



# SQUAXIN ISLAND TRIBE

RESOLUTION NO. 05- 76

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

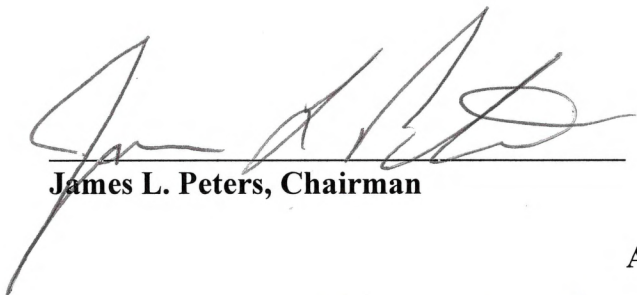
**WHEREAS**, Berkley Risk Administrators Company, LLC is in the business of providing claims administration services to self-insured employers; and

**WHEREAS**, the Tribe waives sovereign immunity with respect to any action or arbitration related to the enforcement of the terms and conditions of this Agreement;

**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.

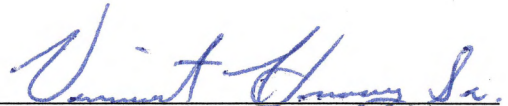
**CERTIFICATION**

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 25<sup>th</sup> day of August, 2005, at which time a quorum was present and was passed by a vote of 4 for and 0 against, with 0 abstentions.

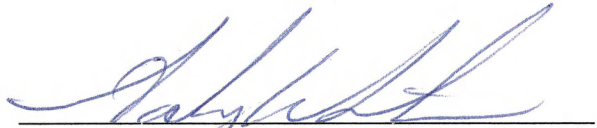


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**James L. Peters, Chairman**

Attested by:   
\_\_\_\_\_

**Vincent Henry, Sr., Secretary**



\_\_\_\_\_

**Andrew D. Whitener, Vice Chairman**

**WORKERS' COMPENSATION  
CLAIMS SERVICES AGREEMENT**

**between**

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

**and**

**SQUAXIN ISLAND TRIBE  
10 S.E. Squaxin  
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 ("Client").

**WHEREAS**, Client desires Servicing Company to provide certain claims services as set forth herein concerning Client's self-insured workers' compensation insurance plan ("Plan");

**WHEREAS**, the workers' compensation claims services provided under this Agreement are limited to claims filed in the state of Washington; 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 THE SERVICING COMPANY**

**1.01 General.** Client understands and acknowledges that Servicing Company will provide the services set forth herein for the stated fees. 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 will:

- A. Service during the term of this Agreement:
  - 1. any workers' compensation claim or potential claims occurring on or after April 1, 2005, 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, 2005;
- 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, and the terms of the Squaxin Island Workers' Compensation Plan, ("Plan").
  - 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. Unless otherwise instructed by the Client, Servicing Company will conduct an investigation as it deems necessary and appropriate for any loss in order to determine compensability. If the Client believes in good faith that additional investigation is necessary, Client may instruct Servicing Company to do such further investigation;
  - D.** Establish individual claim files for each reported claim and an initial indemnity and expense reserve within limits as authorized by client;
  - E.** Evaluate and make recommendations concerning coverage issues;
  - F.** Assign and monitor defense counsel on all litigated claims;
  - G.** Enlist the services of such other independent contractors, including, but not limited to, field adjusters, 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. For example, claims involving multiple or complex issues or requiring out-of-office travel may be referred to an outside investigator, subject to Client approval. In such cases, the costs for outside investigation will be paid off the claims files as an allocated expense. Some service providers may be affiliates of Servicing Company;
  - H.** Evaluate potential subrogation rights of Client and assert those rights that it believes are likely to yield a benefit to the Client. Notwithstanding any judgment made by the Servicing Company about whether to pursue a subrogation claim, the Client reserves the right to instruct the Servicing Company to assert or not assert any meritorious claim;
  - I.** Provide Client with detailed monthly reports:
    1. listing all checks printed for payments made from Client's bank account described in Section 2.02; and
    2. itemizing all claims processed by Servicing Company during the preceding month, including reports giving the status of losses, payments to date, estimated reserve amounts and other details relating to losses for purposes of Client's loss analysis.Customized reports are available upon request for an additional charge;
  - J.** Provide the State of Washington Department of Labor and Industry, or any other governmental or regulatory body having jurisdiction over workers' compensation matters in the State of Washington, all forms necessary for proper claims administration.



