

## AGREEMENT FOR LEGAL SERVICES

THIS AGREEMENT FOR LEGAL SERVICES (the "Agreement") is effective as of the 15<sup>th</sup> day of August, 2013 by and between Fred A. Townsend, III ("Townsend"), a member of the firm of Schmittinger & Rodriguez, P.A., and the State of Delaware Department of Insurance (the "State").

### WITNESSETH:

WHEREAS, the Insurance Commissioner of the State of Delaware ("Commissioner") has been advised by the Delaware Compensation Rating Bureau ("DCRB"), which is the workers compensation advisory organization designated by the Commissioner pursuant to 18 Del. C. §2607, that the DCRB will submit a filing relating to rates or prospective loss costs on or about September 25, 2013; and

WHEREAS, 18 Del. C. §2612(e) provides in part: "Upon the filing of any application by a workers compensation advisory organization with the Commissioner relating to rates or prospective loss costs, the Commissioner shall, with the consent of the Attorney General, retain a member of the Delaware Bar to represent the interests of Delaware workers compensation rate-payers during the Commissioner's consideration of the application (the "ratepayer advocate"); and

WHEREAS, the Commissioner desires to retain Townsend as the Ratepayer Advocate, pursuant to 18 Del. C. §2612(e), based on a determination that Townsend is qualified to serve as Ratepayer Advocate, in that he is a member of the Delaware Bar in good standing, has served as the Deputy Insurance Commissioner from 1994-2000, and has knowledge of administrative law, insurance law, insurance company regulation, and insurance rate proceedings; and

Whereas, the Attorney General has consented to the retention of Townsend as the Ratepayer Advocate by the Commissioner;

NOW THEREFORE, in consideration of the premises, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Townsend and the State (collectively the "Parties") hereto agree as follows:

1. Pursuant to 18 Del. C. §2612(e), Townsend is hereby appointed and employed as Ratepayer Advocate to represent the interests of Delaware workers compensation rate-payers during the Commissioner's consideration of the DCRB's 2013 application relating to rates or prospective loss costs, including any appeals thereof.
2. In his capacity as Ratepayer Advocate, Townsend shall comply with the provisions of 18 Del. C. 2610 (e), (f), and (g) (as recently added by HB 175), applicable regulations promulgated by the DOI pursuant to 18 Del. C. § 2610(f), and other applicable provisions of law.

3. Townsend certifies that he is a member of the Delaware Bar in good standing.
4. The cost of the Ratepayer Advocate shall be borne exclusively by the DCRB (and not by the State). Townsend shall be entitled to charge an hourly rate of \$375, and to be reimbursed for reasonable expenses. Townsend may use associate attorneys or paralegals to assist him, in accordance with his normal practice, provided the rate for any other attorneys and other assistants who work on this engagement shall be at comparable rates to those above, taking into account each attorney's or paralegal's experience. Regardless of the number of hours required to perform the duties of Ratepayer Advocate, the total amount charged by Townsend for fees and expenses for himself, associate attorneys, or paralegals during the course of the application (including any amendments thereto) and any appeals, shall be limited to Forty Thousand Dollars (\$40,000.00). Townsend shall submit a statement or statements for fees and expenses on a monthly basis to the Commissioner, who shall forward each statement to the DCRB for payment.
5. Townsend shall select an actuary to work with him or her in review of the filing and to testify in any rate-setting proceeding. The selected actuary shall be an Associate or Fellow of the Casualty Actuarial Society, and shall have met the qualification standards of the American Academy of Actuaries for issuing a statement of opinion concerning workers compensation insurance. The actuary shall prepare a written report and statement of opinion evaluating the filing, which shall include a calculation of the appropriate increase or decrease in residual market rates and voluntary market loss costs and supporting analysis ("Report"). Townsend must be prepared promptly to retain a qualified actuary, and both Townsend and the selected actuary must meet all deadlines in connection with the ratemaking process.
6. In accordance with 18 Del. C. §2610(g), the reasonable cost of the actuary shall be borne by the DCRB. Townsend shall submit the actuary's statement or statements for fees and expenses on a monthly basis to the Commissioner, who shall forward each statement to the DCRB for payment.
7. Pursuant to HB 175, Section 8 (Enacted June 27, 2013) (the "Act"), the DCRB "shall, within 90 days after June 27, 2013 [*i.e.* no later than September 25, 2013], file for approval by the Commissioner prospective loss costs that shall explicitly and individually account for the impact of any statutory changes in this Act or Senate Bill 238 of the 146<sup>th</sup> General Assembly, as well as any regulatory changes proposed by the Health Care Advisory Panel within 60 days of the enactment of this Act. Any order issued by the Department of Insurance relating to said filing shall explicitly account for all statutory changes and regulatory proposals that are enumerated by the advisory organization in the filing required by this Section." In furtherance of this directive, and to assist the Commissioner in formulating the findings required by the Act, any report prepared by an actuary retained by Townsend "shall explicitly account for all statutory changes and regulatory proposals that are enumerated by the advisory organization in the filing required by this Section [8 of HB 175]." Townsend shall provide a complete copy of the actuary's report to the

Commissioner, the DCRB, and any other party upon receipt of the report from the actuary.

8. Townsend or his law firm shall agree to maintain in full force and effect during the term of the Contract professional liability insurance in an aggregate amount of not less than \$2 million. In order to satisfy this requirement, Townsend has provided to the Department a certificate of insurance or letter from its insurer demonstrating that the Vendor meets this requirement. A commitment letter or other evidence, satisfactory to the Department, that Townsend or his law firm has such coverage is attached hereto as **Exhibit A**.
9. Prior to the execution of this Agreement Schmittinger & Rodriguez will perform a complete screen for conflicts of interest and inform the State if any conflict is identified. Further, during the term of this Agreement, Schmittinger & Rodriguez shall inform the State of any actual or potential conflict that arises and that must be disclosed as required by the Delaware Lawyers' Rules of Professional Conduct. Such notice shall state in writing the names of the parties represented, the nature of the case and the actual or potential conflict. Until such time as it has notified the State in writing as required by this paragraph and received a written waiver of an actual or potential conflict of interest signed by the Commissioner, Schmittinger & Rodriguez shall neither commence work on any new matter nor continue work on any matter that it has undertaken at the time at which the conflict or potential conflict arises unless otherwise instructed by the Commissioner.
10. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Agreement shall exchange among themselves original signed counterparts.

IN WITNESS whereof the parties hereto, intending to be legally bound, have executed this Agreement as of the date first above written.

**Schmittinger & Rodriguez**



Dover, DE

**INSURANCE DEPARTMENT of the  
STATE OF DELAWARE**  
Wilmington, Delaware

By \_\_\_\_\_

Name Title  
8/15/2013



Name Title

8/15/2013