



# SQUAXIN ISLAND TRIBE

## RESOLUTION NO. 05- 07

of the

### SQUAXIN ISLAND TRIBAL COUNCIL

**WHEREAS**, the Squaxin Island Tribal Council is the Governing Body of the Squaxin Island Tribe, its members, its lands, its enterprises and its agencies by the authority of the Constitution and Bylaws of the Squaxin Island Tribe, as approved and adopted by the General Body and the Secretary of the Interior on July 8, 1965; and

**WHEREAS**, under the Constitution, Bylaws and inherent sovereignty of the Tribe, the Squaxin Island Tribal Council is charged with the duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources and rights of the Tribe; and

**WHEREAS**, the Tribe is a federally-recognized Indian Tribe possessing reserved powers, including the powers of self-government; and

**WHEREAS**, the Squaxin Island Tribal Council has been entrusted with the creation of ordinances and resolutions in order to fulfill their duty of protecting the health, security, education and general welfare of tribal members, and of protecting and managing the lands and treaty resources of the Tribe; and

**WHEREAS**, the Squaxin Island Tribe has determined that it shall provide a system of wage compensation and medical benefits for employees of the Tribe, its Unincorporated Divisions and Tribally Chartered Businesses; and

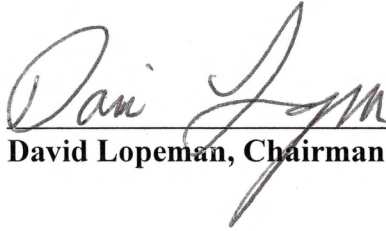
**WHEREAS**, on July 18, 2002 the Squaxin Island Tribal Council adopted Resolution No. 02-68, the Workers' Compensation Plan; and

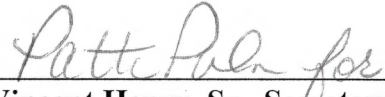
**WHEREAS**, Berkley Risk Administrators Company, LLC is in the business of providing claims administration services to self-insured employers;

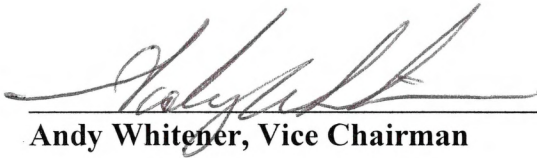
**NOW THEREFORE BE IT RESOLVED**, that the Squaxin Island Tribal Council hereby approves the Claims Services Agreement (as attached) and authorizes the Chairman or the Executive Director to sign the agreement.

**CERTIFICATION**

The Squaxin Island Tribal Council hereby certifies that the foregoing Resolution was adopted at the regular meeting of the Squaxin Island Tribal Council, held on this 13<sup>th</sup> day of January, 2005 at which time a quorum was present and was passed by a vote of 14 for and 0 against, with 0 abstentions.

  
\_\_\_\_\_  
**David Lopeman, Chairman**

Attested by:   
\_\_\_\_\_  
**Vincent Henry, Sr., Secretary**

  
\_\_\_\_\_  
**Andy Whitener, Vice Chairman**

# CLAIMS SERVICES AGREEMENT

between

**BERKLEY RISK ADMINISTRATORS COMPANY, LLC**  
631 Strander Boulevard, Suite C  
Tukwila, WA 98188

and

**Squaxin Island Tribe**  
SE 10 Squaxin Lane  
Shelton, WA 98584

**THIS CLAIMS SERVICES AGREEMENT** (hereinafter referred to as "Agreement") is made in Washington by and between Berkley Risk Administrators Company, LLC ("Servicing Company") and Squaxin Island Tribe, a federally recognized Indian Tribe ("Client").

**WHEREAS**, Client desires Servicing Company to provide certain claims services in connection with Client's self-insured workers' compensation insurance program described as the Squaxin Island Tribe's, Its Unincorporated Divisions' and Tribally Chartered Business' Workers' Compensation Plan ("Plan"); and

**WHEREAS**, Servicing Company desires to provide Client such services upon the terms and conditions stated herein.

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Agreement, the parties agree as follows:

## **ARTICLE I. SERVICES PROVIDED BY SERVICING COMPANY**

**1.01 General.** Servicing Company will provide the services described in this Agreement. Client understands and acknowledges that Servicing Company will provide its services in accordance with usual and customary business practices of the industry. In the event Client requests Servicing Company to provide services that differ materially from those described in this Agreement, the additional cost of such services and out-of-pocket expenses will be paid by Client at Servicing Company's negotiated rates.

