

CONSULTING CONTRACT
Professional Computer Audit Services

This Agreement is made effective as of October 1, 2008, by and between the Alabama Department of Insurance of 201 Monroe Street, Suite 1700, Montgomery, Alabama 36104, and _____

In this Agreement, the party who is contracting to receive services shall be referred to as “Department” and the party who will be providing the services shall be referred to as “Contractor”. The Contractor has personnel with backgrounds in providing computer auditing of insurance companies and is willing to provide services to the Department based on these backgrounds. The Department desires to have services provided by the Contractor.

1. DESCRIPTION OF SERVICES

Beginning on October 1, 2008, and ending on September 30, 2009, the Contractor will provide one or more of the following services, (collectively the “Services”) when requested by the Department: to conduct an electronic data processing (EDP) audit of insurers in accordance with the National Association of Insurance Commissioners Financial Condition and Market Conduct Examiners Handbook, NAIC Accounting Manuals, and Alabama Insurance Department instructions, including familiarity with the Information Systems Questionnaire (ISQ) in the Financial Examiners Handbook; review the insurer’s record keeping system to determine what it does and how it works; review the insurer’s response to the Information Processing Facility Questionnaire (IFPQ) [see sample questionnaire in the Automated Examination Procedures Manual] and understand the controls and the effectiveness of the controls; properly interface the Department’s software package (if available) with the insurer’s system; determine the specific needs of the examiners and arrange for production of the required computer printouts.; remain available to the examiners throughout the examination for consultation on computer-related problems; provide Department examiners with on-the-job training of computer methods and techniques; and summarize the findings of the computer audit specialist in a report that will be forwarded to the examiner in charge of the examination, who will incorporate any comments and recommendations made by the computer audit specialist in the report of examination.

2. PERFORMANCE OF SERVICES

The manner in which the Services are to be performed and the specific hours to be worked by the Contractor shall be determined by the Contractor. The

Department will rely on the Contractor to work as many hours as may be reasonably necessary to fulfill the Contractor's obligations under this Agreement. Contractor will use TeamMate®, the software designated by the DOI for workpaper preparation, in the version currently in use or otherwise required by the DOI at the time of the examination. Any cost in obtaining the software or software upgrade will be at the expense of the Contractor. Contractor must enter into, or have previously entered into, a confidentiality agreement with the DOI confirming the manner in which the Contractor will treat the PricewaterhouseCoopers LLP proprietary TeamMate® software system. All Services are to be performed in accordance with professional ethics and standards of practice and the conflict of interest provision of Section 27-2-13, Code of Alabama 1975. If the assignment is not completed and a written report is not submitted within the budgeted time approved by the Department, the Department reserves the right to refuse making payments under this Agreement until a satisfactory written report is submitted by the contractor. If a written report is not submitted within 30 days after written demand by the Department, any remaining sums billed under the Contract shall be submitted to the State Board of Adjustment.

3. PAYMENT

The Department will pay a fee to the Contractor of no more than \$_____ for services provided by the Contractor, payable at the following hourly rates:

<u>Employee Classification</u>	<u>Per Hour Charge</u>
_____	_____
_____	_____
_____	_____

Upon termination of this Agreement, payments under this paragraph shall cease; provided, however, that the Contractor shall be entitled to payments for periods or partial periods that occurred prior to the date of termination and for which the Contractor has not yet been paid, up to the limits of the Contract.

4. EXPENSE REIMBURSEMENT

The Contractor shall be entitled to reimbursement from the Department for transportation and per diem in lieu of reimbursement for actual expenses for intrastate and interstate travel, which shall be as periodically published and updated by the National Association of Insurance Commissioners in Section V of its "Classifications, Minimum Qualifications and Suggested Compensation

for Zone Examiners” pamphlet. All travel and out-of-pocket expenses for which reimbursement is claimed must be in connection with work performed under this contract. Contractor shall not be reimbursed for travel time or travel expenses not actually incurred in connection with an assignment.

The total expense reimbursement shall not exceed \$_____.

Total payments under this Agreement for professional fees and expense reimbursement shall not exceed \$_____.

5. SUPPORT SERVICES

The Department will not provide support services, such as office space or secretarial services, for the benefit of the Contractor.

6. NEW PROJECT APPROVAL

The Contractor and the Department recognize that the Contractor’s Services will include working on various projects for the Department. The Contractor shall obtain approval from the Department prior to the commencement of a new project.

7. TERM/TERMINATION

The Agreement may be terminated by either party upon 30 days written notice to the other party but in no event shall the term of this Agreement extend past September 30, 2009. Any Contract whose term includes or runs more than one fiscal year is subject to termination in the event that funds should not be appropriated for the continued payment of the Contract in a subsequent fiscal year. In case of proration of the funds from which payment under this Contract is to be made, the Contract will be subject to termination.

8. RELATIONSHIP OF PARTIES

It is understood by the parties that the Contractor is an independent contractor with respect to the Department, and is not an employee of the Department. The Department will not provide fringe benefits, such as health insurance benefits, paid vacation, or other employee benefits for the benefit of the Contractor. It is agreed that the Contractor is not subject to the control of the State of Alabama or the Department of Insurance in the performance of its

duties and is not entitled to the benefits of the State Personnel System or the State Merit System laws.

9. INDEMNIFICATION

The Contractor agrees to indemnify and hold the Department harmless from all claims, losses, expenses, fees including attorney fees, costs and judgment that may be asserted against the Department that result from the acts or omissions of the Contractor, the Contractor's employees, and the Contractor's agents.

10. ASSIGNMENT

The Contractor's obligations under this Agreement may not be assigned or transferred to another person, firm, or corporation without the prior written consent of the Department.

11. CONFIDENTIALITY

The Contractor recognizes that the Department has and will have access to the following information: products, prices, costs, future plans, business affairs, trade secrets, technical information, customer lists, product design information, and other proprietary information (collectively, "Information") which are valuable, special and unique assets of insurers. The Contractor agrees that the Contractor will not at any time or in any manner, either directly or indirectly, use any Information for the Contractor's own benefit, or divulge, disclose, or communicate in any manner any Information to any third party without the prior written consent of the Department. The Contractor will protect the Information and treat it as strictly confidential. A violation of this paragraph shall be a material violation of this Agreement.

12. UNAUTHORIZED DISCLOSURE OF INFORMATION

If it appears that the Contractor has disclosed (or has threatened to disclose) Information in violation of this Agreement, the Department shall be entitled to an injunction to restrain the Contractor from disclosing, in whole or in part, such information, or from providing any services to any party to whom such information has been disclosed or may be disclosed. The Department shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.

13. CONFIDENTIALITY AFTER TERMINATION

The confidentiality provisions of this Agreement shall remain in full force and effect after the termination of this Agreement.

14. RETURN OF RECORDS

Upon termination of this Agreement, the Contractor shall deliver all records, notes, data, memorandum, models and equipment of any nature that are in the Contractor's control and that are the Department property or relate to the Department's business. The Contractor agrees to maintain all work papers generated under this Contract for a period of no more than seven years or until the next examination of an insurer and make the work papers freely available to the Department during regular business hours.

15. NOTICES

All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

Department: Richard Ford, Chief Examiner
Alabama Department of Insurance
201 Monroe Street, Suite 1700
Montgomery, AL 36104

Contractor: _____

Such address may be changed from time to time by either party by providing written notice to the other in the manner set forth above.

16. LIQUIDATED DAMAGES.

The measure of damages in the event of a default by Contractor may be difficult or impossible to calculate, depending on the nature of the default. In the event Contractor fails to perform services or complete deliverables in accordance with the response times required in this contract, the Department may require Contractor to pay the Department \$500.00 per calendar day of delay. For any other failure to perform in accordance with the terms of the contract after

having been notified in writing by the Department of the specific deficiency, the Department may require the Contractor to pay the Department the sum of \$500.00 per day until the deficiency is corrected. The Department may, but is not obligated to, recover these liquidated damages in lieu of any other monetary remedies the Department has under the contract or applicable law.

17. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

18. AMENDMENT

This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.

19. SEVERABILITY

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

20. WAIVER OF CONTRACTUAL RIGHT

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

21. APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Alabama. It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article XI, Section 213, of the Constitution of Alabama, 1901, as amended by Amendment 26. It

is further agreed that if any provision of this contract shall contravene any statute or constitutional provision or amendment, either now in effect or which may, during the course of this Contract, be enacted, then any conflicting provision in the Contract shall be deemed null and void. The Contractor's sole remedy for settlement of any and all disputes rising under the terms of this Agreement shall be limited to the filing of a claim with the Board of Adjustment for the State of Alabama. For any and all disputes arising under the terms of this Agreement, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General's Office of Administrative hearings or, where appropriate, private mediators. The Contractor shall not incur any liability on behalf of the State of Alabama.

22. EXEMPTION

The Department, notwithstanding any provisions of this Agreement, incorporations or amendments hereto, does not release or waive, expressly or impliedly, its right to assert sovereign immunity or any other affirmative or defensive right or claim it may have under law.

23. AUTHORITY

This Contract is made pursuant to and under the authority of Section 27-2-10, Code of Alabama, 1975.

24. EFFECTIVE DATE

This Contract shall not become effective until approved by the Governor of Alabama. The Contractor acknowledges and understands that this contract is not effective until it has received all the requisite state government approvals and the Contractor shall not begin performing work under this contract until notified to do so by the Department. The Contractor is entitled to no compensation for work performed under this contract prior to the effective date of this contract.

DEPARTMENT:

CONTRACTOR:

Alabama Department of Insurance
Contract No.:
Contractor:
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By: _____
Walter A. Bell
Commissioner
Alabama Department of Insurance

By: _____

Taxpayer ID Number: _____

APPROVED AS TO FORM ONLY:

Legal Counsel
Alabama Department of Insurance

APPROVED:

Bob Riley
Governor, State of Alabama