



**Alabama Department of Insurance  
REQUEST FOR PROPOSALS  
for  
Certified Public Accounting Services  
for all types of insurers**

**RFP#ALDOI-2013-03**

**PROPOSALS MUST BE RECEIVED BY  
3:00 PM CENTRAL TIME ON MAY 31, 2013**

**THIS REQUEST SHOULD BE CAREFULLY REVIEWED.  
FAILURE OF A PROPOSAL TO CONFORM TO THIS  
REQUEST MAY CAUSE REJECTION OF THE PROPOSAL**

**Part 1. Solicitation; Description of Services; Qualifications.**

**1.1. Solicitation of proposals.** The Alabama Department of Insurance (DOI), a department of the state government of Alabama, solicits proposals from qualified Respondents to enter into a contract with DOI to furnish the Services described in this Request for Proposals (RFP) during the period beginning on October 1, 2013, and ending on September 30, 2014. If selected, the Respondent shall execute a contract with DOI in the form of Exhibit "A". The final contract will include a maximum dollar amount determined by the DOI to be the maximum amount that can be invoiced to DOI. Contracts may be awarded to multiple qualified Respondents as a result of this RFP.

**1.2. Description of Services.** The following Services shall be provided under a contract awarded as a result of this RFP on an as-requested or as-needed basis:

**1.2.1.** On behalf of and as directed by the DOI, the contractor will conduct examinations of insurers, producers, brokers, and surplus line brokers in accordance with the Market Regulation Manual of the National Association of Insurance Commissioners (NAIC), the NAIC's Financial Condition Examiners Handbook, the NAIC's Accounting Practices and Procedures Manual, the American Institute of Certified Public Accountants, generally accepted auditing standards, and DOI regulations and instructions; will provide a written report of findings to be incorporated in the report of examination of the insurer; will provide training for examiners, analysts or other DOI personnel on accounting issues; will conduct examinations of surplus line brokers; will review the books and records of persons writing preneed funeral and cemetery contracts; will testify concerning the contractor's examination work as needed in administrative hearings and court proceedings; and will provide such other services within the scope of the described services as may be determined by the DOI.

**1.2.2.** An examination may be limited to the review of books and records of surplus line brokers or other insurance producers.

**1.2.3.** An examination may be limited to the review of the books and records of persons writing preneed funeral and cemetery contracts.

**1.2.4.** For each examination, the contractor will prepare an examination report in accordance with the American Institute of Certified Public Accountants and generally accepted auditing standards, and directions of the DOI.

**1.3. Qualifications.** Only experienced insurance examination firms will be considered for a contract award. Persons or firms that are unable to demonstrate the described qualifications should not submit a response to this RFP. The Respondent must have the following qualifications:

**1.3.1.** A minimum of three Certified Public Accountants (CPA) on staff with ten (10) or more years of financial examination experience. Staff must be licensed by the State of Alabama or any state having reciprocity with the State of Alabama and have no sanctions or restrictions on their licenses.

**1.3.2.** Demonstrated experience in providing documentation of examination procedures, etc., that complies with NAIC accreditation requirements.

**1.3.3.** Demonstrated experience in providing expert witness testimony in administrative or court hearings.

**1.3.4.** Demonstrated knowledge, through experience, of Alabama insurance markets, insurance laws, and insurance regulations.

**1.3.5.** Demonstrated communication skills and ability to work with both industry and regulatory personnel to achieve appropriate and adequate insurance industry regulation in Alabama.

**1.3.6.** Demonstrated qualifications and capacity to perform the work in the timeframes established by the DOI.

**1.3.7.** The contractor's employees providing services required by the contract shall have the qualifications, experience, training, and certifications commensurate with the particular services being performed.

**1.3.8.** Persons signing reports of examination on behalf of the contractor must meet the qualifications provided in the NAIC's Market Regulation Manual, the NAIC's Financial Condition Examiners Handbook, the NAIC's Accounting Practices and Procedures Manual, Alabama Insurance Regulations 97 and 103, and Ala. Code §§ 27-2-10(c) and 27-2-13(a).