**1.02 Claims Administration.** During the term of this Agreement, Servicing Company shall:

**A.** Service:

- 1.** Any workers' compensation claim or potential claims occurring on or after April 1, 2003, and reported to Servicing Company during the term of this Agreement;
- 2.** Any reopened workers' compensation claim with an injury/occurrence date predating this Agreement, with an injury/occurrence date on or after the date

Client became self-insured, and reported to Servicing Company during the term of this Agreement; and

3. Any workers' compensation claim that is open as of April 1, 2003.
- B. Handle all claims for the lifetime of each claim or until the termination of this Agreement, whichever occurs first, pursuant to the terms and conditions of this Agreement. Servicing Company will provide services for such claims consistent with the terms of this Agreement, and the terms of the Plan (attached hereto and made part hereof as Addendum A).
  - C. Accept and review all materials regarding notices of claims or incidents with respect to claims or potential claims arising under the Plan and reported to Servicing Company while this Agreement is in effect.
  - D. Investigate, adjust and make recommendations for resolution with respect to all claims identified in Section 1.02A.
  - E. Establish individual claim files for each reported claim. Claim files shall be subject to review, copying and printing by Client, its representative or designee, at any reasonable time within normal business hours upon reasonable notice.
  - F. Enlist the services of such other independent contractors, including, but not limited to, independent adjustment companies, managed care providers, preferred provider networks, medical specialists and legal service providers as necessary to determine claim compensability or otherwise assist in properly resolving such claims.
  - G. Assert, or contract with a third party to assert, any subrogation rights of Client in regard to payments for workers' compensation benefits. Client will receive any subrogation recoveries obtained by Servicing Company, less the costs of such recovery, including any costs Servicing Company or a third party has incurred for amounts they are otherwise entitled to receive under any agreement to provide subrogation recovery.
  - H. Maintain reasonable records relating to its responsibilities under this Agreement. In the event of the termination of this Agreement, Servicing Company will provide Client with the records in Servicing Company's possession relating to Plan and necessary for the continued operation of Plan.
  - I. Provide Client with loss information on a monthly basis or as scheduled.
- 1.03 **Information Systems.** Computer-generated reports, as described under this Article I, are included in the annual fees under Section Article II. Any additional reports may be provided as mutually agreed upon by Client and Servicing Company for a fee and at a time mutually agreed upon by Client and Servicing Company.

## **ARTICLE II. OBLIGATIONS OF CLIENT**

- 2.01 **Payments to Servicing Company.** Client shall remit payment to Servicing Company for services performed based on the compensation schedule described in Article III.

**2.02 Loss Fund.**

Client will make sufficient funds available to Servicing Company to pay claims, claim expenses, and other Plan expenses on behalf of Plan. At all times during the term of this Agreement, Client shall maintain a bank account balance in an amount sufficient to meet or exceed fourteen (14) days of expected paid claims and claim expenses.

Servicing Company will have full authority to sign checks on that bank account to pay, as required, all medical and indemnity claims, claim expenses, and other Plan expenses.

At no time will Servicing Company use its own funds to pay claims, allocated loss adjustment expenses, Program expenses or any other expenses of the Client. Client warrants that it will maintain sufficient funds in said bank account at all times to pay such claims, allocated loss adjustment expenses and Program expenses as they become due.

Claim expenses include allocated loss adjustment expenses including, but not limited to, legal services and defense costs, independent medical evaluations, photocopy and medical reports, police reports, surveillance, court reporter fees, transcript fees, copies of depositions, expert witness fees, rehabilitation services, and managed care. Plan expenses include, but are not limited to, assessments, taxes and audit and actuary fees.

**2.03 Notification.** Client shall timely notify Servicing Company of any and all revisions to the Plan.

**ARTICLE III. COMPENSATION TO SERVICING COMPANY**

**3.01 Service Fees.**

**A.** Client will pay Servicing Company an annual service fee of \$500 per claim for the continued service during the period of April 1, 2003, to April 1, 2004, of those claims that are open as of April 1, 2003.

Client will pay Servicing Company an annual service fee of \$500 per claim for the continued service during the period of April 1, 2004, to April 1, 2005, of those claims that are open as of April 1, 2004, including those claims that were opened or reopened during the period of April 1, 2003, to April 1, 2004.

**B.** During the period April 1, 2003, to April 1, 2004, Client will pay Servicing Company an annual minimum service fee of \$30,187.50 (\$2,515.63 per month) for a total of seventy-five (75) claims files.

During the period April 1, 2004, to April 1, 2005, Client will pay Servicing Company an annual minimum service fee of \$31,696.88 (\$2,641.41 per month) for a total of seventy-five (75) claims files.

Included in the seventy-five (75) claim threshold are (1) those claims not previously filed regardless of the year of the injury and (2) any reopened claims.

