

WCRB WEB SERVICES AGREEMENT

This **WCRB WEB SERVICES AGREEMENT** (“**Agreement**”) is made by and between the Wisconsin Compensation Rating Bureau (“**WCRB**”) and [] (“**Company**”) as of the Effective Date as defined below. WCRB and Company are each referred to herein as a “**Party**” and collectively, the “**Parties**.”

WHEREAS, WCRB is a membership rating organization established under the Wisconsin Insurance Code that provides access to members of the WCRB to certain proprietary and other information relating to workers compensation insurance, including policy and policyholder information, loss and expense data, rating information, classification data, and other data or materials made available by WCRB to its members (collectively, “**Data**”);

WHEREAS, this Agreement provides the legal terms under which Company may obtain and utilize WCRB’s Web Services made available by the WCRB that allows approved member companies to programmatically connect to and query WCRB’s web platform and other databases (collectively, “**Platform**”) for purposes of accessing and obtaining Data in connection with the transaction of workers compensation insurance in Wisconsin (“**Web Services**”).

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **DEFINITIONS**

Terms used in this Agreement but not defined in this Section 1 below shall have the meaning ascribed to them in this Agreement.

- 1.1 “**Web Service Offerings**” collectively means the Web Services and Data accessed, queried, obtained, or otherwise made available using the Web Services.
- 1.2 “**Person**” or “**person**” (whether or not capitalized) means any individual, corporation, firm, or other entity.

2. **WEB SERVICE KEY**

Subject to the terms of this Agreement, WCRB shall make the Web Services available to Company electronically, requiring a unique key for Company to access and use the Web Services (“**Key**”). The WCRB shall provide Company with a unique Key on or after the Effective Date. Company acknowledges that it is Company’s sole responsibility to protect the Key and agrees to keep the Key confidential and not share it with any third party, except as otherwise expressly permitted under this Agreement. If Company believes that the Key has been obtained by any other person or that Company’s account has been used in an unauthorized way, Company shall notify the WCRB immediately.

3. **LICENSE; USE OF WEB SERVICE OFFERINGS**

- 3.1 License Grant. Subject to the terms of this Agreement, the WCRB hereby grants to Company during the Term, solely for the permitted use set forth in Section 3.2 below: (A) a limited, revocable, non-exclusive, non-sublicensable, non-transferable, non-assignable right and license to access and use the Web Services; and (B) a perpetual, non-exclusive, non-sublicensable, non-transferable, non-assignable right and license to access, use, and analyze Data obtained through the Web Services.

- 3.2 Permitted Use. The rights and licenses granted under Section 3.1 shall be limited to the following uses solely in connection with the transaction of workers compensation insurance in Wisconsin (“**Permitted Use**”):
- A. To access and use the Web Service Offerings to prepare or populate policy-related documents and to distribute such documents solely as necessary for purposes of transacting workers compensation insurance in Wisconsin (“Business Use”);
 - B. To use the Data to prepare submissions required by applicable governmental or regulatory agencies in accordance with the requirements of such agencies;
 - C. To use the Web Services (including the Key) as necessary to implement and support the Web Services (including to interface Company’s IT systems with the Platform), and to provide access to the Web Services (including the Key) to Company’s service providers as necessary for such service providers to implement and support the Web Services on Company’s behalf (provided, Company shall be responsible and liable for all acts or omissions of such providers);
 - D. As otherwise expressly permitted under this Agreement.
- 3.3 Use Restrictions. Except as otherwise expressly set forth in this Agreement, Company shall use the Web Service Offerings solely for the Permitted Use and shall not disclose, release, distribute, or deliver the Web Service Offerings, or any portion thereof, to any unauthorized third party without the WCRB’s prior written consent. Any purpose or use not specifically authorized herein is prohibited unless otherwise agreed to in writing by the WCRB. Without limiting the foregoing and except as otherwise expressly set forth in this Agreement, Company shall not at any time, directly or indirectly: (A) copy, modify, recreate or create derivative works of the Data, in whole or in part; (B) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Web Service Offerings, or any portion thereof; (C) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source of the Web Services or methods used to compile the Web Service Offerings; (D) remove any proprietary notices included within the Web Service Offerings; (E) use the Web Service Offerings in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law (including any applicable privacy or data protection law); (F) access or use the Web Service Offerings for marketing or promotional purposes or any similar purposes; (G) access or use the Web Service Offerings for purposes of competitive analysis of the Web Service Offerings, the development, provision or use of a competing service or product, or any other purpose that is to the WCRB’s detriment; (H) use the Web Services to transmit any viruses, worms, defects, Trojan horses, or any other items of a destructive or malicious nature; or (I) call, ping or otherwise use the Web Services to perform daily queries on all Company insureds or otherwise use the Web Services in a manner that, in the WCRB’s sole reasonable discretion, exceeds reasonable request volumes, constitutes excessive or abusive use, or otherwise fails to comply with or is inconsistent with this Agreement or any applicable Web Services documentation or policies provided or made available to Company by the WCRB.
- 3.4 Reservation of Rights. Company acknowledges that, as between Company and the WCRB, the WCRB owns and shall continue to own all right, title and interest, including all intellectual property rights, in and to the Web Service Offerings. The WCRB reserves all rights not expressly granted to Company in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants,

by implication, waiver, estoppel, or otherwise, to Company or any third party any intellectual property rights or other right, title, or interest in or to the Web Service Offerings.

- 3.5 Suspension or Modification of Web Services. The WCRB reserves the right, at its sole discretion, immediately and without notice, to suspend or terminate Company's access to and use of the Web Services for any reason and without penalty or liability, including without limitation, any breach or violation by Company of this Agreement or applicable laws or regulations. The WCRB may, at any time and from time to time, modify, update or discontinue, temporarily or permanently, the Web Services, or any portion thereof, with or without notice. Company agrees that the WCRB shall not be liable to Company or to any third party for any modification, suspension, or discontinuance of the Web Services.

4. **CONFIDENTIALITY; SECURITY**

- 4.1 Confidential Information. Company acknowledges that in connection with this Agreement or Company's use of the Web Offerings, the WCRB may disclose or make available to Company information about the WCRB's business affairs, products, confidential intellectual property, trade secrets, employer or other third-party confidential or proprietary information, and other sensitive or proprietary information (collectively "**Confidential Information**"). Without limiting the foregoing, for purposes of this Agreement, the Data shall be deemed Confidential Information of the WCRB. Confidential Information does not include information that is: (A) rightfully possessed by or known to Company prior to the time of disclosure; (B) independently developed by Company without any use of or reference to the Web Service Offerings; (C) rightfully obtained by Company on a non-confidential basis from a third party; or (D) in the public domain through no act or failure to act on the part of Company or any Company Person.

- 4.2 Protection of Confidential Information. As a condition to being provided with any disclosure of or access to Confidential Information, Company shall:

- A. Not access or use Confidential Information other than as necessary to exercise its rights or perform its obligations under and in accordance with this Agreement;
- B. Except as otherwise expressly set forth in this Agreement, not disclose Confidential Information to any person or entity, except to Company's officers, directors, managers, employees, agents, or other persons acting on Company's behalf (collectively "**Company Persons**") who: (1) need to know such Confidential Information for Company to exercise its rights or performance of its obligations under and in accordance with this Agreement; (2) have been informed of the confidential nature of the Confidential Information and Company's obligations under this Section 4; and (3) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 4;
- C. Safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care Company uses to protect its own confidential information and in no event less than a reasonable degree of care; and
- D. Ensure all Company Persons compliance with, and be responsible and liable for any Company Persons non-compliance with, the terms of this Section 4.

Notwithstanding the foregoing, Company may disclose Confidential Information to the limited extent required in order to comply with an involuntary order of a court or other

governmental body, or as otherwise necessary to comply with applicable law, provided that Company shall first give written notice to WCRB and make a reasonable effort to obtain a protective order.

- 4.3 Security. Company shall implement and maintain reasonable and appropriate administrative, physical, and technical safeguards to protect the security of the Web Service Offerings and to protect the Web Service Offerings from unauthorized access, disclosure, duplication, use, modification, or loss. Company shall notify the WCRB as soon as practicable when Company reasonably suspects or discovers any unauthorized disclosure, duplication, use, modification, or loss of the Web Service Offerings or any attempt to defeat any technical measures put in place by the WCRB to secure of the Web Services.

5. **TERM AND TERMINATION**

- 5.1 Term. The term of this Agreement shall commence on the Effective Date and shall continue until terminated in accordance with this Section 5 ("**Term**").

5.2 Termination.

- A. Either Party may terminate this Agreement at any time without cause or penalty by providing the other Party with thirty (30) days prior written notice of termination.
- B. The WCRB may terminate this Agreement, effective on written notice to Company, if Company breaches any of its obligations under Section 3.3 or Section 4.
- C. Either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement and such breach: (1) is incapable of cure; or (2) being capable of cure, remains uncured five (5) business days after the non-breaching Party provides the breaching Party with written notice of such breach.
- D. Either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (1) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (2) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any bankruptcy or insolvency law; (3) makes or seeks to make a general assignment for the benefit of its creditors; or (4) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

- 5.3 Effects of Termination. Upon termination of this Agreement, the rights and licenses granted hereunder shall terminate and without limiting Company's obligations under Section 4, Company shall cease accessing and using the Web Services and cease using and delete, destroy, or return all copies of the WCRB's Confidential Information and certify in writing to the WCRB that the Confidential Information has been deleted or destroyed.

6. **INDEMNIFICATION**

Company shall indemnify, hold harmless, and defend the WCRB from and against any and all losses, damages, liabilities, awards, claims, obligations, expenses or costs (including reasonable attorney's fees) ("**Losses**") resulting from any third-party claim, suit, action, or proceeding ("**Third-Party Claim**") based on Company's or any Company Persons': (A) gross negligence or willful misconduct; or (B) use or disclosure of the Web Service Offerings in a manner not authorized by this Agreement, provided that Company may not settle any Third-Party Claim against the WCRB unless such settlement completely and forever releases the WCRB from all liability with respect to such Third-Party Claim or unless the WCRB consents to such settlement, and further provided that the WCRB shall have the right, at its option, to defend itself against any such Third-Party Claim or to participate in the defense thereof by counsel of its own choice.

7. **NO WARRANTIES; DISCLAIMERS**

NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS AGREEMENT AND TO THE FULLEST EXTENT NOT PROHIBITED BY APPLICABLE LAW, THE WEB SERVICE OFFERINGS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY AND ALL IMPLIED OR OTHER WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, COMPLETENESS, OR ACCURACY. THE WCRB MAKES NO WARRANTY THAT THE WEB SERVICE OFFERINGS WILL BE ERROR FREE, SECURE, FREE OF VIRUSES, OR THAT ACCESS TO AND USE THEREOF WILL BE CONTINUOUS OR UNINTERRUPTED. ANY ACCESS TO OR USE OF THE WEB SERVICE OFFERINGS SHALL BE AT THE SOLE RISK OF COMPANY AND COMPANY IS SOLELY RESPONSIBLE FOR EVALUATING AND BEARING ALL RISKS ASSOCIATED WITH THE USE OF THE WEB SERVICE OFFERINGS.

8. **LIMITATION OF LIABILITIES**

NOTWITHSTANDING ANY CONTRARY PROVISION OF THIS AGREEMENT AND TO THE FULLEST EXTENT NOT PROHIBITED BY APPLICABLE LAW, NEITHER THE WCRB NOR ITS AFFILIATES NOR ANY OF ITS MEMBERS IN THEIR CAPACITY AS MEMBERS, NOR ANY OF ITS OR THEIR RESPECTIVE DIRECTORS, OFFICERS, MANAGERS, EMPLOYEES, AGENTS OR REPRESENTATIVES (COLLECTIVELY "**WCRB PERSONS**") SHALL BE LIABLE FOR ANY LOSSES OF ANY KIND OR NATURE, OR FOR ANY CONSEQUENTIAL, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE LOSSES OF ANY KIND, WHETHER BASED IN TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF THE WCRB OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES, WHICH IN ANY MANNER ARISES OUT OF OR RELATES TO OR IS IN CONNECTION WITH THIS AGREEMENT OR THE WEB SERVICE OFFERINGS. THE SOLE REMEDY AND RECOURSE OF COMPANY OR OTHER PERSON WITH RESPECT TO ANY OF THE FOREGOING MATTERS OR OTHER DISSATISFACTION WITH ANY OF THE WEB SERVICE OFFERINGS IS TO STOP USING THE WEB SERVICE OFFERINGS.

