

## CONSULTING AGREEMENT

**THIS CONSULTING AGREEMENT** (the "Agreement"), is made effective as of this 6<sup>th</sup> day of March 2003, by and between Paula T. Rogers, Commissioner, State of New Hampshire Insurance Department ("Department"), having its principal place of business at 56 Old Suncook Road, Concord, New Hampshire 03301-5151, (the "Rehabilitator") and Peter Bengelsdorf of 4330 Via Cerritos, Newbury Park, California, 91320 (the "Consultant").

**WHEREAS**, the Commissioner has been appointed Rehabilitator of The Home Insurance Company ("The Home") by Merrimack County Superior Court Order ("Order") dated March 5, 2003 (Docket No. 03-E-106); and

**WHEREAS**, pursuant to applicable provisions of the New Hampshire Insurance Code, the Rehabilitator is vested with the authority and responsibility to protect the interests of policyholders of The Home and may appoint a Special Deputy Commissioner; and

**WHEREAS**, the Rehabilitator desires to secure the Services of a Special Deputy Commissioner and the Consultant desires to perform such Services for the Rehabilitator on the terms and conditions set forth in this Agreement; and

**WHEREAS**, it is understood and agreed that the Consultant will be appointed as the Special Deputy Commissioner for The Home and that all actions, reports, opinions, advice (written and oral) rendered pursuant hereto will be used only by the Department for its guidance in fulfilling its responsibilities under New Hampshire Law; and

**WHEREAS**, it is understood and agreed that the Special Deputy Commissioner, with approval of the Rehabilitator, shall:

1. Have all the powers of the officers and managers of The Home;
2. Redelagate the powers of the officers and managers of The Home as specifically warranted;
3. Secure all of the assets, property, contract, books, records, accounts and other documents of The Home wherever located, and administer them under the general supervision of the Rehabilitator and the Court.
4. Deal with, as vested by operation of law, the title to all property, deposits, securities, contracts, rights of action, books, records and other assets as of the date of entry of the Order.

5. Inventory property of The Home and submit an accounting to the Rehabilitator at such intervals as ordered by the Rehabilitator.
6. Manage operations as necessary or appropriate, including, but not limited to:
  - a. Direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of The Home;
  - b. Collect all claims, accounts receivable, agents' balances, reinsurance proceeds and other amounts owing to The Home, and bring such actions as are necessary, to collect the same and settle and compromise any of such claims or other amounts owing The Home whenever it shall be deemed advisable to do so, upon such terms and conditions as appear to be justifiable;
  - c. Compromise any obligation of The Home where it appears appropriate or necessary;
  - d. Make transfers and sales of any assets or property of The Home, enter into contracts, incur and discharge obligations and make expenditures from the income and receipts of the business of The Home for labor, insurance, equipment, inventory and supplies required, and to do any and every other act necessary to enable performance of the duties imposed herein;
  - e. Place all bank accounts, stock certificates, securities, certificates of deposit and other financial instruments of The Home into New Hampshire accounts, and use any accounts of The Home as an operating fund for the business of the rehabilitation of The Home, and shall keep a true and correct account of any and all receipts or expenditures made as Special Deputy Commissioner in the course of the operation of said business;
  - f. Withhold or discontinue, at his discretion, the payment of any pending claims against or involving The Home until such time as the overall financial condition of The Home has been ascertained;
  - g. Pursue all appropriate legal remedies on behalf of The Home against any criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to The Home by an officer, manager, agent, director, trustee, broker, employee of The Home or other person;
  - h. Take such action as necessary to avoid fraudulent or preferential transfers.

i. Review all transactions, agreements, contracts, transfers of property or other actions agreed upon, entered into, made or incurred by The Home within one (1) year immediately prior to the filing of the Verified Petition for Rehabilitation.

j. Withhold or suspend any payments, at his discretion, on any such transaction, agreement, contract, transfer of property or any other obligation of The Home that may be due or owing for a period of ninety (90) days or until such time as such debt or claim has been properly reviewed.

