

**CONSULTING CONTRACT**  
**Professional Computer-Based Insurer Examination Services**

The Alabama Department of Insurance ("Department") of 201 Monroe Street, Suite 502, Montgomery, Alabama 36104, and

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("Contractor") agree as follows:

**1. EFFECTIVE DATE, TERM, AND TERMINATION DATE.**

1.1 The Effective Date of this Contract is October 1, 2012. Unless sooner terminated as provided in Section 8, the Term of this Contract is one (1) year and the Contract Termination Date is September 30, 2013, subject to Contractor's payment right as provided in Section 8.

**2. SERVICES.**

2.1 Commencing on the Effective Date and continuing during the Term, Contractor shall provide one or more of the following Services upon the request of and as directed by the Department:

2.1.1 Contractor will conduct computer-based examinations of insurers in accordance with the National Association of Insurance Commissioners' (NAIC) Market Regulation Manual, the NAIC's Financial Condition Examiners Handbook, the NAIC's Accounting Practices and Procedures Manual, and Department regulations and instructions; will review the insurer's record keeping system to determine what it does and how it works; will review the insurer's response to the Information Processing Facility Questionnaire and determine the effectiveness of the controls; will properly interface the Department's software package (if available) with the insurer's system; will determine the specific needs of examiners and arrange for production of the required computer printouts; and will be continually available throughout an examination for consultation on computer-related problems.

2.1.2 Contractor shall timely prepare and submit an accurate written report of findings in the computer audit in the format prescribed by the Department which may be incorporated into the report of the examination of the insurer.

2.1.3 As necessary, Contractor shall make available one or more knowledgeable representatives to provide testimony and evidence in any administrative or court hearing or proceeding arising from Services performed by Contractor.

2.1.4 Contractor will provide training for examiners, analysts and other Department personnel on computer methods and techniques as they relate to examinations, as may be requested by the Department.

2.1.5 Contractor shall provide such other services within the scope of the described services as may be determined by the Department.

2.2 Contractor shall only commence Services upon the specific written direction of the Department.

### **3. PERFORMANCE OF SERVICES.**

3.1 Services in connection with a particular task or project shall be commenced and completed within the times specified in the Department's directive that the Services be performed.

3.2 Contractor shall use TeamMate®, a Wolters Kluwer proprietary software system designated by the Department for workpaper preparation. The Contractor shall bear the expense of obtaining a license to use TeamMate®, the TeamMate® software, or any software upgrade required to perform the Services. The contractor must enter into, or have previously entered into, a confidentiality agreement with the Department confirming the manner in which the contractor will use the TeamMate® software system.

3.3 Services shall be performed by Contractor through employees of the Contractor who have the qualifications, experience, training, and certifications commensurate with the particular Services being performed, to include, but not be limited to, any necessary training, experience, and familiarity with TeamMate®.

3.4 Performance of the Services shall be overseen and supervised on the Contractor's behalf by a Contractor employee who is either an Automated Examination Specialist (AES) or a Certified Information Systems Auditor (CISA).

3.5 Each Contractor employee who signs an examination report must meet the qualifications provided in the edition of the NAIC's Market Regulation Manual, the NAIC's Financial Condition Examiners Handbook current as of the time of the report, Alabama Insurance Regulations 482-1-97 and 482-1-103, and Ala. Code §§ 27-2-10(c) and 27-2-13(a).

3.6 Performance of the Services shall conform to the NAIC's Market Regulation Manual, the NAIC's Financial Condition Examiners Handbook, NAIC Accounting Manuals, Alabama statutes, and Department regulations and instructions as may be applicable in the context of the particular Services.

3.7 A written examination report prepared on a format prescribed by the Department shall be submitted within the time designated by the Department.

3.8 The Services shall be timely performed in a professional manner and in accordance with applicable professional standards and ethical standards.

**4. PAYMENT FOR SERVICES AND EXPENSES.**

4.1 The total amount invoiced by Contractor for all Services and Expenses during the operation of this contract shall not exceed \$\_\_\_\_\_, subject to the availability of State funds. If, during the Term, the amount available for funding of this Contract in any one fiscal year is reduced by legislative action, proration, or other action of State government beyond the control of the Department, the maximum amount payable under this Contract in the fiscal year will be adjusted accordingly.