## **Part 2. Proposal Content.**

**2.1. Responsiveness.** The proposal must be responsive to all requirements set forth in this RFP and prepared in the form described in Part 3. A proposal determined by DOI to be non-responsive shall be rejected and shall not be considered for a contract award.

**2.2 Unacceptable terms or conditions.** A proposal containing terms, conditions, or qualifications deemed unacceptable to the DOI may be rejected as non-responsive. Without limiting the generality of the preceding sentence, (i) pricing in accordance with the following Sections 2.3.7 and 2.3.8 shall be firm pricing for the duration of the awarded contract, and (ii) subcontracting or assignment of the contract or of performance of specific aspects of the Services is not permitted.

**2.3. Required content.** To be responsive, a proposal must include the following:

**2.3.1. Identification.** The proposal must contain: the Respondent's correct name; mailing address; physical address if different from the mailing address; telephone

number(s); facsimile number(s); electronic mail address(es); Federal Employer Identification Number if Respondent is a business entity, or Social Security Number if Respondent is an individual or sole proprietorship.

**2.3.2. Contact Persons.** The proposal shall contain the names, titles, telephone and facsimile numbers, and electronic mail addresses of not less than two (2) individuals designated as the Respondent’s contact persons for purposes of the proposal. Each designated individual must be authorized to respond to questions from DOI.

**2.3.3. Authority to transact business.** If the Respondent is a non-Alabama business entity, the proposal shall affirmatively state that the Respondent has qualified or registered, as appropriate, through the Alabama Secretary of State to transact business in Alabama as of the proposal date.

**2.3.4. Agreement to contract.** The proposal shall include an unconditional agreement to enter into a contract with the DOI in the form of Exhibit “A”, which will be modified to include the services, pricing and expense reimbursement terms and as may be necessary for the DOI’s compliance with State and Federal laws, within the time specified in the notice of award if Respondent is notified of a contract award.

**2.3.5. Qualifications.** The proposal must specifically detail the names, qualifications, education, training, experience and certifications of all individuals who will or may provide services under any contract resulting from this RFP. Respondent must warrant that each individual, including any replacement, possesses or will possess as of the time of performance under the contract the qualifications, education, training, experience and certifications necessary to perform the services under the contract. Each individual must be an employee of the contracted firm or a subcontractor under the direct supervision and responsibility of the contracted firm, but only if the subcontractor is listed in the proposal by name, qualifications, etc., as required in Section 2.3.7.

**2.3.6. Pricing – personnel rates.** The proposal must include a completed pricing form in the format described in Section 2.3.8, which specifies the hourly rates of Respondent’s personnel and identifies the individuals who will be performing services under a contract awarded as a result of this RFP. Prices subject to change will not be considered. All personnel identified must be employees of Respondent or independently contracted with the Respondent to act under the direct supervision and responsibility of the contracted firm. Personnel rate pricing must exclude “travel time.”

**2.3.7. Pricing – format.** Please present a fee schedule as follows, listing names, function to be performed, professional designation, (example: CFE) and hourly rates of each individual who will provide services under the contract:

<u>Employee Classification</u>	<u>Per Hour Charge</u>
CPA – Level I (CPA with 10 or more years relevant experience) .....	\$
CPA – Level II (CPA that is not Level I) .....	\$

Individual(s) who will provide services:	Employee Classification	Professional Certification(s), if applicable (CPA, etc.)	Hourly rate

Individual(s) who will provide services:	Employee Classification	Professional Certification(s), if applicable (CPA, etc.)	Hourly rate

**2.3.8. Pricing – expenses.** If awarded a contract, the Respondent shall bear all costs and expenses for performance except expenses incurred for authorized travel shall be reimbursed. The DOI shall reimburse a contractor only for travel expenses if approved in writing by the Department in advance. The proposal shall specify whether Respondent shall be paid for expenses incurred for authorized travel on an actual cost basis or a per diem basis. Actual cost basis cannot include multipliers, carrying or processing charges, or other amounts in excess of actual costs. To the extent Respondent proposes to charge on a per diem basis in lieu of reimbursement for actual costs, the 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 National Association of Insurance Commissioners (NAIC) as part of the NAIC’s *Classifications, Minimum Qualifications and Suggested Compensation for Zone Examiners*. Per diem reimbursement may not include “travel time.”