**NOW, THEREFORE**, in consideration of the foregoing and of the respective covenants and agreements of the parties herein contained, the parties hereto agree as follows:

1. **SERVICES:** The Special Deputy Commissioner shall provide the Rehabilitator such services as are reasonably necessary for the Rehabilitator to effect the provisions of the New Hampshire Insurance Code as enumerated above.

2. **TERM AND TERMINATION:** This Agreement shall be effective as of the date first written above and shall be terminated as of the earlier of:

- (a) The mutual written agreement of the parties hereto to terminate the Agreement;
- (b) The giving by either party at any time of notice of termination of this Agreement upon one (1) day's written notice to the other party.

Upon the termination of the Agreement for any reasons, the Special Deputy Commissioner shall cease providing Services to the Rehabilitator and shall immediately surrender and deliver to the Rehabilitator any and all reports, working papers and documents of every kind prepared by or for the Special Deputy Commissioner relating to The Home and/or the services provided hereunder including, but not limited to, any works in progress following the termination of this Agreement.

3. **COMPENSATION & EXPENSES:** Provided that the Special Deputy Commissioner shall satisfactorily perform his obligations hereunder on behalf of the Rehabilitator, The Home shall pay the Special Deputy Commissioner and hourly fee of \$250, plus reasonable and necessary travel expenses incurred by the Consultant including, without limitation, weekly round trip coach airfare for the Consultant to and from Newbury Park and hotel or apartment accommodations in connection with such travel. Such hourly fee of \$250 shall include time that the Consultant spends traveling between his current residence in Newbury Park and

New York, New Hampshire or any other location deemed necessary. The Consultant shall be compensated at such hourly fee for any testimony required to be given relative to services provided hereunder. The compensation of the Special Deputy Commissioner and any other special deputies, assistants and clerks, and all expenses of taking and securing possession of the property and affairs of The Home and of conducting the rehabilitation of The Home shall be paid out of the funds or assets of The Home. The Consultant shall receive an advance monthly retainer of \$25,000 or an amount which the Rehabilitator and Consultant mutually agree. The Consultant shall submit accurate and complete invoices to the Rehabilitator on a monthly basis against such advance deposit, or more frequently at the request of the Rehabilitator, specifying the day or days on which the Consultant provided services, the number of hours, or fraction thereof, spent providing the services, a reasonably detailed description of the tasks performed, and the expenses incurred thereon.

4. FACILITIES AND SERVICES TO BE PROVIDED TO THE CONSULTANT: On behalf of the Rehabilitator, The Home shall provide all necessary facilities and services to the Special Deputy Commissioner to provide the services enumerated above.

5. RELATIONSHIPS OF PARTIES: The Special Deputy Commissioner's status under this Agreement and his performance of his duties and obligations hereunder shall be that of an independent contractor, and nothing contained in this Agreement shall create or imply an employer/employee relationship between the Rehabilitator and the Special Deputy Commissioner. Nor shall this Agreement be deemed to constitute a joint venture or partnership between the parties. However, for purposes of New Hampshire RSA Chapter 402-C, the Special Deputy Commissioner shall enjoy and be vested with the same privileges, protections and immunities as the Rehabilitator, pursuant to the provisions of RSA 402-C and other applicable provisions of the New Hampshire statutes, and common law.

6. COVENANT: The Special Deputy Commissioner shall not, during the term of this Agreement, serve any interest or do any act or thing that may conflict with the interests of the Rehabilitator and its responsibility to the policyholders of The Home. If consistent with the foregoing Covenant and if it will not diminish the Consultant's availability and capacity to fully and timely fulfill the obligations under this Contract, the Consultant may continue to serve current or new clients while performing consulting services for the Rehabilitator, and such retention and commitments shall not, in themselves, be deemed a breach of this Covenant.

7. CONFIDENTIALITY: The Special Deputy Commissioner shall receive and have access to information that is privileged and confidential. Both during and after the term of this Agreement, the Special Deputy Commissioner agrees to strictly preserve and protect the privileged and confidential nature of this information except as the Department shall authorize in writing addressed to the

Special Deputy Commissioner. Privileged and confidential information shall include, but not be limited to any and all statements, models, projects, analyses, calculations and any and all materials in connection therewith concerning the financial condition or business or operations of The Home, but does not include any documents, records or information that have become publicly available other than by reason of the Special Deputy Commissioner's failure to comply with this Agreement.