4.2 The total reimbursement for services shall not exceed \$\_\_\_\_\_ during the Term of the contract. Contractor shall use the following hourly rates by employee classification in invoicing the Department for Services performed during the entire Term:

<u>Employee Classification</u>	<u>Per Hour Charge</u>
Computer Audit Specialist .....	\$

4.3 Contractor shall be reimbursed for travel expenses incurred for travel in performance of the Services approved by the Department. Travel expense reimbursement shall be on a per diem basis in lieu of reimbursement for actual expenses for intrastate and interstate travel. Travel expense methodology must conform to the per diem rates for intrastate and interstate travel in the latest version of the standard CONUS rates as published in table form from time to time by the NAIC as part of the NAIC’s Classifications, Minimum Qualifications and Suggested Compensation for Zone Examiners, provided that calculation of per diem rates shall not include “travel time” or travel expenses not actually incurred in connection with an assignment. The total reimbursement for expenses shall not exceed \$\_\_\_\_\_ during the Term of the contract.

4.4 The total amount expressed in Subsection 4.1 is not an agreement by the Department that tasks or projects which will be assigned to Contractor from time to time during the Term will authorize invoices from the Contractor aggregating such total amount.

4.5 Contractor shall account for all time spent by its employees in performance of the Services on an hourly basis in increments of not less than two-tenths (.2) of an hour. If requested by the Department, Contractor must be able to produce time and expense records in reasonable detail for use by the Department in billing insurers or others who are the subject of Services performed for reimbursement to the Department of the amounts paid to Contractor.

4.6 Contractor shall not invoice for “travel time.”

4.7 The Department shall not pay any costs for services or expenses not within Subsections 4.2 and 4.3, and shall not pay for the services or expenses.

4.8 On a not less than monthly basis during its performance of Services, Contractor will send an invoice and a remittance copy of the invoice to the attention of Tisha Johnson at the

Department addressed to Post Office Box 303351, Montgomery, Alabama 36130-3351, if sent by any delivery method of the United States Postal Service, or addressed to RSA Tower Suite 502, 201 Monroe Street, Montgomery, Alabama 36104, if delivered by hand or sent by commercial delivery service. To the extent Contractor may be performing Services on several tasks or projects, each task or project shall be separately invoiced. Each invoice shall contain:

4.8.1 A description of the Services performed, to include the date, time spent, nature of the Service, performing employee, performing employee's classification, and amount charged as determined by application of the appropriate hourly rate.

4.8.2 A detailed listing of expenses supported, if applicable, by receipts or other evidence acceptable to the Department documenting the expenses.

4.9 Amounts appearing on a non-conforming invoice will not be paid until Contractor has submitted a conforming invoice.

4.10 The Department contact person for matters relating to invoicing and payment processing for this Contract shall be Tisha Johnson, Department Accountant [(334) 241-4106 or tisha.johnson@insurance.alabama.gov].

4.11 Contractor will promptly refund or credit within thirty (30) calendar days any erroneously paid funds that are not expressly authorized by the Department.

4.12 In its discretion, the Department may withhold payment of invoices if Contractor has failed to complete a task or project or submit an examination report within the time parameters established by the Department for the task or project until such time as the task or project has been completed, the report has been submitted, or the Department is otherwise satisfied about the status of Contractor's performance.

4.13 Upon termination of this Contract for any reason, payments under the Contract shall cease, except 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.

## **5. SUBCONTRACTORS; ASSIGNMENT.**

5.1 All Services shall be performed by Contractor's employees. Contractor may not subcontract performance of any Services.

5.2 Contractor's interest in or obligations under this Contract may not be assigned.

## **6. INDEPENDENT CONTRACTOR.**

6.1 Contractor's status under this Contract is strictly that of independent contractor. The Department does not reserve any right to exercise the right of control over the means and method by which Contractor performs the Services.

6.2 Contractor shall account for and remit all taxes relating to its performance under this Contract, including but not limited to, income taxes, employee wage withholding for income tax and FICA taxes, and any other payroll taxes. Contractor is solely responsible for any benefit plans Contractor may provide for its employees.

6.3 At all times during the Term, Contractor shall, at its sole cost and expense, maintain in force the following types of insurance:

6.3.1 Workers' compensation insurance for those employees of Contractor performing Services under this Contract who are subject to the workers' compensation laws.

6.3.2 Vehicle liability insurance covering the employee in employee's operation of, or responsibility for the operation of, the vehicle, for any employee of Contractor using a vehicle (including any rental vehicle) in performance of the Services under this Contract. If requested by the Department, Contractor will have the Department and the State of Alabama shown as additional named insureds on such vehicle liability insurance policy or policies and shall provide evidence of any endorsement to that effect.

