

**SAMPLE INTERCOMPANY SERVICE AGREEMENT**

The following document represents a good example of the various elements the department will look for in a satisfactory intercompany service agreement.

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SERVICE AGREEMENT (“Agreement”) made effective as of the \_\_\_\_\_ day of \_\_\_\_\_ by and among [*identify parties*].

WHEREAS each of the above named companies is a member of a group of commonly owned insurers and desires to cooperate in the performance of certain administrative and special services (collectively “services”) and desires further to share in the use of their day to day operations of certain property, equipment, and facilities (collectively “facilities”) of Group members in [*specify location*], and other locations; and

WHEREAS Group members contemplate that such an arrangement will achieve certain operating economies, and improve services to the mutual benefit of all Group members; and

WHEREAS Group members wish to assure that all charges for services and the use of facilities incurred hereunder are reasonable, and in accordance with the requirements of the domiciliary state insurance department and the California Departments of Insurance, and to the extent practicable, reflect actual costs and are arrived at in a fair and equitable manner.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and intending to be legally bound hereby, Group members agree as follows:

1. PERFORMANCE OF SERVICES AND USE OF FACILITIES Each group member agrees to the extent requested by another Group member to perform such services for the requesting Group member as the recipient Group member determines to be reasonably necessary in the conduct of its operations; provided that the performing Group member may in its sole discretion decline to provide the requested services if that would interfere with the performing Group member’s ability to meet its obligations to its policyholders or would otherwise adversely affect the performing group member.

Each Group member agrees to the extent requested by another Group member to make available its facilities to the recipient Group member as the recipient Group member may determine to be reasonable necessary in the conduct of its operations, including but not limited to: data processing, equipment, business property, whether owned or leased, and communication equipment; provided that the performing Group member may in its sole discretion decline to provide the requested facilities if that would interfere with the requested Group member’s ability to meet its obligations to its policyholders or would otherwise adversely affect the performing group member.

(a) CAPACITY OF PERSONNEL, STATUS OF FACILITIES Whenever a Group member utilizes its personnel to perform services for one or more other Group members pursuant to this Agreement, such personnel shall at all times remain employees of the performing Group member and the performing Group member shall alone retain full liability to such employees for their welfare, salaries, fringe benefits, legally required employer contributions and tax obligations.

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No facility of any Group member used in performing services for or subject to use by other Group members shall be deemed to be transferred, assigned, conveyed or leased by performance or use pursuant to this agreement.

(b) EXERCISE OF JUDGEMENT IN RENDERING SERVICES In providing any services hereunder which require the exercise of judgement by the performing Group member, the performing Group member shall perform any such service in accordance with any standards and guidelines developed and communicated to be in, or not opposed to, the best interests of the recipient Group member and in any event in accordance with the written standards and guidelines of each recipient Group member. If the performing Group member cannot perform the requested services in a manner reasonably calculated to be in, or not opposed to, the best interests of the recipient Group member, the performing Group member shall so advise the recipient Group member and shall, in an orderly fashion, cease to perform the requested services.

(c) CONTROL The performance of services by any group member for any other Group member pursuant to this Agreement shall in no way impair the absolute control of and responsibility for the business and operations of the performing group member or the recipient Group member by their respective Boards of Directors. The performance by any Group member under this Agreement with respect to the business and operations of any recipient Group member shall at all times be subject to the direction and control of the Board of Directors of the recipient Group member. The performing Group member shall act hereunder so as to assure the separate operating identity of each recipient Group member. Notwithstanding any other provisions of this Agreement, it is understood that the business and affairs of each Group member shall be managed by their Boards of Directors, and, to the extent delegated by each such board, by its appropriately designated officers. The Board of Directors and officers of the performing Group member shall not have any management prerogatives with respect to the business affairs and operations of the recipient Group member.

2. SERVICES Subject to the terms and conditions of this Agreement, each Group member may provide to other Group members the services set forth below. The listing of the following services is not intended to limit the performance of other services by one Group member for another Group member pursuant to Section 1.

### PERFORMANCE OF SERVICES AND USE OF FACILITIES.

(a) ACCOUNTING, TAX AND AUDITING Under the supervision of the Boards of Directors and responsible officers of each Group member, a group member may provide accounting services as may be required, including preparation and maintenance of the financial statements and reports including annual statements on both statutory and GAAP basis when required, and tax returns, and preparation and processing of the related financial records and transactions of other Group members. A group member may also provide such assistance as may be required with respect to tax and auditing services.

(b) UNDERWRITING Subject to written underwriting standards established by each Group member and communicated to other Group members, Group members may provide underwriting services as may be required, including review of reports rendered by agents of other Group members, monitoring and auditing business underwritten on behalf of other Group members, and advising the management of other group members as needed with respect to reinsurance assumed and / or retroceded. Each Group member shall at all times have the ultimate and final authority in accepting or rejecting risks, to determine from whom they will accept reinsurance assumed and to whom they will cede reinsurance.

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(c) CLAIMS Subject to procedures established by each Group member and communicated to the performing Group member, the performing Group member may provide claims services as may be required, including review of claims services rendered by agents of recipient Group members. Recipient Group members shall at all times have the ultimate and final authority in determining whether to pay or reject payment on claims.

(d) INVESTMENT Subject to the direction and control of the Boards of Directors of each Group member, and subject to the compliance with investment guidelines established by each Group member (copies of which are attached hereto as Exhibits A-E) and with the investment provisions of each Group member's domiciliary state insurance laws, a group member may provide investment services, including trading, sales and maintenance of short term securities. Ownership and possession of all investments shall reside with respective Group members.

(e) FUNCTIONAL SUPPORT SERVICES Subject to the ultimate control and direction of each Group member's Board of Directors, the performing Group member may provide (i) actuarial services, including rate development and actuarial certifications, (ii) telecommunications services and electronic data processing services, facilities and integration, including software programming and documentation and hardware utilization, (iii) legal services, including representation of other Group members in the negotiation and preparation of contracts, agreements and agency documents, product development and drafting and filing of policies and forms and reinsurance agreements, governmental relations and advising on regulatory compliance and rendering opinions on various legal matters, and (iv) purchasing, payroll, and employee relations services.

3. CHARGES Each Group member agrees to reimburse other Group members for services and facilities provided pursuant to this Agreement. Charges for such services and facilities shall include all direct and directly allocable expenses, reasonably and equitably determined to be attributable to the recipient Group member by the performing Group member, plus a reasonable charge for direct overhead, the amount of such charge for overhead to be agreed upon by the parties from time to time.

The basis for determining such charges shall be those used by the performing Group members for internal cost distribution including, where appropriate, time records prepared at least annually for this purpose. Such basis shall be modified and adjusted by mutual agreement where necessary or appropriate to reflect fairly and equitably the actual incidence of cost incurred by the performing Group member on behalf of recipient Group members.

The performing Group member's determination of charges hereunder shall be presented to the recipient Group member and if the recipient Group member objects to any such determination, it shall so advise within thirty (30) days of receipt of notice of said determination. Unless the parties can reconcile any such objection, they shall agree to the selection of a firm of independent certified public accountants which shall determine the charges properly allocable to the recipient Group member, and shall, within a reasonable time, submit such determination, together with the basis therefore, in writing to both parties whereon such determination shall be binding. The expenses of such a determination by a firm of independent certified public accountants shall be borne equally by both parties.

4. PAYMENT Within thirty (30) days after the end of each calendar quarter, Group members will submit to each other Group member a detailed written statement of the charges due for services and the use of facilities pursuant to this Agreement in the preceding calendar quarter, including charges not included in any previous statements, and any balance payable as shown in such statement shall be paid within thirty (30) days following receipt of such written statement.

5. RECORDS AND DOCUMENTS RELATING TO CHARGES Each Group member shall be

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responsible for maintaining full and accurate accounting records of all services rendered and facilities used pursuant to this Agreement and such additional information as other Group members may reasonably request for purposes of their internal bookkeeping and accounting operations. Each Group member shall make such account records insofar as they pertain to the computation of charges hereunder available at its principal offices for audit, inspection and copying by each recipient Group member or any governmental agency having jurisdiction over such recipient Group member during all reasonable business hours.

6. OTHER RECORDS AND DOCUMENTS All books, records and files established and maintained by each performing Group member by reason of its performance under this Agreement which, absent this Agreement, would have been held by the recipient Group member shall be the property of the recipient Group member and shall be subject to examination by the recipient Group member and persons authorized by it at all times. Recipient Group members may at any time require the performing Group member to surrender possession of such books, records, and files, whereupon the performing Group member shall deliver them to the recipient Group member.

7. TERMINATION AND MODIFICATION This Agreement or any part thereof shall remain in effect until terminated in whole or in part by mutual consent or by any party upon giving thirty days written notice, provided that each party shall have the right to elect to continue to receive data processing services and/or to continue to utilize data processing facilities and related software for up to one year from the date of such notice. This agreement shall be subject to negotiation at least every three years. Upon termination, each Group member shall deliver to other Group members all books and records that are, or are deemed by this Agreement to be, the property of other Group members.

This Agreement may be amended only by mutual consent in writing signed by the parties. No amendment of this agreement shall be effective without the prior approval of each department of insurance where required by applicable state law.

8. SETTLEMENT ON TERMINATION No later than ninety (90) days after the effective date of termination of this Agreement, each performing Group member shall deliver to each recipient Group member a detailed written statement for all charges incurred and not included in any previous statement to the effective date of termination. The amount owed hereunder shall be due and payable within thirty (30) days of receipt of such statement.

9. ASSIGNMENT This Agreement and any rights pursuant hereto shall not be assignable by any party hereto, except by operation of law. Nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto, or their respective legal successors, any rights, remedies, obligations or liabilities, or to relieve any person other than the parties hereto, or their respective legal successors, from any obligations or liabilities that would otherwise be applicable.

10. GOVERNING LAW This Agreement is made pursuant to and shall be governed by, interpreted under, and the rights of the parties determined in accordance with, the laws of [*identify appropriate domiciliary state*].

11. ARBITRATION Any unresolved difference of opinion between the parties arising out of or relating to this Agreement, or in the breach thereof, except as provided in Section 3, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Association and the Expedited Procedures thereof, and judgement upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall take place in the domiciliary state.

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12. NOTICE All notices, statements or requests provided for hereunder shall be in writing and shall be deemed to have been duly given when delivered by hand to an officer of the other party, or when deposited with the U.S. Postal Service, as certified or registered mail, postage prepaid, addressed:

*[specify necessary addresses]*

or to such person or place as each party may from time to time designate by written notice sent as aforesaid.

13. HEADINGS The headings of the various paragraphs of this Agreement are for convenience only, and shall be accorded no weight in the construction of this Agreement.

14. ENTIRE AGREEMENT This Agreement, together with such amendments as may from time to time be executed in writing by the parties, constitutes the entire Agreement between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate by their respective officers duly authorized to do so, and their corporate seals to be attached hereto as of the date and year first above written.