

**SERVICE AGREEMENT FOR AUTO PHYSICAL DAMAGE AND PROPERTY
CLAIMS HANDLING FOR LEXINGTON FAYETTE URBAN COUNTY
GOVERNMENT**

THIS SERVICE AGREEMENT (this “Agreement”) shall be effective as of February 1, 2013, by and between Assured NL Insurance Services Inc., a/k/a Risk Management Services Company a Delaware company (hereinafter “Service Provider”), and Lexington Fayette Urban County Government (hereinafter “LFUCG” or “Client”), collectively (the “Parties”)

PRELIMINARY STATEMENTS

WHEREAS, Client desires for Service Provider to provide various services for and on the behalf of Client and its affiliates (all of which shall be deemed to be included in any reference to Client herein); and

WHEREAS, Service Provider was selected as the most responsive bidder to LFUCG’s RFP No. 37-2012, and agrees to perform such services on the terms and conditions set forth in that RFP and herein.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises and covenants hereinafter contained, the Parties agree as follows:

ARTICLE 1 TERM: SERVICES PROVIDED

Unless otherwise terminated or cancelled pursuant to the provisions herein, this Agreement shall expire on June 30, 2016. Subject to all other terms and conditions of this Agreement, Service Provider shall provide the services (the “Services”) described in the proposal RFP No. 37-2012 of the Lexington Fayette Urban County Government, that is attached hereto as Exhibit A (the “Proposal”) and this attachment will become a part of the complete Contract between the Parties. A list of the claims handling duties and minimum requirements are listed as follows:

- Risk Management Services Company will comply with the claims handling standards listed in the RFP No. 37-2012, concerning its ability to provide investigations that meet or exceed the Claims handling Best Practices. All claims will be handled in our LFUCG Riskmaster software system.
- Risk Management Services Company will at all times assign adjusters who have at least 5 years of experience in APD and PRP claims adjusting. All adjusters assigned to LFUCG claims will be properly licensed as adjusters by the Commonwealth of Kentucky.
- Risk Management Services Company will at all times during this contract, use the Insurance Industry Best Practices in claims handling, as covered by LFUCG Division of Risk Management Quality Control forms and the LFUCG Division of Risk Management

Claims APD and PRP audit forms, which have previously been provided to it. **All claimants will be contacted to determine liability and subrogation possibilities.**

- Risk Management Services Company will use the services of Property Damage Appraisers, Inc. (“PDA Appraisers”), if the auto physical damage is over \$3500 or the property damage is over \$5000. The cost of PDA Appraiser services will be paid by LFUCG.

Risk Management Services Company will assure through proper claims supervision that its adjusters are handling the LFUCG claims per LFUCG Division of Risk Management required standards, and in full compliance with the Commonwealth of Kentucky’s Unfair Claims Settlement Practices Act.

ARTICLE 2 - PROPRIETARY RIGHTS

The Parties shall each retain all title, copyright, and other proprietary rights in and to all materials and systems, all works of authorship and all intellectual property created, utilized or developed by each of them or their representatives in the performance of the Services hereunder or otherwise in connection with this Agreement, including, without limitation, computer programs, computer equipment, products, software, designs, plans, specifications, computer output, valuations, estimates, reports, modules, formats, risk data record formats, procedures, documentation and every innovation, conception, improvement, discovery or invention and any and all intellectual property rights associated therewith. Any materials delivered by Client to Service Provider in connection with this Agreement shall be used by Service Provider only in connection with performance of the Services and shall not otherwise be disclosed to third parties. Upon demand by Client, Service Provider shall immediately return to Client all materials provided by Client to Service Provider, any compilations or analyses of Client data such as loss runs or claims histories, and any other intellectual property described above.

ARTICLE 3 - RELATIONSHIP OF PARTIES AND THIRD PARTIES

3.1. Service Provider, at all times, shall be an independent contractor, and employees of Service Provider shall in no event be considered employees of Client.

3.2. The Parties do not anticipate that Client or its representatives will provide Service Provider with any protected health information (“PHI”) that is subject to protection under the Health Insurance Portability and Accountability Act of 1995 (“HIPAA”) and the Standards for Privacy of Individually Identifiable Health Information and Security Standards for the Protection of Electronic Protected Health Information, 45 C.F.R. Part 150 and Part 154 (“Rules”) in connection with the performance of the Services called for under the Agreement. In the event that it is deemed necessary for Client or its representatives to provide PHI to Service Provider in connection with the performance of the Services, the parties agree to take reasonable steps necessary to protect the security and confidentiality of such PHI in accordance with HIPAA, the Rules, and other laws relating to the privacy and security of PHI, which are now in force or which may hereafter be in force.

ARTICLE 4 – COMPENSATION

4.1 Service Provider shall be compensated by Client for the Services rendered hereunder in accordance with the Proposal, as follows:

- A. Risk Management Services Company fee schedule for FY 13 & 14 is APD claims \$60 per claim to closure and for PRP is \$50 per claim until closure. Subrogation fee is 20% of collected funds.**
- B. Risk Management Services Corporation fee schedule for FY 15 is APD claims \$60 per claim to closure and PRP is \$50 per claim to closure. Subrogation fee is 20% of collected funds.**
- C. Risk Management Services Corporation fee schedule for FY 16 is APD \$62 per claim to closure and PRP is \$52 per claim to closure. Subrogation fee is 20% of collected funds.**

4.2. Service Provider may seek to adjust or amend its fees for the reasons set forth in subsections a-c below. Upon notice from Service Provider regarding a proposed adjustment or amendment, Client agrees to review such proposal promptly and discuss the proposal with Service Provider in good faith. In no event will an adjustment or amendment be retroactive. Adjustments may be proposed for the following reasons:

- a) The historical data upon which Service Provider's fees and service charges were developed were based upon erroneous, obsolete or insufficient information, or a change in Client's business will materially change the nature and/or volume of its business or needs as contemplated at the inception of the Agreement;
- b) Legislative and/or regulatory requirements materially impact or change the scope of Service Provider's services or responsibilities; or
- c) Service Provider must, under any applicable law, utilize another service company as a provider of services hereunder.

4.3. Upon prior notice, Client shall be responsible for any sales, use, value added, or similar taxes customarily attributable to a user of services, and Client shall pay such taxes to Service Provider in accordance with invoices submitted by Service Provider.

ARTICLE 5 - TERMINATION

5.1. This Agreement may be terminated by either party at any time upon ninety (90) days prior written notice to the other party.

5.2 In the event of termination by either party, the Parties agree to cooperate with each other for any balance of the term of the Agreement and for a reasonable amount of time thereafter. Such cooperation will include, without limitation, return of each party's respective property, transfer by Service Provider of Client's information, including electronic records, and communicating with each other regarding all matters pertaining to the Agreement and its cessation.

ARTICLE 6 - CONDITIONS AND LIMITATIONS

6.1. Service Provider does not act as an insurer for Client, and this Agreement shall not be construed as an insurance policy or a contract or agreement of indemnity; it being understood that Service Provider is in no event financially responsible for the payment or satisfaction of claims, lawsuits, or any cause of action of any form, kind or nature against Client.

6.2. Service Provider's responsibility for the performance of Services as specified in this Agreement is conditioned upon Client fully cooperating with, and providing all reasonable assistance requested by, Service Provider; and the performance by Client of all other obligations under this Agreement. Service Provider likewise agrees to cooperate with Client fully in connection with this Agreement, including without limitation providing all reasonable assistance requested by Client relative to the Services under this Agreement.

6.3. The Services to be provided by Service Provider hereunder are not of a legal nature, and Service Provider shall in no event give, or be required to give, any legal opinions or provide any legal representation to Client.

6.4. Service Provider shall indemnify, defend and hold harmless Client, its direct and indirect parents, subsidiaries and affiliates, and each of their respective officers, directors, agents, employees, shareholders, managers, members, successors, and assigns from and against any and all claims, suits, demands, losses, costs, judgments, fines, liabilities, and damages, including reasonable attorneys' fees and court costs (hereinafter individually and collectively referred to as "Liabilities") incurred by or asserted against Client as a result of or arising from Service Provider's negligence, acts, omissions or misconduct. This indemnity shall not apply to any acts or omissions by Service Provider as a result of any directives or instructions issued by Client or its employees, or attorneys.

6.5. SERVICE PROVIDER WARRANTS THAT IT WILL PERFORM THE SERVICES HEREUNDER IN ACCORDANCE WITH INDUSTRY STANDARDS AND IN A GOOD AND WORKMANLIKE MANNER. SERVICE PROVIDER EXPRESSLY

DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO SUCH SERVICES AND ITS PERFORMANCE HEREUNDER.

IN NO EVENT SHALL EITHER PARTY TO THIS AGREEMENT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER.

6.5. Neither party shall be in breach of this Agreement if there is a total or partial failure by it in its duties and obligations occasioned by any act of God, fire, act of foreign, federal, state or local government, war, civil commotion, insurrection, embargo, prevention from or hindrance in obtaining any raw materials, energy or other supplies, labor disputes or whatever nature, or any other reason beyond its reasonable control. In the event of delay in performance due to any such cause, the date of the delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay.

6.6. Any recommendations by Service Provider hereunder are advisory only for the sole purpose of assisting Client. All surveys and reports shall be based upon the conditions observed and the information supplied by Client during any Service Provider visit of Client's location(s) or otherwise and Service Provider shall be under no obligation to verify or investigate the accuracy or completeness of the data and information provided by Client. Any survey performed by Service Provider pursuant hereto is not a comprehensive safety inspection. Client acknowledges that Service Provider does not guarantee, assure or warrant: (1) the safety of any of Client's locations, properties or operations; (2) that Client or its locations, properties or operations are in compliance with federal, state and local laws, statutes, ordinances, recommendations, regulations, consensus codes or other standards; or (3) that compliance with, or implementation of, Service Provider's recommendations will eliminate or reduce any or all hazards, accidents or other losses.

6.8. Neither party may assign this Agreement, or its rights hereunder, without the prior written consent of the other party hereto.

6.9. All notices to be given pursuant to this Agreement shall be in writing, and shall be deemed to have been duly given when personally delivered or when mailed by United States first class mail, postage prepaid, to the following addresses:

If to Client:

Janet M. Graham, Commissioner of the Department of Law, 200 E. Main St. Lexington, Kentucky 40507

Tom Sweeney, Claims Manager, Department of Law. 200 E. Main St. Lexington, Kentucky 40507

If to Service Provider:

Risk Management Services Co.
2211 River Road
Louisville, KY 40205
Attention: Jeff Rausch

6.10. The terms of this Agreement shall be governed by the laws of the Commonwealth of Kentucky.

6.11. The Parties mutually agree that this Agreement is intended by them to be solely for the benefit of the parties hereto and that no third parties may rely on any reports, analyses or other material provided by Service Provider or shall obtain any direct or indirect benefits from this Agreement, have any claim or be entitled to any remedy under this Agreement or otherwise in any way be regarded as third party beneficiaries of this Agreement.

6.12 This Agreement and the attached Exhibit A, RMSC response to RFP No. 37-2012 and the RFP 37-2012 constitute the entire understanding and agreement between the Parties, and supersede all prior or contemporaneous agreements or understandings, written or oral, of the Parties. This Agreement may be amended or modified only in a writing executed by both parties. No waiver of one or more provisions of this Agreement shall constitute a waiver of any other provision.

Article 7: INSURANCE

Risk Management Services Corporation shall maintain for the duration of this Agreement Commercial General Liability Insurance and Errors and Omissions Coverage against claims which may arise from or in connection with the work performed under this agreement in the principal amount of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, per policy year, for any act or omission in the furnishing of Liability claims handling services. Said policy shall name “The Lexington Fayette Urban County Government, its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers, and successors in interest” as “additional insured” and be placed with an insurer with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined in the most current Best Key rating guide. The policy shall provide that such insurance shall not be cancelled, modified or permitted to lapse without (30) days prior written notice to LFUCG. When requested by LFUCG from time to time, Risk Management Services Company shall promptly provide evidence of such insurance acceptable to LFUCG.

IN WITNESS WHEREOF, the parties have executed this Service Agreement as of the day and year first above written.

Assured NL Insurance Services, Inc.

Lexington-Fayette Urban County Government

BY: _____

BY: _____

TITLE: _____

TITLE: _____

EXHIBIT A

Services to be Provided and Compensation Fee Structure

Description of Services

In consideration of the services to be provided hereunder, Client agrees to pay Service Organization service fees as follows:

- This agreement is subject to the final approval of the Mayor and the Council of the LFUCG. **The fee schedule is based on LFUCG RFP 37-2012 proposal of Risk Management Services Corporation.** Commencing on 12:01 AM, February 1, 2013 and ending at 12PM on June 30, 2016. The fee schedule is as follows:
 - A. Risk Management Services Corporation fee schedule for FY 13 & 14 is APD claims \$60 per claim to closure and for PRP is \$50 per claim until closure. Subrogation fee is 20% of collected funds.
 - B. Risk Management Services Corporation fee schedule for FY 15 is APD \$ 60 per claim to closure and PRP is \$50 per claim to closure. Subrogation fee is 20% of collected funds.
 - C. Risk Management Services Corporation fee schedule for FY 16 is APD \$ 62 per claim to closure and PRP is \$52 per claim to closure. Subrogation fee is 20% of collected funds.

(List scope of services, pricing, terms and conditions)

- Client agrees to pay Service Organization within (30) days of the invoice.