9. **MISCELLANEOUS**

- 9.1 Entire Agreement. This Agreement, together with all schedules, exhibits, and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter; provided, however, that this Agreement shall not supersede or otherwise affect or amend any WCRB membership rights and obligations of Company to the extent not in conflict with this Agreement. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party hereto.

- 9.6 Waiver. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving.
- 9.7 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- 9.8 Arbitration. Except any claims relating to the WCRB's intellectual property rights (which shall be subject to litigation pursuant to Section 9.9 below), any dispute arising from or relating to or in connection with this Agreement or the subject matter hereof, shall be subject to binding arbitration, in accordance with the current prevailing commercial dispute rules of the American Arbitration Association (www.adr.org), as modified and supplemented by procedures of this Section. The arbitrator(s) shall have the authority to grant injunctive relief and specific performance to enforce the terms of this Agreement. Judgment on any award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction. Notwithstanding any contrary provision of this Agreement, any arbitration shall be conducted and resolved solely on an individual basis and not a class-wide, multiple plaintiff, or similar basis.
- 9.9 Governing Law; Jurisdiction. This Agreement and all matters arising out of or relating to or in connection with this Agreement shall be governed by the laws of the State of Wisconsin, without reference to conflicts of law principles. Subject to the foregoing Section 9.8, any and all suits and other proceedings under this Agreement must be brought exclusively in the federal or state courts of Wisconsin and each of the Parties acknowledges and agrees that such courts shall have exclusive jurisdiction and venue over all disputes arising out of or relating to or in connection with this Agreement. Either Party also may seek injunctive or other equitable relief for breach of this Agreement in any court of competent jurisdiction wherever located.
- 9.10 Attorney's Fees. If any legal action or proceeding or arbitration, including an action for arbitration or injunctive relief, is brought relating to or in connection with this Agreement or the subject matter hereof, the prevailing party in any final judgment or arbitration award, or the non-dismissing party in the event of a voluntary dismissal by the party instituting the action, shall be entitled to the full amount of all reasonable expenses, including all court costs, arbitration fees and actual attorney's fees paid or incurred in good faith.
- 9.11 No Agency. The Parties are independent contractors. Nothing contained herein shall be construed as creating any agency, partnership, or other form of joint enterprise between the Parties. No Party has the right or power or authority to act as an agent for the other Party or enter into any agreement or other obligation for or otherwise bind the other Party.
- 9.12 Interpretation. For purposes of this Agreement: (A) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation"; (B) the word "or" is not exclusive; (C) words denoting the singular have a comparable meaning when used in the plural, and vice-versa; and (D) unless the context otherwise requires, references in this Agreement to Sections and Exhibits refer to the Sections of, and Exhibits attached to, this Agreement. The Parties intend this Agreement to be construed without regard to any

presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted.

- 9.13 Counterparts Facsimile or Electronic Delivery and Electronic Execution. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission (to which a signed PDF copy is attached) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Electronic or digital signatures shall be deemed to be original signatures for purposes hereof.
- 9.14 Authority to Sign. Each of the undersigned individuals represents and warrants that he or she is expressly and duly authorized by his or her respective entity or agency to execute this Agreement and to legally bind each such entity or agency as set forth in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement, which shall be effective as of the later date of signature of the Parties below ("**Effective Date**").

Wisconsin Compensation Rating Bureau

 By

 Signature

 Title

 Date

 By

 Signature

 Title

 Date

Internal Filing Use Only:
NCCI/Bureau Code: