

Professional Services Agreement

This Agreement is made on [DATE] between [LEGAL NAME OF CONTRACTOR] (“Contractor.”), a [TYPE OF COMPANY], and the New Hampshire Department of Insurance (the “Department”), to furnish certain professional services with respect to the Department’s Market Conduct Examination of [NAME OF COMPANY UNDER EXAMINATION] (“the Company” or “Companies”) that is subject to regulation by the Department upon the following terms and conditions:

I. CONTRACTOR SERVICES AND RESPONSIBILITIES

The attached Scope of Services Addendum (“Scope of Services”) sets forth the specific activities Contractor must perform for the Department pursuant to this Agreement. The examination work performed pursuant to this Agreement, as further detailed in the Scope of Services, must be performed by Contractor or sub-consultants that are pre-approved by the Department. The attached Scope of Services will be enforceable in accordance with its terms and the terms of this Agreement.

II. IMMUNITY FROM LIABILITY UNDER RSA 400-A:37

The parties agree that Contractor and its employees are considered examiners retained by the commissioner pursuant to Title XXXVII, Section 400-A:37, New Hampshire Revised Statutes and therefore will be accorded the protections, including without limitation the immunity from liability, for examiners contained therein.

III. TERM

A. *Term of Agreement.* The term of this Agreement shall be for the period from the effective date of this agreement through [DATE] unless terminated earlier in accordance with the terms, herein, which term may be extended by the mutual agreement of the parties.

B. *Termination.* This Agreement and any addendum may be cancelled at any time by the Department upon written or electronically conveyed notification to Contractor, or at any time by Contractor upon written or electronically conveyed notification to the Department. If this Agreement and/or any addendum are cancelled in accordance with this paragraph, Contractor shall be entitled to fees and reimbursement of its travel expenses for Services performed and travel incurred prior to said cancellation. To seek payment of fees and reimbursement of travel expenses under this paragraph, Contractor shall submit a copy of invoices, detailing the fees and the travel expenses for which reimbursement is sought, to the Department for review. After review, the Contractor will submit any approved fees and requests for reimbursement to the Company for direct payment to Contractor. The Department reserves the right to disapprove any fee or expense that it

reasonably deems to be excessive or unrelated to the Services required under this Agreement and/or Scope of Services Addendum.

IV. GENERAL PROVISIONS

- A. *Independent Contractor.* Contractor shall perform the services as an independent contractor and not as an agent or employee of the Department or the State of New Hampshire, and, as such, shall be responsible for all applicable federal, state, and local tax withholding payments and filings on its employees. Contractor is responsible for the management or supervision of its owners, employees, and representatives.
- B. *Sub-consultants.* Subject to the approval of the Department, Contractor may contract for or employ, at its expense, such professionals, as Contractor deems necessary for the completion of the Services. Contractor may hire the services of sub-consultants with the Department's advanced written approval. Contractor is as responsible for the performance of its sub-consultants as it would be if it had rendered these services itself. Nothing in the foregoing procedure shall create any contractual relationship between the Department or Company and the professionals or sub-consultants employed by Contractor under the terms and conditions of this Agreement. Contractor is solely responsible for payment of any sub-consultants.
- C. *Ownership and Use of Documents.* All work product, reports, work papers, records, files, documents, schedules, computations, and correspondence created by or in the possession or control of Contractor or its sub-consultants and related to the Scope of Services to be provided, including those in electronic format, whether complete or incomplete, shall be the exclusive property of the Department. Contractor may retain a copy of and its sub-consultants its working papers for its records.
- D. *Security and Confidentiality:* Contractor and its sub-consultants shall comply fully with all security procedures of the Department (or that bind the Department) in performance of this agreement. With respect to any information supplied in connection with this Agreement and designated as confidential, or which Contractor and its sub-consultants should reasonably believe is confidential based on its subject matter or the circumstances of its disclosure, Contractor and its sub-consultants agrees to protect the confidential information in a reasonable and appropriate manner, and use and reproduce the confidential information only as necessary to perform its obligations under this Agreement and for no other purpose. Without express written consent of the Department, Contractor and its sub-consultants shall not divulge to third parties any confidential information obtained by Contractor or its agents, sub-consultants, officers, or employees in the course of performing work under this Agreement and/or the Scope of Services, including but not limited to security procedures, business operations information, or commercial proprietary information in the possession of the Department. To ensure confidentiality, Contractor shall take appropriate steps as to its personnel, agents, peer reviewer(s), and sub-contractors. The provisions of this paragraph shall

survive this Agreement.

