocated Loss Expense, and thus Client shall make payment for all such charges in addition to the claims service fees delineated in Exhibit C. For subrogation and subsequent injury fund recoveries, BSAI may utilize the services of a subcontractor or affiliate, with Client's written consent, to perform all or a portion of such services, which services shall be billed as a pass through to Client. Client acknowledges that BSAI may add an administrative fee in connection with the provision of such services as set forth in Exhibit C;
14. pay, out of Client's claims fund account, such disability (lost time and indemnity) benefits, medical benefits, death benefits, Allocated Loss Expense, and any other loss and expense as may be required to comply with applicable workers' compensation laws and regulations, including any judgments or expenses as set forth in this Exhibit and the Agreement;
15. act as an agent for Client and report to the Centers for Medicare and Medicaid Services, as required by Section 111 of the Medicare, Medicaid and SCHIP Extension Act of 2007, otherwise known as the Medicare Secondary Payor Provision, and rules promulgated thereunder, and otherwise assist Client, as the Responsible Reporting Entity, to comply with Section 111 and provide other Centers for Medicare and Medicaid Services compliance services, through a

subcontractor or an affiliate. Client acknowledges that BSAI and its affiliate may be compensated in connection with the provision of such services;

- 16. provide any information requested by any appropriate reinsurance or excess insurance carriers; and
- 17. provide to such certified public accountants, attorneys, or actuaries any claim cost information as may be reasonably directed by Client.

C. The claims services provided by BSAI under this Exhibit and the Agreement are to be provided in accordance with (a) the reasonable rules and regulations adopted by Client and provided, in writing, to BSAI; (b) the rules and regulations of any governmental or regulatory authority; and (c) the express lawful, requirement of any reinsurance or excess insurance contracts issued to Client.

Client LS
Initial

BSAI DS
RF
Initial

EXHIBIT B
Loss Control Services

In accordance with Section II of the Agreement, this Exhibit is attached to and incorporated within the Third-Party Administrator Agreement ("Agreement") between Brentwood Services Administrators, Inc. ("BSAI") and City of O'Fallon, Missouri ("Client").

- A. BSAI shall provide to Client the following loss control services subject to the hours and terms agreed to between the parties in Exhibit C. BSAI shall:
 - 1. provide qualified loss control consultants to visit Client on an as needed and agreed upon basis to review and advise Client of its current loss control program;
 - 2. assist the management of Client in the development and modification of a loss control program;
 - 3. conduct safety training seminars, as agreed upon;
 - 4. perform on-site surveys for hazard identification and work practice evaluation, including accident analysis, to identify trends and problem areas for loss control focus;
 - 5. provide written reports to Client with an appropriate summary of activities, listing hazards and loss problems, along with recommendations for improvements; and
 - 6. provide to Client information on third-party independent contractors which may be utilized, at Client's expense, to secure industrial hygiene and OSHA compliance.

- B. BSAI is entitled to reimbursement for loss control services in accordance with the fee schedule in Exhibit C. BSAI, or its subcontractors, time spent preparing, writing reports, providing loss control services, and traveling time is billable as loss control services pursuant to this Agreement.

- C. Client acknowledges that it is ultimately and solely responsible for its own safety program. BSAI makes no representation that all unsafe conditions or procedures will be discovered, even if such unsafe conditions or procedures were reasonably discoverable. BSAI makes no representation that any location, workplace, operation, machinery, or equipment is safe, healthful, or in compliance with any laws, rules, or regulations.

Client



Initial

BSAI



Initial

**EXHIBIT C
Fee Schedule**

In accordance with Section 2 of the Third-Party Administrator Agreement (“Agreement”), this Exhibit is attached to and incorporated within the Agreement between Brentwood Services Administrators, Inc. (“BSAI”) and City of O’Fallon, Missouri (“Client”).

A. Claim Service Fee. Client shall pay to BSAI a claims service fee (“Service Fee”) according to the schedule below.

Standard Services	Year 1	Year 2	Year 3
WC Indemnity Claim (per claim)	\$1,000.00	\$1,030.00	\$1,065.00
WC Medical Only Claim (per claim)	\$165.00	\$170.00	\$180.00
WC Information Only (per claim)	\$55.00	\$60.00	\$65.00
General Liability Claim (per claim)	\$900.00	\$930.00	\$960.00
Property Liability Claim (per claim)	\$900.00	\$930.00	\$960.00
Property Claims Above \$250,000 Total Incurred	\$95.00 per hour plus expense		
Auto Liability (per claim)	\$900.00	\$930.00	\$960.00
System Fee (view only annual) 24/7 system access	Up to 4 users free, \$500.00 annually per each add'l user		
Other			
Loss Control Fee (per hour plus expense)	\$175.00	\$185.00	\$195.00
All Medical Bill Review PPO Savings (% of savings)	28%	28%	28%
All Pharmaceutical Bill Review Savings (% of savings)	28%	28%	28%
All Other Savings (% of savings)	28%	28%	28%
CMS Reporting (annual)	\$5,000.00	\$5,150.00	\$5,305.00
Subsequent Claim Fee after 3 yrs. (per claim)	\$000.00	\$000.00	\$000.00

B. Loss Control Fee. Client shall pay to BSAI the Loss Control Fee contained in the Section A schedule. “Expense” is defined as time spent traveling, preparing risk evaluation reports, time re-preparing loss analyses, writing benchmark reports, conducting phone consultation, and other similar expenses. The Loss Control Fee may be adjusted by BSAI with thirty (30) days’ notice prior to the end of each Agreement year.

C. Data Conversion Charges. Client shall pay to BSAI an initial data conversion charge of _____NA_____ Dollars (\$____.00). Should Client request that BSAI convert additional data during the Term of this Agreement, then Client will pay an additional data conversion charge of _____NA_____ Dollars (\$____.00) per hour of time expended by BSAI or its subcontractor to convert the data. Client shall pay the full invoice amount to BSAI within ten (10) days of the invoice date. Any fee under this Section is fully earned once the data is converted to BSAI’s information system. **[If blank, charges are included in the Service Fee.]**

D. Bank Reconciliation Fee. Client shall pay to BSAI an annual fee of Zero Dollars (\$0.00) for BSAI to reconcile Client’s claims fund account, including the reconciliation of beginning balance, checks

issued, checks cleared, checks outstanding, checks voided, deposits, and ending balance. **[If blank, charges are included in the Service Fee.]**

- E. Subrogation, Subsequent Injury, and Secondary Injury Fund Recoveries.** For each subrogation, Subsequent Injury Fund, and Secondary Injury Fund recovery, Client shall pay to BSAI an administrative fee equal to fifteen percent (15%) of the net recovery. Such recovery fees are an Allocated Loss Expense in accordance with Exhibit D herein and are paid off the respective claim file. All such recovery fees are in addition to the service fees listed above. BSAI is not entitled to any additional fees for its time expended pursuing such recoveries.
- F. Custom Reports and IT Time.** All system menu reports are included in the Service Fee. Should Client request any customized claims, loss control, or risk management reports or need any other service from BSAI's information technology personnel, then Client shall pay to BSAI a fee of Two Hundred Dollars (\$200.00) per hour for time expended by BSAI's personnel. The per hour fee is earned as the time is expended. Client must pay to BSAI the entire invoice amount within thirty (30) days of the invoice date.
- G. Billing, Payment, and Audit.** Client shall pay to BSAI the Service Fee in equal quarterly installments. **Payment of the entire invoice amount is due thirty (30) days after the invoice date.**

Within ninety (90) days following the end of each Agreement year, BSAI will complete an audit for the previous Agreement year. Upon completion of the audit, BSAI will provide to Client a statement showing the amount owed by Client with an invoice for such amount or a statement showing the amount to be refunded to Client by BSAI. If Client owes monies to BSAI after the audit, payment of the amount owed shall be made to BSAI within thirty (30) days of the invoice date. If BSAI owes monies to Client, BSAI shall apply such amount as a credit for Client for the next Agreement year or, upon the written request of Client, refund the overpayment to Client within thirty (30) days of the audit statement date.

- H. Definition of Claim; Earning of Per-Claim Fees.** For purposes of calculating the number of claims, each injured individual or damaged property is considered a "claim", even if there are multiple individuals injured or properties damaged as a result of the same occurrence. All per-claim fees are completely earned when the claim is reported to BSAI.
- I. Medical Cost Containment Fees.** BSAI shall receive fees for bill review and PPO services, utilization review services, pharmaceutical bill review and PPO procurement services, durable medical equipment bill review and durable medical equipment PPO services, and medical cost containment services in addition to the Service Fee, in accordance with the following schedule.
1. For each medical bill reviewed, Client shall pay BSAI the fee indicated in the Section A schedule to reconcile the bill to the usual customary charge.
 2. For all medical bill review PPO savings, Client shall pay BSAI the percentage indicated in the Section A schedule of all savings achieved below the usual and customary charge or fee schedule.
 3. For all pharmaceutical bill review savings, Client shall pay BSAI the percentage indicated in the Section A schedule of all savings achieved below the usual and customary charge or fee schedule.

4. For all other PPO savings, Client shall pay BSAI the percentage indicated in the Section A schedule of all savings achieved below the billed amount or the usual and customary charge, whichever is lower.

All medical cost containment fees are an Allocated Loss Expense in accordance with Exhibit D and are paid off the respective claim file. All such fees are in addition to the Service Fee.

- J. **Claim Run-off Fee.** In the event Client or Client's insurance carrier requests BSAI handle Qualified Claims to conclusion following termination of this Agreement, Client shall pay to BSAI the Claim Run-off Fee, at the prevailing rate, per open claim, per year, for the life of the Qualified Claim. The Claim Run-off Fee may be adjusted by BSAI with thirty (30) days' notice prior to the end of each Agreement year.
- K. **CMS Reporting Fee.** Client shall pay to BSAI the annual CMS Reporting Fee listed in the Section A schedule for services performed for Section 111 reporting to CMS. The CMS Reporting Fee is earned pro-rata.
- L. **Subsequent Claim Fee.** Client shall pay to BSAI a Subsequent Claim Fee for any indemnity claim that is open three (3) years after inception, at the rate listed in the Section A schedule. If no rate is listed in the Section A schedule, Client shall pay to BSAI the prevailing rate, per open claim, per year, for the life of the Qualified Claim.
- M. **Takeover Claim Fee.** If listed, Client shall pay to BSAI the Takeover Claim Fee listed in the Section A schedule for any open and existing claims that it takes on from Client. The fee listed in the Section A schedule is on a per open claim basis and is fully earned when reported to BSAI.
- N. **Transportation, Translation, and Investigation Fees.** Client shall reimburse BSAI fees for transportation, translation, third-party investigation, and other similar expenses incurred by BSAI. Such expenses are an Allocated Loss Expense in accordance with Exhibit D and are paid off the respective claim file.
- O. **Late Fees.** Should any payment required herein not be received by BSAI within thirty (30) days of the date due, Client shall pay to BSAI a late fee of one percent (1%) per month, or the maximum amount permitted by law, whichever is lower, of the amount outstanding.
- P. **Transfer of Files Upon Termination.** Omitted.

Nothing in this Exhibit or the Agreement may be construed as prohibiting BSAI or any of its affiliates from receiving ordinary and reasonable commissions from an insurance carrier, for producing Client's workers' compensation policy or from any other insurance company or reinsurer providing reinsurance or other insurance coverage. Such commissions may not be considered a setoff against the fees due under this Agreement. For any such commissions, BSAI shall notify Client of such commission received.

Unless otherwise specified herein, the fees listed in the Section A schedule contemplate BSAI providing the services described in this Agreement only during the Term or a renewal thereof, is in full force and effect.

For Maximum, Fixed, or Flat Fee Service Agreements, if a force majeure event, as defined in the Agreement, or a multiple-employee injury event occurs and such event results in claims volume increasing greater than ten percent (10%) over what would have been the claims volume in the absence of such event, then BSAI shall be entitled to additional claims service fees, at BSAI's then prevailing rate, which shall not be less than BSAI's prevailing indemnity claim rate listed in the Section A schedule per claim.

Client 
Initial


BSAI 
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EXHIBIT D
Allocated Loss Expense

In accordance with Section III of the Third-Party Administrator Agreement (“Agreement”), this Exhibit is attached to and incorporated within the Agreement between Brentwood Services Administrators, Inc. (“BSAI”) and City of O’Fallon, Missouri (“Client”).

Under this Exhibit and the Agreement, “Allocated Loss Expense” is defined as and includes the following:

- 1) attorneys’ fees and expenses;
- 2) court reporter’s fees, court costs, fees, and expenses;
- 3) pre- and post-judgment interest;
- 4) costs of depositions, including, but not limited to, transcript fees;
- 5) costs of obtaining copies of public records;
- 6) costs of obtaining copies of medical records;
- 7) service of process fees;
- 8) witness fees and expenses;
- 9) expert fees and expenses;
- 10) costs of independent medical examinations and evaluations;
- 11) medical cost containment services, including, but not limited to, utilization management services;
- 12) travel expenses incurred by BSAI at Client’s request;
- 13) bill review service costs;
- 14) costs associated with indexing and submitting claims information to the Insurance Service Office, rate advisory service organizations, claims compilation or transmission agencies, and state agencies and their designees;
- 15) subrogation costs and expenses;
- 16) operative, investigative, and detective service costs;
- 17) postage solely related to a particular Qualified Claim;
- 18) survey and appraisal fees;
- 19) costs associated with making any regulatory filings with the Centers for Medicare and Medicaid Services, including, but not limited to, filings in connection with the Medicare Secondary Payor provisions of the Social Security Act;
- 20) medical case management service costs;
- 21) costs associated with disputing or complying with Medicare Section 111 conditional payment liens;
- 22) costs associated with creating or obtaining a Medicare Set Aside; and
- 23) any other similar fee, cost, or expense that is reasonably chargeable for the investigation, negotiation, settlement, adjustment, or defense of a Qualified Claim, whether charged by BSAI or a third party, or as required for the protection of the rights or collectability of subrogation on behalf of Client.

Client MS
Initial

BSAI DS
RF
Initial

EXHIBIT E
Electronically Accessible Information and Cybersecurity

In accordance with Section III of the Agreement, this Exhibit is attached to and shall be incorporated within the Agreement between Brentwood Services Administrators, Inc. ("BSAI") and City of O'Fallon, Missouri ("Client").

The Agreement is hereby amended to add the following:

1. Definitions.

a. Information System. "Information System" means and refers to a discrete set of electronic information resources organized for the collection, processing, maintenance, use, sharing, dissemination or disposition of electronic information, as well as any specialized system such as industrial/process control systems, telephone switching and private branch exchange systems, and environmental control systems.

b. Nonpublic Information. "Nonpublic Information" means and refers to:

i. Confidential business-related information of:

- 1) BSAI or any of its affiliates;
- 2) Insurance companies whose insurance policies BSAI sells or solicits, and other insurance intermediaries involved in the sale or solicitation of such policies (collectively, the "Insurers"); and
- 3) Any past, actual or prospective insureds under such policies (collectively, the "Insureds"),

the tampering with, unauthorized disclosure of, or access or use of which could cause an adverse impact to the business, operations or security of BSAI, the Insurers or the Insureds;


ii. Any information concerning an individual which, because of name, number, personal mark or other identifier, can be used to identify such individual, in combination with any one or more of the following data elements: (1) social security number; (2) driver's license number or non-driver identification card number; (3) checking, savings, money market, credit card, debit card or any other financial account (collectively, a "Financial Account") number; (4) any security code, access code or password that would permit access to an individual's Financial Account; or (5) biometric records; and

iii. Any information or data, except age or gender, in any form or medium created or derived from a health care provider or an individual that relates to any actual or proposed past, present or future medical treatment or payment for provision of healthcare.

2. Access to Information Systems and Nonpublic Information. Client agrees that any access to and use of BSAI's Information Systems and Nonpublic Information shall only be as required to perform its duties and obligations under the Agreement and shall at all times be in accordance with all applicable laws and regulations. Subject to all other terms and conditions of this Exhibit, Client shall limit access to BSAI's Information Systems and Nonpublic Information to only those Client employees, agents and subcontractors who (a) have a "need to know" in order for Client to perform its duties and obligations under the Agreement and (b) are subject to a legal obligation (whether by agreement, applicable law

- or regulation or otherwise) to maintain the confidentiality of such Information Systems and Nonpublic Information, as required herein.
3. Data Privacy. Client represents, warrants and covenants that it maintains and will continue to maintain for the duration of the Agreement a data privacy plan and written policy for Nonpublic Information (the "Data Privacy Plan and Policy").
 - a. Client represents, warrants and covenants that its Data Privacy Plan and Policy addresses Client's methods for protecting, storing, disposing, accessing and making accessible, using and communicating Nonpublic Information.
 - b. Client shall provide a current copy of its Data Privacy Plan and Policy to BSAI upon BSAI's request.
 4. Data Security. Client represents, warrants and covenants that it maintains and will continue to maintain for the duration of the Agreement a data security plan and written policy for protecting Nonpublic Information (the "Data Security Plan and Policy").
 - a. Client represents, warrants and covenants that its Data Security Plan and Policy contains organizational and technological safeguards reasonably calculated to protect Nonpublic Information from unauthorized and unintended disclosure, and before it accesses BSAI's or BSAI's affiliates' Nonpublic Information will include, but will not be limited to: (i) application and software access controls; (ii) multi-factor authentication; (iii) database encryption technology to encrypt Nonpublic Information at rest; (iv) secure sockets layer (SSL) encryption for data in transit; (v) firewall, anti-malware and intrusion protection software capable of identifying and eliminating unauthorized threats; (vi) internal review, maintenance, monitoring and auditing guidelines, which call for periodic assessment of vulnerabilities; and (vii) appropriate training of personnel with access to Nonpublic Information.
 - b. Client shall provide a current copy of its Data Security Plan and Policy to BSAI upon BSAI's request.
 5. Transfer of Nonpublic Information. Client agrees that it shall not provide any subcontractor, vendor or other third party (each, a "Subcontractor") with access to BSAI's Information Systems, or allow any Subcontractor to transmit, store or process Nonpublic Information, unless it has received the prior written consent of BSAI. Prior to providing any Subcontractor with such access, or allowing such transmission, storage or processing, Client shall: (a) conduct a reasonable investigation of such Subcontractor's information security to ensure that such security is reasonable and consistent with Client's obligations under this Exhibit; and (b) contractually impose upon such Subcontractor the same or substantially similar contractual duties regarding data privacy and security that are set forth herein or as required by all applicable laws and regulations.
 6. Oversight and Security Compliance. Upon BSAI's written request, Client shall promptly and accurately complete a written information security questionnaire provided by BSAI or a third party on BSAI's behalf regarding Client's business practices and information technology program and environment in relation to all Nonpublic Information handled and/or services provided by Client.
 7. Conflicts. Except to the extent hereby amended, the Agreement shall remain in full force and effect. In the event of any conflict between the provisions of this Exhibit and the Agreement, the provisions of this Exhibit shall control.

Client


Initial

BSAI


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EXHIBIT F

State Specific Terms and Conditions

The Exhibit is incorporated into the Third-Party Administrator Agreement (“Agreement”) between Brentwood Services Administrators, Inc. (“BSAI”) and City of O’Fallon, Missouri (“Client”) (individually a “Party” and together, the “Parties”) and amends the Agreement and any attached exhibits, as it applies to services provided in the listed states below. As it only applies to the state listed, the terms of this Exhibit F supersede any conflicting terms and conditions in the Agreement and attached exhibits.

WHEREAS, Missouri law, specifically, Mo. Rev. Stat. §§ 376.1075 - 376.1095, requires that administrators contract with insurance companies for the provision of third-party administrator services which contain the provisions delineated in Mo. Rev. Stat. §§ 376.1075 - 376.1095.

1. *Payments of premiums and claims deemed paid, when* – Mo. Rev. Stat. § 376.1080 (Missouri Revised Statutes (2022 Edition)). With respect to Missouri claims handling duties, the payment to BSAI of any premiums or charges for insurance by or on behalf of the insured party shall be deemed to have been received by Client, and the payment of return premiums or claim payments forwarded by Client to BSAI shall not be deemed to have been paid to the insured party or claimant until such payments are received by the insured party or claimant. Nothing in this section limits any right of Client against BSAI resulting from the failure of BSAI to make payments to Client, insured parties, or claimants.
2. *Records maintained by BSAI for Client - director may examine records - records owned by Client, transfer allowed, when* – Mo. Rev. Stat. § 376.1082 (Missouri Revised Statutes (2022 Edition)). BSAI shall maintain, at its principal administrative office, adequate books and records of all transactions between it, Client, and Client’s employees for a period of five (5) years from the date of their creation. BSAI shall maintain the books and records in accordance with prudent standards of insurance industry recordkeeping. With respect to Missouri claims handling duties, the director of the department of commerce and insurance (“Director”) shall have access to books and records maintained by BSAI for the purposes of examination, audit, and inspection. Any trade secrets contained in such books and records, including the identity and addresses of policyholders and certificate holders, shall be kept confidential, except that the Director may use such information in any proceeding instituted against BSAI. Examinations shall be conducted pursuant to Mo. Rev. Stat. §§ 374.160, 374.162, 374.190, 374.202 – 374.207, and 374.220.
3. *Premiums held in fiduciary capacity, duties - financial records, duties - withdrawals from fiduciary account by agreement only, contents - payment of claims* – Mo. Rev. Stat. § 376.1085 (Missouri Revised Statutes (2022 Edition)). With respect to Missouri claims handling duties:
 - a. All insurance charges or premiums collected by BSAI on behalf of or for Client and the return of premiums received from that Client shall be held by BSAI in a fiduciary capacity. Such funds shall be immediately remitted to the person or persons entitled to them or shall be deposited promptly in a fiduciary account established and maintained by BSAI in a federally or state insured financial institution. BSAI shall periodically render an accounting to Client detailing all transactions performed by BSAI pertaining to the business underwritten by Client.
 - b. If charges or premiums deposited in a fiduciary account have been collected on behalf of Client, BSAI shall keep records clearly recording the deposits in and withdrawals from the account on behalf of Client. BSAI shall keep copies of all the records and, upon request of

Client, shall furnish Client with copies of the records pertaining to such deposits and withdrawals.

- c. BSAI shall not pay any claim by withdrawals from a fiduciary account in which premiums or charges are deposited. Withdrawals from such account shall be made as provided in the Agreement, to include the following:
 - i. Remittance to Client entitled to remittance.
 - ii. Deposit in an account maintained in the name of Client.
 - iii. Transfer to and deposit in a claims-paying account, with claims to be paid as provided herein.
 - iv. Payment to a group policyholder for remittance to Client entitled to such remittance.
 - v. Payment to BSAI of its commissions, fees, or charges; or
 - vi. Remittance of return premium to the person or persons entitled to such return premium.
- d. All claims paid by BSAI from funds collected on behalf of or for Client shall be paid only on drafts or checks of, and as authorized by, Client.

Client MS
Initial

BSAI DS
RF
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