**2.3.9. References.** The proposal must provide a list of all states, agencies or other entities for which Respondent has provided services similar to those requested in this RFP within the four (4) years preceding the proposal date. The proposal must include names, telephone and facsimile numbers, and electronic mail addresses of contact persons at each named entity.

**2.3.10. Cancellations.** The proposal must provide a list of all contracts that Respondent executed or accepted for examination services within the two (2) years preceding the proposal date and that were canceled or terminated by any state agency or other entity prior to completion. If applicable, the proposal must include a detailed explanation for each such cancellation or termination and the final resolution of the matter. The proposal must include the names, telephone and facsimile numbers, and electronic mail address of each such agency’s or entity’s contact individual with knowledge of the cancellation and the reasons for the cancellation.

**2.3.11 Administrative action; litigation.** The proposal must specify whether during the three (3) years preceding the proposal date, the Respondent, including any parent or subsidiary business entity and/or office location, has been involved in any administrative proceeding or litigation with any federal, state, or governmental entity. If applicable, the proposal must set forth the style and case number of the proceeding, the jurisdiction in which the proceeding is or was pending, a description of the issues, and a description of the resolution or current status if still pending as of the proposal date.

**2.3.12. Conflicts or Potential Conflicts of Interest.** The proposal must identify any conflicts or potential conflicts of interest of Respondent or Respondent’s employees who will or may provide services under any contract resulting from this RFP. The proposal must acknowledge that Respondent possesses the necessary independence in the provision of Services under the contract notwithstanding any disclosed existing or potential conflicts of interest.

**2.3.13. Financial disclosure.** The proposal must include a properly completed and executed disclosure statement required pursuant by Ala. Code §§ 41-16-80 et seq. (2001). The disclosure statement form and instructions are accessible on the website of

the Attorney General of Alabama at: <http://www.ago.state.al.us/Page-Vendor-Disclosure-Statement-Information-and-Instructions>

**2.3.14. Warranties.** The proposal shall include the following:

**2.3.14.1.** Respondent warrants that neither Respondent nor any person or entity that will participate financially in the contract has received compensation from DOI for participation in preparation of the RFP and any resulting contract.

**2.3.14.2.** Respondent warrants that it has not given, offered to give, and does not intend to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to any public servant or employee in connection with this RFP and any resulting contract.

**2.3.14.3.** Respondent warrants that it is not currently delinquent in the payment of any taxes owed the State of Alabama.

**2.3.14.4.** Respondent warrants that neither Respondent nor anyone acting for Respondent has directly or indirectly communicated Respondent's proposal or the contents thereof to any competitor or any other person engaged in the type of business described in this RFP, has colluded or conspired with any other respondent in devising proposals in response to this RFP, or has otherwise violated the antitrust laws of Alabama or the Federal antitrust laws in connection with the Respondent's proposal.

**2.3.15. Other information.** The proposal may contain such information not specifically required by this RFP as the Respondent may elect to submit for the DOI's consideration.

### **Part 3. Proposal Format.**

**3.1. Legibility and organization.** The proposal must be typed or printed by means of word processing software. It should clearly state the RFP to which the response is directed. The proposal shall identify the content requirements in Section 2.3 above by subsection number. To the extent a particular subsection in Section 2.3 is not applicable, that subsection should be identified with a notation to the effect that it is not applicable.

**3.2. Supporting documents and materials.** A proposal must include copies of all documents or other materials Respondent desires the DOI to consider in evaluating the proposal. Each document or item submitted shall be identified to a specific portion of this RFP by citation to the particular subsection number. The DOI may reject and not consider any documents or other materials that are not included or submitted with the proposal.

**3.3. Claim of protection for proprietary information.** Proposals will become a public record as provided in Section 5.8. To the extent a Respondent deems any specific portion of its proposal to include a "trade secret" as defined in Ala. Code § 8-27-2(1), such portion(s) shall be clearly identified. Said designation shall not be binding on the DOI but the DOI will review and consider the designation. Wholesale designation of a proposal or substantial parts of a proposal as "trade secrets" shall not be accepted by DOI.

**3.3. Binding.** It is requested that the proposal and all supporting documents or materials be bound on the left in a manner that is secure, does not obscure the text, and allows the proposal to lie reasonably flat when open. Use of a three-ring binder is acceptable.

**3.4. Submittal letter.** The first page of the proposal must be a submittal letter signed by the Respondent, if an individual, or by an authorized representative of a Respondent business entity, which includes the following:

The representations and information in this proposal are true and correct as of the date of this proposal. The submitting person or entity represents that it is ready and able to execute a contract if a contract is awarded based on this proposal. This proposal shall remain firm and be valid through the date of the contract resulting from this RFP if awarded. The submitting person or entity understands that DOI's contract form is not negotiable and will not be revised unless DOI determines, in its sole discretion, that a revision would be in the best interests of DOI and the State of Alabama.

The undersigned represents that the only person or persons, entities, or parties interested in the proposal as principals are named in this proposal. This proposal is made without collusion with any other person, persons, company or parties submitting a proposal. This proposal is in all respects fair and made in good faith without collusion or fraud. If the submitting party is a business entity, the undersigned has full authority to bind the entity in a contract with DOI.

The submitting person or entity acknowledges that a material false statement in or omission from this proposal and all material submitted with this proposal may cause rejection of the proposal or the withholding of a contract, or may constitute a breach of an awarded contract.

#### **Part 4. Submission of Proposal.**

**4.1. Delivery format.** The original proposal, including the submittal letter required by Section 3.4 containing an original signature in ink, and three (3) identical copies of the proposal shall be sent to the Department in a sealed envelope separate from the delivery envelope, addressed as provided in Section 4.2 below. At its election, the Respondent may include a brief cover letter identifying the sealed envelope as containing a proposal in response to the RFP or the proposal envelope may be identified as containing a proposal in response to this RFP.

**4.2. Delivery address.** The proposal should be addressed to Reyn Norman, General Counsel, Alabama Department of Insurance, at one of the following:

By U. S. Postal Service:	Post Office Box 303351 Montgomery, AL 36130-3351
By hand or commercial courier:	RSA Tower Suite 502 201 Monroe Street Montgomery, AL 36104 Telephone: 334-269-3550

Please Note: All deliveries by the United States Postal Service are made to an off-site, central state government mail facility. Forms of USPS expedited delivery may not be expedited.

**4.3. Time for submission.** To be considered, a proposal must be received by the DOI and time-stamped **before 3:00 PM Central Time on May 31, 2013**. Identified proposals received after the deadline will be returned unopened. Proposals submitted after the deadline will not be considered under any circumstances.

**4.4. Alterations or withdrawals.** A proposal cannot be altered or amended after it has been delivered to the DOI. A proposal may be withdrawn before the deadline specified in Section 4.3, but may not be withdrawn after the deadline.

**4.5. Facsimile or electronic response.** A proposal submitted by telephonic facsimile or electronic means will be rejected as non-responsive.

**Part 5. Other Terms.**

**5.1. Anticipated Timetable.** DOI currently anticipates that the selection of a qualified firm and execution of the contract will proceed according to the following approximate timetable. DOI reserves the right, in its sole discretion, to revise all deadlines related to this RFP and to post notice of these revisions on the DOI website ([www.aldoi.gov](http://www.aldoi.gov)).

Issuance of Request for Proposals	May 1, 2013
Deadline for Written Questions	May 15, 2013
Answers to Written Questions Posted on DOI Website	May 22, 2013
Deadline for Proposal Responses	May 31, 2013
Contracts executed	July 16, 2013

**5.2. Contact Person.** Other than questions about the RFP addressed in Section 5.3, all requests for other information concerning this RFP prior to opening must be directed **in writing** to Reyn Norman, General Counsel, Alabama Department of Insurance, Post Office Box 303351, Montgomery, Alabama 36130-3351, or by facsimile at (334) 240-7581, or by e-mail to [Reyn.Norman@insurance.alabama.gov](mailto:Reyn.Norman@insurance.alabama.gov). Prior to contract award, the Respondent or Respondent's agent shall not contact other DOI employees regarding this RFP. Following the award, DOI will designate a contract administrator to whom requests for information concerning the RFP or awarded contract should be directed.

**5.3. Written Questions; DOI's Response.** By the date indicated above in Section 5.1, Respondents must submit any questions about the RFP **in writing** to Reyn Norman, General Counsel, by mail, facsimile, or e-mail as provided in Section 5.2. DOI will respond to these written questions in two ways: (1) DOI will fax or e-mail its response to all potential respondents that submit a fax or e-mail request for such a response; and (2) DOI will post its response on the DOI website as an amendment to the RFP posting. DOI will not mail any responses. DOI will make every reasonable effort to post, e-mail and fax responses by close of business on the date indicated above in Section 5.1 to written questions received by the deadline indicated above.

**5.4. Evaluation Criteria; Evaluation Committee.** Proposals will be evaluated by DOI’s Evaluation Committee according to the criteria set out in the table below:

<b>Criteria for DOI Evaluation of Proposal Responses:</b>	
(1) <i>Experience &amp; Qualifications:</i> Specialized expertise, capabilities, experience and technical competence of the specific individuals who are anticipated to perform the services described in this RFP. Adequate resources to perform the services. References should be clear as to the type of work performed. Clearly defined proposed project management techniques. Demonstrated ability and history in handling special project constraints. Quality, reliability and ability to provide the quality services detailed in this RFP.	60 points
(2) <i>Cost:</i> Proposed costs, reasonableness of costs, hourly rates and costs assigned to personnel.	30 points
(3) <i>Knowledge of Alabama Insurance Market:</i> Demonstrates understanding of specific characteristics of the Alabama insurance market as exhibited in prior work performed for the DOI. An applicant with no Alabama DOI prior experience but with significant experience with Alabama insurers and with other state insurance regulators will receive credit in this category.	5 points
(5) <i>Clarity of response:</i> Clarity and content of respondent’s proposal, including their understanding of the nature of the solicitation, their work plan, and their communication skills.	5 points
<b>TOTAL:</b>	<b>100 points</b>

**5.5. Contract.** Each Respondent whose proposal is deemed acceptable by DOI shall be notified of an award and shall execute and return a final contract within the time period specified in the notice. The contract, when fully executed, shall be the entire agreement between the DOI and contracting Respondent.

**5.6. Rejection of proposals.** The DOI may reject all proposals and not award a contract based on this RFP if, in the DOI’s judgment, a contract award will not serve the best interests of DOI and the State of Alabama. DOI may issue another RFP for the services as described in this RFP or similar services at any time.

**5.7. Waiver of minor deviations.** In its sole discretion, the DOI may waive minor deviations from the requirements expressed in this RFP.

**5.8. Public Record.** All proposals in response to this RFP become the property of DOI. Except as to portions of a proposal designated as containing “trade secrets” as provided in Section 3.3, which designation has been accepted by the DOI, all proposals and any resulting contract(s) are public records and subject to review by the public upon request.

**5.9. Proposal preparation costs.** The DOI shall not pay or reimburse Respondent for the cost or expense of preparing and submitting a proposal.



Exhibit "A"  
2013 DOI RFP – Certified Public Accounting Services

**CONSULTING CONTRACT**  
**Certified Public Accounting 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, 2013. 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, 2014, 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 examinations of insurers, producers, brokers, surplus line brokers, and persons writing preneed funeral and cemetery contracts, all in accordance with the prescribed or permitted statutory accounting principles of the National Association of Insurance Commissioners' and the American Institute of Certified Public Accountants, generally accepted auditing standards, and Department regulations and instructions, as applicable;

2.1.2 As may be necessary in the context of a particular examination, Contractor shall coordinate the activity of all National Association of Insurance Commissioners (NAIC) zone examiners.

2.1.3 Contractor shall timely prepare and submit an accurate written examination report in the format prescribed by the Department.

2.1.4 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.

2.1.5 Contractor will provide training for examiners, analysts and other Department personnel on accounting issues, as may be requested by the Department;

2.1.6 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 Services shall be performed by Contractor through individuals employed or otherwise engaged by the Contractor who have the qualifications, experience, training, and certifications commensurate with the particular Services being performed.

3.3 Performance of the Services shall be overseen and supervised on the Contractor's behalf by an individual who is a Certified Public Accountant.

3.4 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.

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

3.6 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 individual classification in invoicing the Department for Services performed during the entire Term:

<u>Individual Classification</u>	<u>Per Hour Charge</u>
CPA – Level I (CPA with 10 or more years relevant experience)	\$
CPA – Level II (CPA that is not Level I)	\$

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 the individuals acting on its behalf 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 prepay 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, individual performing the service, performing individual'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 individuals either employed by the Contractor or otherwise engaged under separate contract with the Contractor and subject to the direct supervision and responsibility of the Contractor. All individuals to provide services on behalf of the Contractor must have been listed in the proposal submitted by the Contractor.

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 and not as an employee of the Department. The Department does not reserve any right to exercise the right of control over the means and method by which Contractor performs the Services. The Department will not provide fringe benefits, such as health insurance, paid vacation, or other employee benefits for the benefit of the Contractor or any individuals employed or otherwise engaged by the Contractor. The Contractor and individuals employed or otherwise engaged by Contractor are not entitled to benefits of the State Personnel System or the State Merit System laws.

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 the individuals it employs or otherwise engages.

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 individuals acting on behalf of Contractor performing Services under this Contract who are subject to the workers' compensation laws.

6.3.2 Vehicle liability insurance covering the individual in the individual's operation of, or responsibility for the operation of, the vehicle, for any individual acting on behalf 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 individuals employed or otherwise engaged by Contractor. 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 the individuals employed or otherwise engaged by Contractor.

## **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 individuals acting on behalf of the Contractor, 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.

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

## Exhibit "B"

### Confidentiality Agreement

\_\_\_\_\_, hereinafter referred to as "Contractor," acknowledges and agrees that it has been hired, or is filing a proposal to be hired, as an independent contractor of the **Alabama Department of Insurance** ("Licensee"). Contractor acknowledges and agrees that this agreement (the "Agreement") confirms the manner in which Contractor will treat the Wolters Kluwer Tax and Accounting ("Wolters Kluwer") proprietary software system known as Wolters Kluwer Tax and Accounting TeamMate®, among other matters.

1. Proprietary Information. Contractor acknowledges and agrees that Wolters Kluwer's TeamMate® software (including without limitation the computer programs comprising the system, the source code and object code related thereto and all related documentation, tools, and templates), as any of the foregoing may be modified for, by or on behalf of Licensee or otherwise, now or in the future, is the confidential and proprietary information of Wolters Kluwer ("Proprietary Information"). Contractor shall keep in confidence and prevent the unauthorized duplication, use and disclosure of Proprietary Information. Proprietary Information may only be used for the purpose of assisting Licensee with its authorized use of this software. The Proprietary Information may not be used to compete with Wolters Kluwer, including without limitation to invent, create, modify, adapt, manufacture or provide any computer software product, feature or enhancement, or service that would compete with or be used in lieu of Wolters Kluwer's computer software products or services. Proprietary Information may not be copied; may not be removed from Licensee's premises; and may not be disclosed to third parties, except to: (1) full-time employees of Licensee and Contractor, who have a need-to-know it in connection with Licensee's authorized use; and (2) regulatory authorities under an express obligation of confidentiality. Without limiting the foregoing restrictions, Contractor shall, upon completion of its services to Licensee or otherwise upon demand, at Wolters Kluwer's option either return to Wolters Kluwer or destroy and certify in writing to Wolters Kluwer the destruction of any and all documents, papers and materials and notes thereon in Contractor's possession.

2. Limited Access. Contractor shall limit access to Proprietary Information to only those third parties authorized under paragraph 1 above and those of its employees having a need-to-know it in connection with Licensee's authorized use and shall limit further dissemination within Contractor to this group of employees. When Proprietary Information is disclosed to any of these employees, Contractor shall inform them in writing of the claim of proprietary status for the Proprietary Information, and the restrictions on duplication, use and dissemination, and disclosure to third parties contained in this Agreement, and ensures that they abide by all such restrictions.

3. Liability and Injunctive Relief. Contractor agrees that it shall protect the confidentiality of the Proprietary Information through the exercise of (1) the precautions set forth in this Agreement and (2) no less protection and care than it customarily uses in preserving and safeguarding its own proprietary information. Contractor acknowledges that Wolters Kluwer shall suffer irreparable damage in the event of a breach or threatened breach of any provision of this Agreement. Accordingly, in such an event, Wolters Kluwer shall be entitled to preliminary and final injunctive relief, as well as any and all other applicable remedies of law or equity, including the recovery of damages.

4. Loss of Status. Notwithstanding anything to the contrary contained in this Agreement, Contractor shall not be obligated to treat as confidential and proprietary any information disclosed which:

- a. is or becomes publicly available without breach of this Agreement by Contractor;
- b. is rightfully obtained by Contractor without any restriction from third parties not under any obligation of confidentiality;
- c. is compelled by law to be released by Contractor in response to a subpoena, court order or other legal process and is not subject to a protective order or other standard of confidentiality; provided, that if disclosure is purportedly compelled by law to be released, Contractor shall promptly inform Wolters Kluwer and, prior to disclosure, shall take, at the expense of Wolters Kluwer, all reasonable, legal steps to oppose such disclosure; and provided that disclosure may be made only to the extent expressly required under such subpoena, court order or other legal process; or
- d. is rightfully known to Contractor (as evidenced by Contractor's files), without obligation of confidentiality or is developed by Contractor without reliance on Proprietary Information.

5. No License. Contractor acknowledges and agrees that: (1) the Proprietary Information contains valuable trade secrets; (2) the Proprietary Information is the property of Wolters Kluwer; and (3) all rights to Proprietary Information are reserved by Wolters Kluwer. No license, express or implied, by estoppel or otherwise, under any trade secret right, trademark, patent, copyright or other proprietary right or applications which are now or may hereafter be owned by Wolters Kluwer, is granted by the disclosure of information under this Agreement.

6. Entire Agreement and Amendments. This Agreement constitutes the entire agreement on this subject matter between Contractor and Wolters Kluwer. All prior agreements, understandings and proposals, oral or written, between Contractor and Wolters Kluwer relating to this subject are superseded by this Agreement. This Agreement may only be modified or amended by a writing signed by both parties. Both parties explicitly acknowledge and agree that all subsequent oral agreements, oral understandings and oral proposals are null and void. Contractor's obligations under this Agreement shall survive termination of this Agreement for any reason.

7. Waiver and Severability. No provision of this Agreement shall be waived and no breach excused unless the waiver or consent is in writing and is signed by the party that is claimed to have waived or consented. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, the remaining provisions shall continue in full force and effect as if the Agreement had been executed without the invalid provision.

8. Applicable Law. This Agreement shall be governed by law of the State of Alabama, without regard to its choice of laws rules.

9. Publicity. Contractor agrees to keep the terms and conditions of this Agreement confidential. Disclosure to third parties is prohibited without Wolters Kluwer's prior written consent.

If the foregoing accurately reflects your understanding of our confidentiality and nondisclosure agreement, please execute and return the enclosed copy of this Agreement.

(this section for contractor)

ACCEPTED AND AGREED TO THIS \_\_\_\_ day of \_\_\_\_\_, 2013.

Print Name of Organization: \_\_\_\_\_

Sign Name: \_\_\_\_\_

Print Individual's Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

(this section for State Insurance Department)

ACCEPTED AND AGREED TO THIS \_\_\_\_ day of \_\_\_\_\_, 2013.

Alabama Department of Insurance

\_\_\_\_\_  
Jim L. Ridling  
Commissioner of Insurance