- 1.03 **Bill review.** For an additional fee, Servicing Company will electronically review medical bills for compliance with any relevant fee schedule. The fee for this service is \$1,200 per year.
- 1.04 **Loss Control.** For an additional fee, loss control services may be available in the form of on-site visits, or via the telephone, facsimile or the internet. Loss control services may consist of, but are not limited to, the following:
- A. Safety surveys
  - B. Job hazard analysis
  - C. Noise surveys
  - D. Indoor air quality complaint investigations
  - E. Supervisor/employees safety training
  - F. Accident investigation
- 1.05 **Reinsurance Placement.** For an additional fee, Servicing Company may provide Client with reinsurance placement services.

## **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 expense, 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 check drafting authority on said 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, Plan expenses or any other expenses of the Client. Client warrants that it will maintain sufficient funds in said account at all times to pay such claims, allocated loss adjustment expenses and Plan 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.
- 2.04 **Communications with Servicing Company:** Client agrees to give Servicing Company prompt notice of claims, to forward all necessary and relevant information and to respond to requests for information or requests for authority in a prompt manner.

2.05 **Legal Advice:** Client understands and acknowledges that Servicing Company does not provide legal advice.

### ARTICLE III. COMPENSATION TO SERVICING COMPANY

3.01 **Fees.** For the services described in paragraph 1.02, Servicing Carrier will be paid the following fee:

For the period of April 1, 2005 through March 31, 2006, Client will pay Servicing Company a total of \$44,203 (\$3683.58 per month) for a total of one-hundred (100) new claim files. Should the total number of new claims exceed one-hundred, (100), Client will pay Servicing Company \$669 per time loss claim and \$209 for each medical-only claim.

For the period of April 1, 2006 through March 31, 2007, Client will pay Servicing Company a total of \$45,971 (\$3,830.92 per month) for a total of one-hundred (100) new claim files. Should the total number of new claims exceed one-hundred, (100), Client will pay Servicing Company \$696 per time loss claim and \$217 for each medical-only claim.

“New” claims are any claim that has not been previously filed, regardless of the year of the injury.

“Time Loss” claims are 1) any claims that involve exposure or requests for total temporary disability, loss of earning power or permanent impairment/disability; 2) claims which involve third party subrogation investigation or recovery efforts; 3) claims where the worker is represented by legal counsel or the claim is in litigation; 4) asbestosis claims; 5) hearing loss claims. Such claims are considered “Time Loss” claims for purposes of this Agreement, regardless if time loss or indemnity benefits are incurred or paid.

“Medical Only” claim means a workers’ claim (a) for which only medical treatment is sought or at issue and all such medical treatment is obtained within ninety (90) days after the initial treatment date and (b) that does not exceed a total monetary payout of over \$2,500.00.

A pro-rata amount of the annual fee will be billed prospectively every month.

At the end of every annual term of this Agreement, Servicing Carrier’s fees may be increased by four percent (4%).

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.

### ARTICLE IV. TERM AND TERMINATION

4.01 **Term.** This Agreement is effective April 1, 2005 through March 31, 2007 and will be automatically renewed each year thereafter unless and until it is terminated. An Agreement year is twelve months from the effective date.



- 4.02 **Termination At Will.** During the term of this Agreement or any period of extension, either party may terminate this Agreement for any reason or no reason, without penalty, by giving notice to terminate this Agreement. Termination will be effective sixty (60) days after notice is given.
- 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 ten (10) days from the date of the notice of default, this Agreement will automatically terminate. Servicing Company may immediately terminate this Agreement if Client fails to maintain a bank account balance as described in Section 2.02A.
- 4.04 **Procedures on Termination.** In the event this Agreement is terminated, all obligations of the Servicing Carrier in Article I will cease. Servicing Company will be paid to the last day of the month services are rendered, including any additional claims service fees as described under Section 3.01. No further payment of fees from Client to Servicing Company will be required. All fees paid as of the date of termination will be deemed earned and will not be subject to any claim for refund. Servicing Company will render a final accounting of Client's claims 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.

## 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 will be governed by the laws of the State of Washington. The parties hereby consent to jurisdiction in the State of Washington and agree that the state courts within Washington shall have 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 or arbitration related to the enforcement of the terms and conditions of this Agreement.