## **7. DEPARTMENT SUPPORT.**

7.1 The Department will provide Contractor with copies of annual statements, actuarial opinions, audited financial statements, previous examination reports, or such other information concerning the subject of a task or project within the Services as the Department and Contractor deem necessary to allow proper performance of the Services.

7.2 The Department will not provide support services, including office space and secretarial services, for the Contractor.

## **8. TERMINATION.**

8.1 If not sooner terminated, this Contract terminates effective on the Termination Date.

8.2 The Department and Contractor may mutually agree in writing to terminate this Contract before the Termination Date, upon such terms and conditions as the termination agreement may provide.

8.3 Either the Department or the Contractor may terminate this Contract due to a claimed breach of a material term of the Contract by the other. In such event, the terminating

party shall give the other a written notice specifying the nature and circumstances of the claimed breach and shall afford a reasonable period of not less than thirty (30) days within which to cure the breach. If the breach shall not have been cured within the stated cure period, the termination shall be effective as of the termination date specified in or determined from the termination notice.

8.3.1 In the event Contractor exercises this termination right by identifying a claimed material breach on the part of the Department which remains uncured after notice, other than failure of the Department to pay for the Services, Contractor shall complete performance of the Services on any task or project in process at the time of the termination notice unless the Department specifically agrees in writing that Contractor is relieved of the obligation to complete performance.

8.3.2 In the event the Department exercises this termination right by identifying a material breach on the part of the Contractor which remains uncured after notice, the Department may, upon such reasonable terms and in such manner as it deems appropriate, obtain substitute services similar to the Services remaining unperformed due to the breach and termination of this Contract. In such event, Contractor will be liable to the Department for any amounts incurred by the Department which exceed amounts that would have been paid under this Contract but for the breach and termination, plus court costs and attorneys' fees to the extent that Contractor's obligation must be enforced through the court system. The Department may offset such amounts against amounts, if any, due to Contractor but unpaid as of the termination of this Contract.

8.3.3 Without limitation, the Department may deem the existence of a material false representation or statement in, or the omission of material facts from, Contractor's response to the Request for Proposal that resulted in this Contract, including documents or information submitted with the response, to be a ground in the nature of a material breach justifying termination of this Contract.

8.4 The Department may cancel this Contract by giving Contractor not less than thirty (30) days written notice in advance of the termination date in the event that legislative action or other action of the State government, including, but not limited to, availability of funds for this Contract, makes provision of the Services impossible or unnecessary. In such event, Contractor shall be paid any amounts due for Services performed to the termination date.

8.5 The Department and the State of Alabama have no liability to Contractor for consequential or other damages beyond amounts, if any, due but unpaid for Contractor's performance of the Services, and Contractor waives any right to seek such damages and covenants not to take legal action of any type to assert or recover such damages.

## **9. CONFIDENTIALITY; RECORDS.**

9.1 Contractor's performance of the Services will give access to information and records of the Department and of persons or entities who are the subject of the Services which will include such confidential or proprietary data, or trade secrets, as information about product features and design, pricing and cost information, current or future marketing plans, claims data, internal information about business affairs, technical information, customer lists, and other proprietary information (collectively, "Confidential Information") which are valuable, special and unique assets of the persons or entities who are the subject of the Services. At all times, Contractor shall treat such information and records as Confidential Information. Contractor agrees that it will not at any time or in any manner, either directly or indirectly, use any Confidential Information for the Contractor's own benefit, or divulge, disclose, or communicate in any manner any Confidential Information to any third party without the prior written consent of the Department or the person or entity, as may be the case. A violation of this subsection shall be a material violation of this Contract. The confidentiality provisions of this Contract shall remain in full force and effect after the termination of this Contract.

9.2 If it appears that the Contractor has disclosed (or has threatened to disclose) Confidential Information in violation of this Contract, 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.

9.3 Upon termination of this Contract, 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.

9.4 Contractor shall maintain all work papers generated in its performance of Services under this Contract for the lesser period of seven (7) years or until the next examination of the insurer or other person or entity who is the subject of the work papers. Contractor shall make the work papers freely available to the Department at the Department's request.

9.5 Contractor shall maintain all records pertaining to amounts invoiced under this Contract and shall make them available at reasonable times for inspection by any authorized representative of the Department upon request during the Term of the Contract and for four (4) years thereafter. If any litigation, claim, or audit is commenced before the expiration of the four (4) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

## 10. NOTICES.

10.1 All notices required or permitted under this Contract 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 502  
Montgomery, AL 36104

Contractor:

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

## 11. CONFLICT OF INTEREST.

11.1 During the term of this Contract, Contractor shall not engage in any other consulting activities or work that would constitute a conflict of interest as described in Ala. Code § 27-2-13, or with the performance of its obligations under this Contract. Contractor is not precluded from engaging in other assignments or performing services for others similar in scope to the Services described in this Contract as long as such performance does not conflict with the Contractor's responsibilities under this Contract.

## 12. ADDITIONAL REQUIREMENTS.

12.1 **Immigration.** The Contractor will comply with the requirements of all state and federal laws regarding employment verification and retention of verification forms for any individuals who will perform any labor or services under the contract.

12.2 **Equal Opportunity.** The Contractor will comply with the Civil Rights Act in giving equal opportunity without regard to race, color, creed, sex or national origin.

12.3 **ADA.** Contractor will comply with the requirements of the Americans with Disabilities Act (ADA).

12.4 **Payment of Taxes and Insurance by Contractor.** Contractor will be responsible for payment of all taxes, including, but not limited to, state, federal, foreign, or local taxes, including income tax, withholding tax, social security tax, pension contributions, and any other form of payroll or other taxes, for all Contractor's employees. At Contractor's sole cost and expense, Contractor will secure and maintain any and all insurance that is required by the



contract or is necessary to protect the interests of the State of Alabama and the Department or that Contractor may need or desire for Contractor or Contractor's Employees.

**13. INDEMNIFICATION.**

13.1 Contractor shall indemnify and hold the Department harmless from all claims, losses, expenses, fees (including attorneys fees and litigation costs), costs and judgments that may be asserted against the Department and that result from the acts or omissions of the Contractor, the Contractor's employees, and the Contractor's agents arising from or relating to Contractor's performance under this Contract. At its election, upon receiving notice of any claim for damages within the scope of this Section, the Department may tender said claim to Contractor to furnish a defense of the Department at Contractor's expense in the jurisdiction where the claim is asserted.

**14. NOTICE OF IMMUNITY.**

14.1 As a department of State government, the Department is immune from being made a defendant in any court of law or equity by operation of Art. I, § 14, Ala. Const. 1901 (Recomp.), which immunity is not waivable and is not waived by any provision of this Contract.

**15. CONTRACT NOT DEBT OF THE STATE.**

15.1 This Contract does not create or constitute a debt against or incurred by the State of Alabama for purposes of Art. XI, § 213, Ala. Const. 1901 (Recomp.).

**16. BOARD OF ADJUSTMENT.**

16.1 In the event of a dispute concerning payment for Services or for damages otherwise claimed to be due to Contractor under or relating to this Contract, Contractor agrees that its remedy shall be limited to the filing of a claim with the Board of Adjustment for the State of Alabama as provided in Ala. Code §§ 41-9-60 et seq.

**17. ENTIRE AGREEMENT.**

17.1 This Contract contains the entire agreement of the parties. Any oral or written statements concerning the subject matter of this Contract which precede execution of this Contract by the parties are merged into the terms of this Contract, which alone expresses the intent of the parties, and the Department and Contractor warrant, each to the other, that they have not relied upon any preceding oral or written statements not set forth in this Contract in deciding to enter into this Contract.

**18. AMENDMENT.**

18.1 This Contract may be modified or amended by a writing signed by both parties. To the extent the laws of the State of Alabama require that the Department amend this Contract

to include additional language or terms, Contractor agrees to execute any such amendment upon the request of the Department.

**19. SEVERABILITY.**

19.1 If any provision of this Contract shall be held 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 Contract 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.**

20.1 The failure of either party to enforce any provision of this Contract 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 Contract. The Department does not waive any privileges, rights, defenses, remedies, or immunities available to the Department as an agency of the State of Alabama or otherwise available to the Department. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in this Contract or otherwise available to the Department by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities, or be considered a basis for estoppel.

**21. APPLICABLE LAW.**

21.1 This Contract shall be governed by the laws of the State of Alabama.

**22. TIME OF THE ESSENCE.**

22.1 Time is of the essence in the performance of this Contract.

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Alabama Department of Insurance  
Contract No.:  
Contractor:  
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DEPARTMENT:

CONTRACTOR:

By: \_\_\_\_\_  
Jim L. Ridling  
Commissioner  
Alabama Department of Insurance

By: \_\_\_\_\_  
Taxpayer ID Number:

APPROVED AS TO FORM ONLY:

\_\_\_\_\_  
Legal Counsel  
Alabama Department of Insurance

APPROVED:

\_\_\_\_\_  
Robert Bentley  
Governor, State of Alabama