During the period April 1, 2003, to April 1, 2005, should the total number of claims not previously filed and any reopened claims exceed seventy-five (75), Client will pay Servicing Company the following additional service fee for each such claim:

1. \$650 for each time loss claim.
  2. \$200 for each medical-only claim.
- C. Any loss control services provided by Servicing Company to Client shall be at a rate of \$65.00 per hour.
- D. Servicing Company shall remit a monthly invoice to Client for the monthly service fee, along with any additional fees for loss control services, which invoice shall be due and payable by Client to Servicing Company within thirty (30) days from the date Client received the invoice.
- E. Should Servicing Company provide services to Client in addition to services included in the annual service fee, as described under Article I, Client shall pay fees to Servicing Company upon Servicing Company's performance of those additional services at Servicing Company's then-current rate for such services.
- F. In the event of termination of this Agreement for any cause, responsibility of Servicing Company for Client's claims shall cease. Client will be responsible for service fees to the last day of the month services are rendered, as well as any and all costs associated with retrieval and/or delivery of claims, claim files and Client records to Client's location.
- G. Client reserves the right to assume the handling and control of any claim at any time for any reason without reduction to Servicing Company's service fees or to any claim expenses incurred by Servicing Company.

**3.02 Change in Service Fee.** If Servicing Company's performance under this Agreement is made materially more burdensome or expensive due to a change in federal, state or local laws, rules or regulations during the term of this Agreement, the parties will negotiate an appropriate adjustment to the fee paid to Servicing Company. If the parties cannot agree on an adjusted fee within ninety (90) days after Servicing Company sends written notice to Client of the material change and its wish to negotiate an adjusted fee, then Servicing Company may terminate this Agreement upon ninety (90) days written notice to Client.

In addition, Servicing Company shall have the right to review with Client and prospectively adjust the service fees with agreement of Client if relevant historical data, including but not limited to claim volume and mix of claims is erroneous, insufficient, or obsolete, or in the event of change in the operations or requirements of Self-Insured which materially changes the scope of services contemplated at the inception of this Agreement.

#### **ARTICLE IV. TERM AND TERMINATION**

**4.01 Term.** This Agreement will be in effect beginning April 1, 2003 and ending April 1, 2005. Either party may terminate this Agreement by giving a ninety (90) day notice of intent to terminate. The effective date of termination will be ninety (90) days from the date of such notice.

**4.02 Early Termination by Either Party.** During the term of this Agreement or any period of extension, either party may terminate this Agreement upon the occurrence of any one of the following events and in accordance with the following procedures:

- A.** Should either party materially breach one or more provisions of this Agreement, the other party may terminate this Agreement by giving written notice stating the reason or reasons for termination. Unless the breaching party fully cures its breach within thirty (30) days from receipt of the written notice, this Agreement will automatically terminate.
- B.** This Agreement may also terminate at the option and mutual agreement of the parties upon the execution of an agreement signed by both parties.
- C.** This Agreement will terminate effective immediately upon the delivery of written notice to the other party in the event of a conviction of a felony by the other party or a judicial or administrative determination of the other party's fraud or dishonesty, provided that such notice shall be given no later than thirty (30) days after the terminating party becomes aware of the conviction or judicial or administrative determination.
- D.** This Agreement will terminate effective immediately upon the delivery of written notice to the other party in the event (1) such other party ceases doing business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy, files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar arrangement under any present or future statute, law or regulation, or files an answer admitting the material allegations of a petition filed against it in any such proceeding; (2) such other party consents to or acquiesces in the appointment of a receiver or liquidator of it or all of any substantial part of its assets or property; (3) such other party or its shareholders take any action looking to dissolution or liquidation; or (4) any order for relief is entered against such other party under the federal bankruptcy laws.
- E.** This Agreement will terminate effective immediately upon the delivery of written notice to the other party at any time which is at least sixty (60) days after the commencement of any proceedings against such other party seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, if such proceedings have not then been dismissed, or after the appointment without the other party's consent or acquiescence of any receiver or liquidator of it or of all or any substantial part of its assets and properties, if such appointment has not then been vacated.

**4.03 Servicing Company's Exclusive Rights of Early Termination.** Servicing Company may terminate this Agreement at any time for Client's non-payment of fees due and owing Servicing Company under this Agreement, by giving written notice of default in payment to Client. Unless Client fully cures its breach of payment terms within three (3) days from the date of the notice of default, this Agreement will automatically terminate. In the event this Agreement terminates by Client's failure to cure any payment default, Client remains liable to Servicing Company for all fees due and owing to Servicing Company up to and including the effective date of termination.