## ARTICLE VI. INDEMNIFICATION

- 6.01 **Client's Duty of Indemnification.** Client agrees to defend, indemnify and hold harmless the Servicing Company, its officers, directors, agents, affiliates and employees with respect to any and all claims, damages, judgments, liabilities or expenses, including reasonable attorneys' fees, asserted against, imposed upon or incurred by the Servicing Company in the performance of services pursuant to this Agreement or that otherwise arise out of or concern: (i) the acts or omissions, including



negligence, of the Client or the Client's officers, directors, agents or employees in connection with the discharge of any of Client's or the Client's officers' directors, agents' or employees' responsibilities under this Contract or (ii) from Servicing Company's compliance with instructions of the Client or Servicing Company's non-negligent performance of its obligations under this Contract. Notwithstanding this limitation, Client agrees to provide Servicing Company with a defense unless and until there is substantial evidence or a judicial determination that Servicing Company was not compliant with the instructions of Client or that Servicing Company was negligent in the performance of its obligations under this agreement.

Client agrees to notify Servicing Company in writing of any threatened or actual lawsuit against Client or Servicing Company.

This provision shall survive the termination or expiration of this Agreement.

- 6.02 Servicing Company's Duty of Indemnification** Servicing Company agrees to defend, indemnify, and hold the Client, its officers, directors, employees and agents harmless from and against any and all claims, damages, costs and expenses, including reasonable attorney's fees, caused by the negligence, willful misconduct or dishonesty of Servicing Company or its officers, directors, employees or agents. However, Servicing Company shall have no obligation to indemnify, defend or hold harmless Client and Client's officers, directors, employees or agents for any claims or demands, actions, damages, costs and expenses that are the result of Servicing Company's non-negligent fulfillment of its duties under this Agreement or Servicing Company's acts or omissions taken in compliance with the instructions of the Client. Servicing Company agrees to notify Client in writing of any threatened or actual lawsuit against TPA or Client.

This provision shall survive the termination or expiration of this Agreement.

- 6.03 Limitation of Damages:** Except as may be required under the indemnification provisions, Servicing Company and Client agree that in no event will one be liable to the other for punitive damages, lost profits or other consequential or incidental damages that arise out of or relate to any breach of this Agreement whether framed as a contract or tort claim. It is further understood and agreed that Servicing Company is not a guarantor of the financial outcome of Client's financial results.

## ARTICLE VIII. CONFIDENTIALITY AND PRIVACY REQUIREMENTS

- 7.01 Confidential Information.** Servicing Company and Client each have obligations to safeguard non-public, personal information under federal and state privacy laws and regulations. Each party hereto agrees to comply with these laws and represents and warrants that it will not take action that will violate these laws or cause the other party to be in violation of such Privacy Laws. It is, however, understood and agreed that the documents containing non-public personal information are part of the claims file and, as such, are the property of Client. Servicing Company will follow Client's instructions regarding the use or sharing of these documents. Servicing Company owes no duty of care to Client in complying with Client's instructions and Client will defend, indemnify and hold Servicing Company harmless from any expense, claim, investigation or liability that may arise from Servicing Company's compliance with Client's instructions.
- 7.02 Prohibition Against Disclosure.** Except as may be authorized by a claimant or as otherwise authorized by law, the parties will not at any time, directly or indirectly, use, copy, reveal, report, memorialize, publish, duplicate, or otherwise disclose to any third party in any way whatsoever any

Information designated and marked as Confidential by the other party without the prior written consent of the other party, which consent will be granted, if at all, in the sole discretion of such party. The parties will receive, maintain, and use any information designated as Confidential in the strictest of confidence and use commercially reasonable efforts keep such information strictly confidential and to prevent the unwarranted disclosure thereof.

## ARTICLE VIII. MISCELLANEOUS

- 8.01 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.
- 8.02 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.
- 8.03 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.
- 8.04 Survival.** The provisions of this Agreement regarding Confidentiality, Indemnification and Release, Arbitration, and Survival will survive the expiration or termination of this Agreement.
- 8.05 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.
- 8.06 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.
- 8.07 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.
- 8.08 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.
- 8.09 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.



**8.10 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 Commercial Arbitration Rules of the American Arbitration Association and be venued in the State of Washington. Each party will bear the expense of its own attorney's fees. Arbitrators shall have no authority to award punitive, special, consequential, indirect, or exemplary damages.

THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVE THEIR RIGHT TO A TRIAL BY JURY and agree that if the foregoing binding arbitration provision is determined for any reason to be unenforceable or inapplicable to a particular dispute, then such dispute shall be decided solely by a judge (without the use of a jury) sitting in a court of competent jurisdiction. This binding arbitration and jury trial waiver provision shall survive the termination of this Agreement.

**8.11 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.

**8.12 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 Boulevard, Suite C  
Tukwila, WA 98188

WITH A COPY TO: Kenneth R. Hopkins  
President and Chief Operating Officer  
Berkley Risk Administrators Company, LLC  
222 South 9<sup>th</sup> Street, Suite 1300  
Minneapolis, MN 55402-4023

IF TO CLIENT: Ray Peters  
Executive Director



Squaxin Island Tribe  
10 S.E. Squaxin  
Shelton, WA 98584

The parties hereto agree to these terms by executing this Agreement through their respective, duly authorized officers.

**BERKLEY RISK ADMINISTRATORS  
COMPANY, LLC**

**SQUAXIN ISLAND TRIBE**

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

By: 

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

Its: Executive Director

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

Date: 9/22/05

**WORKERS' COMPENSATION  
CLAIMS SERVICES AGREEMENT**

between

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

and

**SQUAXIN ISLAND TRIBE  
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**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 THE SERVICING COMPANY**

**1.01 General.** Client understands and acknowledges that Servicing Company will provide the services set forth herein for the stated fees. 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 will:

**A.** Service during the term of this Agreement:

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3. any workers' compensation claim that is open as of April 1, 2005;
- 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, and the terms of the Squaxin Island Workers' Compensation Plan, ("Plan").
  - 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. Unless otherwise instructed by the Client, Servicing Company will conduct an investigation as it deems necessary and appropriate for any loss in order to determine compensability. If the Client believes in good faith that additional investigation is necessary, Client may instruct Servicing Company to do such further investigation;
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### ARTICLE III. COMPENSATION TO SERVICING COMPANY

3.01 **Fees.** For the services described in paragraph 1.02, Servicing Carrier will be paid the following fee:

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A pro-rata amount of the annual fee will be billed prospectively every month.

At the end of every annual term of this Agreement, Servicing Carrier’s fees may be increased by four percent (4%).

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.

### ARTICLE IV. TERM AND TERMINATION

4.01 **Term.** This Agreement is effective April 1, 2005 through March 31, 2007 and will be automatically renewed each year thereafter unless and until it is terminated. An Agreement year is twelve months from the effective date.



- 4.02 **Termination At Will.** During the term of this Agreement or any period of extension, either party may terminate this Agreement for any reason or no reason, without penalty, by giving notice to terminate this Agreement. Termination will be effective sixty (60) days after notice is given.
- 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 ten (10) days from the date of the notice of default, this Agreement will automatically terminate. Servicing Company may immediately terminate this Agreement if Client fails to maintain a bank account balance as described in Section 2.02A.
- 4.04 **Procedures on Termination.** In the event this Agreement is terminated, all obligations of the Servicing Carrier in Article I will cease. Servicing Company will be paid to the last day of the month services are rendered, including any additional claims service fees as described under Section 3.01. No further payment of fees from Client to Servicing Company will be required. All fees paid as of the date of termination will be deemed earned and will not be subject to any claim for refund. Servicing Company will render a final accounting of Client's claims 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.

#### 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 will be governed by the laws of the State of Washington. The parties hereby consent to jurisdiction in the State of Washington and agree that the state courts within Washington shall have 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 or arbitration related to the enforcement of the terms and conditions of this Agreement.

#### ARTICLE VI. INDEMNIFICATION

- 6.01 **Client's Duty of Indemnification.** Client agrees to defend, indemnify and hold harmless the Servicing Company, its officers, directors, agents, affiliates and employees with respect to any and all claims, damages, judgments, liabilities or expenses, including reasonable attorneys' fees, asserted against, imposed upon or incurred by the Servicing Company in the performance of services pursuant to this Agreement or that otherwise arise out of or concern: (i) the acts or omissions, including



negligence, of the Client or the Client's officers, directors, agents or employees in connection with the discharge of any of Client's or the Client's officers' directors, agents' or employees' responsibilities under this Contract or (ii) from Servicing Company's compliance with instructions of the Client or Servicing Company's non-negligent performance of its obligations under this Contract. Notwithstanding this limitation, Client agrees to provide Servicing Company with a defense unless and until there is substantial evidence or a judicial determination that Servicing Company was not compliant with the instructions of Client or that Servicing Company was negligent in the performance of its obligations under this agreement.

Client agrees to notify Servicing Company in writing of any threatened or actual lawsuit against Client or Servicing Company.

This provision shall survive the termination or expiration of this Agreement.

- 6.02 Servicing Company's Duty of Indemnification** Servicing Company agrees to defend, indemnify, and hold the Client, its officers, directors, employees and agents harmless from and against any and all claims, damages, costs and expenses, including reasonable attorney's fees, caused by the negligence, willful misconduct or dishonesty of Servicing Company or its officers, directors, employees or agents. However, Servicing Company shall have no obligation to indemnify, defend or hold harmless Client and Client's officers, directors, employees or agents for any claims or demands, actions, damages, costs and expenses that are the result of Servicing Company's non-negligent fulfillment of its duties under this Agreement or Servicing Company's acts or omissions taken in compliance with the instructions of the Client. Servicing Company agrees to notify Client in writing of any threatened or actual lawsuit against TPA or Client.