- E. *Public Records*: Work papers and other information obtained during the course of an examination, analysis or investigation are confidential under New Hampshire Statutes, and are exempt from the public records law in New Hampshire. As such, Contractor and its sub-consultants shall consult with the Department and obtain Department approval before disclosure of any records except as expressly provided for in this Agreement and the Scope of Services. If Contractor or its sub-consultants receives a request for records or a subpoena, Contractor shall furnish copies of the request and of any records in its possession and its sub-consultants possession that are responsive to the request to the Department. The Department will either defend the request or produce any public records or subpoenaed records to the requesting party, if any of the records are determined to be subject to disclosure. In the event that a judge in a court of competent jurisdiction orders Contractor or its sub-consultants to produce records in its possession directly to a court or other party, Contractor and its sub-consultants shall comply with the order and shall furnish a copy of any records produced to the Department.
- F. *Conflict of Interest*. The Contractor representative signing this agreement affirms that to the best of its knowledge, no conflict of interest exists that must be disclosed in relation to this Agreement and the Scope of Services. In the event of a change in either the private interest or services under this Agreement, any questions regarding a possible conflict of interest that may arise as a result of a change in circumstances shall be promptly disclosed in writing to the Department. For purposes of this Agreement, promptly means within five (5) business days of the date Contractor becomes aware of the possible conflict of interest.
- G. *Communication Between Parties*. Contractor shall report directly to [Director/Chief Examiner] regarding performance of the scope of Services. Communication between the Company and Contractor shall be limited to the solicitation of information by Contractor from the Company regarding the scope of Services Contractor shall not issue any draft or final report to the Company.
- H. *Equipment*. Contractor shall provide, at its own expense, all computers and other equipment needed to perform the Services regarding this Agreement. If the Company requires Contractor and Contractor's sub-consultants to use Company owned/possessed computers to perform the examination, Contractor will be solely responsible for returning those computers to the Company and for any liability or property damage or any other claim for damages that may arise from Contractor's use of the Company's computers.
- I. *Insurance Requirements*. During the Agreement term, Contractor, at its sole expense, shall provide commercial insurance (e.g.: worker's compensation, employer's liability, commercial general liability) of such a type and with such terms and limits as may be reasonably associated with the providing of Services under this Agreement, covering all employees, sub-consultants, and assignees

engaged in any work under this Agreement. Providing and maintaining adequate insurance coverage is a material obligation of Contractor. The limits of any coverage under each policy maintained by Contractor and its sub-consultants shall not be interpreted as limiting Contractor liability and obligations under the Agreement. The Contractor shall furnish its and its sub-consultants certificate(s) of insurance to the Department prior to work commencing under this Agreement upon request during the pendency of the agreement. Certificates of insurance associated with this paragraph shall be attached to this Agreement and incorporated herein by reference.

- J. *Notice of Other Engagements.* Contractor will exert reasonable commercial efforts, through its representatives, to continually evaluate current client relationships and prospective clients, regarding independence and conflict of interest in relation to the Scope of Services it and its sub-consultants are providing to the Department. In doing so, Contractor must promptly notify the Department if any conflicts arise during the term of this Agreement. For purposes of this Agreement, promptly means within five (5) business days of the date Contractor becomes aware of the possible conflict of interest.
- K. *Change of Control.* Contractor shall not assign, or otherwise transfer any interest in this Agreement without prior written notice, which shall be provided to the Department at least fifteen (15) days prior to the assignment, and a written consent of the Department. For purposes of this paragraph, a Change of Control shall constitute assignment. "Change of Control" means (a) merger, consolidation, or a transaction or series of related transactions in which a third party, together with its affiliates, becomes the direct or indirect owner of fifty percent (50%) or more of the voting shares or similar equity interests, or combined voting power of the Contractor, or (b) the sale of all or substantially all of the assets of Contractor.
- L. *Workers' Compensation.* By signing this Agreement, Contractor agrees and certifies that it is in compliance with or exempt from, the requirements of N.H. RSA 281-A (Workers' Compensation) and any other state's applicable workers' compensation law. To the extent Contractor is subject to the requirements of RSA 281-A and any other state's applicable workers' compensation law, Contractor shall maintain, and require any sub-consultant or assignee to secure and maintain, payment of Workers' Compensation insurance in connection with activities which the sub-consultant or assignee proposes to undertake for Contractor relative to this Agreement. Contractor shall furnish any and all applicable Workers' Compensation certificates of insurance it and its sub-consultants have obtained to the Department prior to work commencing under this Agreement. The certificate(s) of insurance associated with this paragraph shall be attached to this Agreement and incorporated herein by reference. The Department shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor or any sub-consultant or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws or any other

state's applicable workers' compensation laws in connection with the performance of services under this Agreement.