The Special Deputy Commissioner hereby acknowledges that each term and condition contained in this paragraph 7 is necessary to preserve the confidentiality of the information furnished to the Special Deputy Commissioner and that the Special Deputy Commissioner's failure to comply with any such term or condition would result in irreparable damage to the Department and The Home in an amount that is impossible to quantify.

The Special Deputy Commissioner shall require any of its agents with employees who receive the Information (collectively "Agents") to abide by the terms of this paragraph to the same extent that the Special Deputy Commissioner is required to do so.

At such time as the Rehabilitator requests, the Special Deputy Commissioner and its Agents shall return to the Department or its designated representatives or shall destroy all copies of the information in any form whatsoever (including any notes, reports, transmittal letters or other writings prepared by the Special Deputy Commissioner and its Agents). Upon the request of the Department any such destruction shall be certified in writing by the Special Deputy Commissioner.

Subject to any Court order and RSA 400-A:25, I, all information obtained by the Rehabilitator or the Department from The Home, its affiliates, or its providers or other creditors, in the course of the rehabilitation, shall be considered examination workpapers and shall be given confidential treatment as provided in RSA 400-A:37, IV, (d).

8. INDEMNIFICATION: If any claim is made or any civil action is commenced against the Special Deputy Commissioner arising from such acts committed within the scope of his official duty, he shall be entitled, as a state officer or official, to defense and indemnification as set out in RSA 99-D and in accordance with the terms and conditions contained therein.

9. NON-ASSIGNMENT: This Agreement is personal to the Consultant and he may not assign or delegate any of his rights or obligations hereunder without first obtaining the written consent of the Rehabilitator.

10. NOTICES: All notices, requests, approvals and consents and other communications required or permitted under this Agreement shall be in writing

and shall be sent by telecopy number specified below. A copy of any such notice shall also be personally delivered or sent by (a) first class U.S. Mail, registered or certified, return receipt requested, postage pre-paid; or (b) U.S. Express Mail, Federal Express, or other similar overnight bonded mail delivery services, to the address setout below, or to such address as may be notified in writing from time-to-time by the party in question to the other party.

If to the Rehabilitator:

New Hampshire Insurance Department  
56 Old Suncook Road  
Concord, New Hampshire 03301-5151  
FAX: (603) 271-7851

If to the Special Deputy Commissioner:

Peter Bengelsdorf  
4330 Via Cerritos  
Newbury Park, California 91320  
FAX: (805) 498-3020

1. **COUNTERPARTS:** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one single agreement between the parties.

2. **HEADINGS:** The headings are for reference and convenience only and shall not be considered in the interpretation of this Agreement.

3. **SEVERABILITY:** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this Agreement will remain in full force and effect.

4. **WAIVER:** No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any party of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing and signed by the party waiving its rights.

5. **AMENDMENTS:** No amendments to, or change, waiver or discharge of, any provision of this Agreement shall be valid unless in writing and signed by an authorized representative of the party against which such amendment, change, waiver or discharge is sought to be enforced.


6. GOVERNING LAW: This Agreement shall be interpreted in accordance with and governed by the laws of the State of New Hampshire, without giving effect to the principles of conflicts of laws.


7. VENUE: Any action or proceeding arising out of this Agreement may be brought against either party in the Merrimack County Superior Court of the State of New Hampshire, and each party consents to the jurisdiction of such courts in any such action or proceeding and waives any objection to venue laid therein.

8. ENTIRE AGREEMENT: This Agreement is the entire agreement between the parties with respect to its subject matter, and except as recited above there are no other representations, understandings or agreements between the parties relative to such subject matter.

IN WITNESS WHEREOF, each of the Department and the Special Deputy Commissioner have caused this Agreement to be signed and delivered by its duly authorized representative.

NEW HAMPSHIRE INSURANCE DEPARTMENT

  
Paula T. Rogers, Rehabilitator  
of The Home Insurance Company

  
Peter Bengelsdorf, Consultant