This provision shall survive the termination or expiration of this Agreement.

- 6.03 Limitation of Damages:** Except as may be required under the indemnification provisions, Servicing Company and Client agree that in no event will one be liable to the other for punitive damages, lost profits or other consequential or incidental damages that arise out of or relate to any breach of this Agreement whether framed as a contract or tort claim. It is further understood and agreed that Servicing Company is not a guarantor of the financial outcome of Client's financial results.

## **ARTICLE VIII. CONFIDENTIALITY AND PRIVACY REQUIREMENTS**

- 7.01 Confidential Information.** Servicing Company and Client each have obligations to safeguard non-public, personal information under federal and state privacy laws and regulations. Each party hereto agrees to comply with these laws and represents and warrants that it will not take action that will violate these laws or cause the other party to be in violation of such Privacy Laws. It is, however, understood and agreed that the documents containing non-public personal information are part of the claims file and, as such, are the property of Client. Servicing Company will follow Client's instructions regarding the use or sharing of these documents. Servicing Company owes no duty of care to Client in complying with Client's instructions and Client will defend, indemnify and hold Servicing Company harmless from any expense, claim, investigation or liability that may arise from Servicing Company's compliance with Client's instructions.
- 7.02 Prohibition Against Disclosure.** Except as may be authorized by a claimant or as otherwise authorized by law, the parties will not at any time, directly or indirectly, use, copy, reveal, report, memorialize, publish, duplicate, or otherwise disclose to any third party in any way whatsoever any

Information designated and marked as Confidential by the other party without the prior written consent of the other party, which consent will be granted, if at all, in the sole discretion of such party. The parties will receive, maintain, and use any information designated as Confidential in the strictest of confidence and use commercially reasonable efforts keep such information strictly confidential and to prevent the unwarranted disclosure thereof.

## ARTICLE VIII. MISCELLANEOUS

- 8.01 **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.
- 8.02 **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.
- 8.03 **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.
- 8.04 **Survival.** The provisions of this Agreement regarding Confidentiality, Indemnification and Release, Arbitration, and Survival will survive the expiration or termination of this Agreement.
- 8.05 **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.
- 8.06 **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.
- 8.07 **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.
- 8.08 **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.
- 8.09 **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.



**8.10 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 Commercial Arbitration Rules of the American Arbitration Association and be venued in the State of Washington. Each party will bear the expense of its own attorney's fees. Arbitrators shall have no authority to award punitive, special, consequential, indirect, or exemplary damages.

THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVE THEIR RIGHT TO A TRIAL BY JURY and agree that if the foregoing binding arbitration provision is determined for any reason to be unenforceable or inapplicable to a particular dispute, then such dispute shall be decided solely by a judge (without the use of a jury) sitting in a court of competent jurisdiction. This binding arbitration and jury trial waiver provision shall survive the termination of this Agreement.

**8.11 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.

**8.12 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 Boulevard, Suite C  
Tukwila, WA 98188

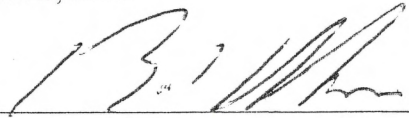
WITH A COPY TO: Kenneth R. Hopkins  
President and Chief Operating Officer  
Berkley Risk Administrators Company, LLC  
222 South 9<sup>th</sup> Street, Suite 1300  
Minneapolis, MN 55402-4023

IF TO CLIENT: Ray Peters  
Executive Director

Squaxin Island Tribe  
10 S.E. Squaxin  
Shelton, WA 98584

The parties hereto agree to these terms by executing this Agreement through their respective, duly authorized officers.

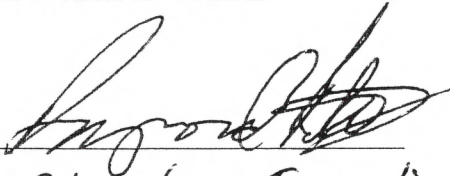
**BERKLEY RISK ADMINISTRATORS  
COMPANY, LLC**

By: 

Its: Sr. V.P.

Date: Oct 15<sup>th</sup>, 2005

**SQUAXIN ISLAND TRIBE**

By: 

Its: 9/29/05 Executive Director

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