Servicing Company also may immediately terminate this Agreement if Client fails to maintain a bank account balance as described in Section 2.02.

- 4.04 **Termination by Government Action.** This Agreement will terminate upon the effective date of any applicable federal, state or local law, rule or regulation, which nullifies or invalidates any of the services or provisions of this Agreement.
- 4.05 **Procedures on Termination.** In the event of termination of this Agreement, all obligations of the parties to this Agreement to each other will cease. Servicing Company will be paid, as provided in Article II, to the last day of the month services are rendered. No further payment of fees from Client to Servicing Company will be required. Servicing Company will render a final accounting of Client's claims account and return all of Client's claims and financial or other records in the possession of Servicing Company. Servicing Company will not be financially responsible for and will not administer any claims existing at the time of termination. Servicing Company will make all records available for Client to pick up at Servicing Company's location, provided that Client has satisfied all of its obligations to Servicing Company, including, but not limited to, Client's obligation to pay Servicing Company's service fees. Client will be responsible for any costs associated with the delivery of records to Client's location. Servicing Company may make copies of and keep any and all files, at Servicing Company's expense, at Servicing Company's sole discretion or as instructed by any governmental or judicial authority.

#### ARTICLE V. LAWS, RULES AND REGULATIONS

- 5.01 **Regulatory Compliance.** Servicing Company and Client agree that they will use their best endeavors to assure that no breach of any laws or regulations (whether federal, state, tribal or otherwise) occurs in executing their respective responsibilities under this Agreement.
- 5.02 **License Approvals.** Servicing Company will obtain and maintain any licenses or regulatory approvals necessary for it to perform its services under this Agreement.
- 5.03 **Governing Law.** This Agreement shall be governed by the laws of the State of Washington, without giving effect to the principles of conflicts of laws. The parties hereby consent to jurisdiction in the State of Washington and agree that the state courts within Washington shall have exclusive jurisdiction over any issues regarding the enforcement of this Agreement and that a party shall not be required to first exhaust all tribal court remedies. Client waives sovereign immunity with respect to any action related to the enforcement of the terms and conditions of this Agreement.

#### ARTICLE VI. INDEMNIFICATION

- 6.01 **Client's Duty of Indemnification.** Client will defend, hold harmless and indemnify Servicing Company and Servicing Company's officers, directors, agents and employees against any and all claims, liabilities, damages, judgments or expenses, including reasonable attorneys' fees, asserted against, imposed upon or incurred by Servicing Company that arise: (a) out of the negligence, willful action or dishonesty of Client or Client's employees; (b) from Servicing Company's non-negligent fulfilling of its obligations under this Agreement; or (c) from Servicing Company's non-negligent following of Client's instructions to Servicing Company. Servicing Company agrees to notify Client in writing of any threatened or actual lawsuit against Client or Servicing Company.



- 6.02 **Servicing Company's Duty of Indemnification.** Servicing Company will defend, hold harmless and indemnify Client and Client's officers, directors, agents and employees against any and all claims, liabilities, damages, judgments or expenses, including reasonable attorneys' fees, asserted against, imposed upon or incurred by Client that arise out of the negligence, willful action or dishonesty of Servicing Company or Servicing Company's employees. Servicing Company shall have no obligation to indemnify, defend or hold harmless Client for any claims, demands, actions, damages, costs and expenses which are the result of Servicing Company's non-negligent fulfilling of its obligations under this Agreement or its non-negligent following of instructions of Client. Client agrees to notify Servicing Company in writing of any threatened or actual lawsuit against Servicing Company or Client.
- 6.03 **Release of Liability.** Client hereby releases Servicing Company from any and all liability for damages arising out of or in connection with any breach or non-performance of this Agreement, except in the event of fraud, willful misconduct or gross negligence on the part of Servicing Company, it being understood and agreed that the sole remedy of Client in the event of any breach or non-performance not involving fraud, willful misconduct or gross negligence consists of termination of this Agreement as set forth in Article IV.

## ARTICLE VII. MISCELLANEOUS

- 7.01 **Entire Agreement.** The terms and provisions contained and referenced herein constitute the entire Agreement between the parties and supersede any previous communications, representations or Agreements, either oral or written, with respect to the subject matter hereof. This Agreement may not be amended except in a writing signed by both parties.
- 7.02 **Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.
- 7.03 **Severability.** If any provisions of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement, or the application of such provisions or circumstances other than those as to which it is determined to be invalid or unenforceable shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.
- 7.04 **Survival.** The provisions of this Agreement regarding Indemnification and Release, Arbitration, and Survival will survive the expiration or termination of this Agreement.
- 7.05 **Regulatory Compliance.** Subject to Section 3.02 of this Agreement, in the event that any federal, state or local legislative or executive body enacts or promulgates legislation or regulation affecting the obligation of the parties under this Agreement, the parties agree to amend this Agreement in order to comply with any such legislation or regulation.
- 7.06 **Independent Contractor.** Servicing Company is an independent contractor. Nothing in this Agreement will be construed or deemed to create any other relationship between the parties, including one of employment or joint venture.

7.07 **No Guarantee.** Servicing Company shall not be responsible to Client for guaranteeing that the overall Plan undertaken shall provide a profit, or for the financial solvency or performance of the Plan, its investors, its reinsurers or any other stakeholder.

7.08 **No Waiver of Rights.** The failure of any party to insist upon the strict observation or performance of any provision of this Agreement or to exercise any right or remedy will not impair or waive any such right or remedy.

7.09 **Assignment.** This Agreement shall be binding upon and inure to the benefit of the successors of each of the parties hereto, however neither this Agreement nor any rights or obligations hereunder may be assigned, delegated or transferred by either party without the prior written consent of the other party.

7.10 **Arbitration.** In case of any dispute arising between the parties to this Agreement that the parties cannot resolve themselves, the parties agree to binding arbitration to resolve any such dispute. Either party may initiate such binding arbitration by notifying the other party in writing. Such binding arbitration shall commence in accordance with the following procedures:

- A. Within thirty (30) days from receipt of notice, each party will name an arbitrator, and a third arbitrator will be chosen by the two (2) arbitrators before they enter upon arbitration. All of the arbitrators shall have bona fide knowledge of the insurance industry. In the event that any party should fail to choose an arbitrator within thirty (30) days, the other party may choose two (2) arbitrators, who in turn will choose a third arbitrator before entering into arbitration. If the two (2) arbitrators fail to agree upon the selection of the third arbitrator within thirty (30) days following their appointment, then the parties will petition the American Arbitration Association to appoint a third arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association.
- B. Arbitration will take place in a location mutually agreed upon by the parties to this Agreement. Each arbitrator shall submit its case within thirty (30) days following the selection of the third arbitrator. The arbitrators will give their decision in writing at the earliest convenient date, but not later than sixty (60) days from the end of the thirty-day period provided for submission of the case by the parties. The decision rendered by the majority of the arbitrators will be final and binding on both parties. Judgment upon the final decision of the arbitrators may be entered into any court having jurisdiction.

Each party will bear the expense of its own arbitrator and attorney's fees, and all parties will bear the expense of the third arbitrator and the common arbitration expenses. Arbitrators shall have no authority to award punitive or exemplary damages.

7.11 **Force Majeure.** If either party is rendered unable, wholly or in part, by force majeure or any other cause of any kind not reasonably within its control, to perform or comply with any obligations or conditions of this Agreement, upon giving reasonably detailed notice setting forth such grounds to the other party, the obligations or conditions of this Agreement will be suspended during the continuance of inability to perform and such party will be relieved of all liability for failure to perform the obligations of this Agreement during such period. The term "force majeure" includes, but is not limited to, the following: Acts of God and the public enemy, fires, accidents, break downs, strikes, labor disputes, and any laws, orders, rules, regulations, acts or restraints of any governmental body or authority, civil or military, including any state

department of insurance, which detrimentally impairs the ability of the parties to this Agreement to perform their obligations, or any other causes beyond control of the parties hereto.

**7.12 Notice.** All notices, certificates or other communications provided for, authorized or required under this Agreement will be sufficiently given and will be deemed given when mailed by certified or registered mail, postage prepaid, with proper address indicated below. Servicing Company and Client may, by written notice given by each to the other, designate any address or addresses to which notices, certificates or other communications to them will be sent when required as contemplated by this Agreement. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them will be addressed as follows:

IF TO SERVICING COMPANY: Kevin Kincade, General Manager  
Berkley Risk Administrators Company, LLC  
631 Strander Blvd, Suite C  
Tukwila, WA 98188

WITH A COPY TO: Kenneth R. Hopkins  
President and Chief Operating Officer  
Berkley Risk Administrators Company, LLC  
920 2<sup>nd</sup> Ave South, Suite 700  
Minneapolis, MN 55402-4023

IF TO CLIENT: Ray Peters  
Squaxin Island Tribe  
SE 10 Squaxin Lane  
Shelton, WA 98584

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement by their respective, duly authorized officers.

**BERKLEY RISK ADMINISTRATORS  
COMPANY, LLC**

**SQUAXIN ISLAND TRIBE**

By: \_\_\_\_\_

By:  \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_