M. *Third Parties.* The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

V. COMPENSATION

- A. The Company shall make payment directly to Contractor for fees and any reimbursement for travel expenses resulting from Services performed by Contractor relating to the scope of services within thirty (30) days of receipt by the Company of invoices or requests for reimbursement of travel expenses that have been approved by the Department. Contractor shall contemporaneously record all time worked and travel expenses incurred and make those records available to the Department as requested.
- B. A copy of all invoices, fees and requests for reimbursement of travel expenses of Contractor shall be submitted to and approved by the Department prior to being submitted to the Company. The Department reserves the right to disapprove any fee or expense that it reasonably deems to be excessive or unrelated to the Services required under this Agreement and/or Addendum.
- C. Requests by Contractor and its sub-consultants for reimbursement of travel expenses incurred shall be determined in accordance with the provisions of the Department, and shall be accompanied by receipts for all included out-of-pocket expenses.
- D. Contractor shall not invoice or attempt to collect from the Company any fees or expenses related to the Services performed except as provided in this Agreement and/or Addendum.
- E. Contractor shall not be entitled to receive, nor shall it seek to receive, compensation or reimbursement of travel expenses or any other expenses or fees from the Department or the State of New Hampshire in connection with the Scope of Services under this Agreement and/or any Addendum. Contractor understands that the Company will be responsible for any and all payment due under this Agreement and expressly agrees that it shall not hold the Department or the State of New Hampshire directly liable for the payment of any fees or costs due under this Agreement.

VI. INDEMNIFICATION AND LIMITATION OF LIABILITY

The Department does not indemnify Contractor or its sub-consultants for any liability and does not waive sovereign immunity. The Department shall not be liable for any

actions of Contractor or its sub-consultants that fall outside the scope of duties in the performance of this Agreement.

Contractor shall be liable to the Department for loss, cost, damage, or expense sustained through professional malpractice, bad faith, intentional acts or gross negligence by Contractor or its sub-consultants, but only to the extent of payment for services performed pursuant to this Agreement. The Department shall not be liable for any costs incurred by Contractor or its sub-consultants arising under this paragraph. The terms within this paragraph shall survive the termination of this Agreement.

VII. STATUTORY REQUIREMENTS

- A. During the engagement services under any Addendum, Contractor shall promptly communicate in writing to the Department any instances of material findings along with any documents or other proof of such findings.
- B. Contractor shall not be responsible for the fraud or other illegal acts committed by the Company, but shall promptly bring to the Department's attention any evidence discovered by Contractor that fraud or other illegal acts may have occurred.
- C. Contractor shall perform the Services in a manner consistent with the provisions of RSA 400-A:37 and as provided in the NAIC's *Market Regulation Handbook*.

VIII. AUTHORITY OF AGREEMENT

- A. This Agreement, including the attached Scope of Services, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. Only a written instrument signed by the Department and Contractor may amend this Agreement or the Agreement's Scope of Services.
- B. If a court deems any provision of this Agreement or the Agreement's Scope of Services Addendum void or unenforceable, that provision shall be enforced only to the extent that it is not a violation of law or is not otherwise enforceable, and all other provisions shall remain in full force and effect.

IX. NON-SOLICITATION

During the term of the Agreement, and for a period of one year following its expiration or termination, the Department will not actively solicit, employ or otherwise engage any of Contractor's employees (including former employees) who were involved in the Agreement. For avoidance of doubt, the foregoing does not prohibit the Department from employing individuals who were not involved in the Agreement or who apply for positions in response to internal postings, employment advertisements, or other general

solicitations of employment, whether such applications are during the Agreement or thereafter.

X. OTHER MATTERS

Neither party shall be liable to the other for any delay to perform any of the Services or obligations set forth in this Agreement due to causes beyond its reasonable control. If any provision of this Agreement is determined to be invalid under any applicable law, it is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable.

Contractor will not undertake work that is beyond the Services set forth in the Agreement. Either party may request changes to the Scope of Services. To be effective, a change in Services must be in writing and signed by both parties.

No delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver. No waiver or discharge shall be valid unless in writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced.

This Agreement shall be governed, interpreted and construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party. Any actions arising out of this Agreement shall be brought and maintained in New Hampshire Superior Court, which shall have exclusive jurisdiction thereof.

This Agreement, in conjunction with the Scope of Services Addendum, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement.

[NAME OF CONTRACTOR]

New Hampshire Department of Insurance

BY: _____

BY: _____

Name:

Name:

Title:

Title: Commissioner

Date:

Date: