

CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT is made and entered into this 17th day of August, 2012, by and between the State of Wisconsin, as a nominal party on behalf of the states as described below, through its Attorney General (“Attorney General”), and **COMPASS LEXECON**, 1101 K St. NW, 8th Floor, Washington, D.C., 20005, and shall be referred to as either “Compass Lexecon” or “the Consulting Firm,” and **JONATHAN BAKER**, 5126 Newport Avenue, Bethesda, MD 20816, shall be referred to as “Expert.”

AGREEMENT

NOW, THEREFORE, in consideration for the promises and commitments hereinafter set forth, the parties hereby agree as follows:

1. **SCOPE OF PROFESSIONAL SERVICES TO BE PROVIDED.** The Expert shall provide the following services in accordance with the best professional standards:

(a) **SERVICES.** The Attorney General hereby retains, hires, and employs Consulting Firm and Expert on behalf of a multistate working group comprised of Texas; Connecticut; Alabama; Alaska; Arizona; Arkansas; Colorado; Delaware; District of Columbia; Idaho; Illinois; Indiana; Iowa; Kansas; Louisiana; Maryland; Massachusetts; Michigan; Missouri; Nebraska; New Mexico; New York; North Dakota; Ohio; Pennsylvania; Puerto Rico; South Dakota; Tennessee; Utah; Vermont; Virginia; West Virginia; and Wisconsin, and any other states that may subsequently join in the eBooks antitrust litigation or in mediation or settlement efforts relating to the litigation (“the States”), to provide technical and professional service as more specifically described below. Expert hereby agrees to undertake and provide such services with the degree of professionalism customary to persons and entities which provide such services.

(b) **DESCRIPTION OF SERVICES.** Expert shall provide his individual expert opinion and may, in connection with his analysis and work, work with Compass Lexecon (or any other experts or consulting firms approved by the States’ Expert Committee (“Expert Committee”))¹ in (i) conducting any economic analysis concerning markets for eBooks, price fixing by eBook publishers, and damages to the States and their residents as a consequence of price fixing among eBook publishers, (ii) preparing expert reports or affidavits to be filed with the Court, (iii) preparing for and giving testimony at depositions and trials, and (iv) performing other work as may be agreed by the Expert Committee and Consulting Firm and Expert, related to the eBook antitrust litigation.

This agreement does not constitute a commitment that any or all of the above-described services will be required or requested by the Expert Committee or the States. The actual scope of the Expert’s specific work shall be set forth in successive “Work Plans” as more fully described in Section 1(e).

¹ The expert committee consists of the States of Wisconsin, Illinois, Ohio, Missouri, Tennessee, Texas, and Virginia.

(c) **TIME FOR DELIVERY OF SERVICES.** Expert and the Consulting Firm shall be available to provide the services under this agreement upon the execution of this agreement and shall work in a timely manner pursuant to (i) the Work Plans provided by the Expert Committee, (ii) any scheduling orders that may be issued in the eBooks antitrust litigation, and (iii) any timetable as otherwise agreed upon by the parties.

(d) **METHODOLOGY.** Expert shall determine the manner and methodology by which Expert and any others acting under his direction, including any employees of Compass Lexecon, performs and fulfills the obligations under this agreement. Expert and Compass Lexecon shall follow generally accepted theory and practices.

(e) **CONTROLS AND DIRECTION.** The Attorney General, the Expert Committee, and the States shall at all times maintain control and direction over the scope of work being performed under this agreement. All specific directives as to the work to be performed by Expert or Consulting Firm, and any needed clarifications, shall be provided by the chairman of the Expert Committee. The Expert Committee is presently chaired by Gwendolyn Cooley of the Wisconsin Attorney General's Office.

For purposes of assisting in the monitoring of expenses incurred under this agreement, Expert, with such input of Consulting Firm as desired, and the Expert Committee shall develop a Work Plan which sets forth particular tasks to be performed by Expert and others acting under his direction and the anticipated time and expenses required to perform such tasks over a defined period of time, typically not to exceed three months, provided this Work Plan may be extended by mutual agreement of Expert and the Expert Committee. In addition, Expert (or the Consulting Firm on his behalf) shall make periodic status reports to the Expert Committee as described in each Work Plan or as requested by the Expert Committee. These reports will describe the work performed, the work anticipated to be performed, and whether the work will depart in any way from the Work Plan developed for that time period.

The actual scope of the Expert's specific work shall be set forth in successive "Work Plans" agreed upon by the Expert, the Consulting Firm and the Expert Committee. Each Work Plan shall be provided in writing, and no work shall be compensable which exceeds the reasonable scope of a Work Plan.

Upon agreement by the Consulting Firm, the Work Plans may be subject to "caps" on professional fees and costs for purposes of monitoring expenses of the States under this contract. The cap amount shall be set out in writing in the Work Plan. Such caps shall include the Expert's own fees and all fees of all other support work by Compass Lexecon or others as specified in Section 15. Any out-of-pocket costs and charges may not exceed actual costs incurred by the Expert or others, including Compass Lexecon, and are subject to Section 15 below. No billings for professional fees or other costs may exceed such caps without approval by the Expert Committee.

At the direction of the Expert Committee, Expert and/or the Consulting Firm may be required to provide a cost estimate of any Work Plan or contemplated Work Plan.

2. **PROHIBITION AGAINST ASSIGNMENT OF CONTRACT.** The Expert shall not assign this contract or any portion of the professional services to be provided hereunder to another person or party without the prior written consent of the Attorney General and Expert Committee.

3. **PROHIBITION AGAINST ENGAGING SERVICES OF CURRENT STATE EMPLOYEES.** The Expert shall not hire, employ, or engage the services of any person or persons now employed by the States, including any department, independent agency, commission or board thereof, without the prior written consent of the employer of such person or persons and the Attorneys General.

4. **NONDISCRIMINATION IN EMPLOYMENT.** In connection with the performance of work under this contract, the Expert agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Wis. Stat. § 51.01(5), sexual orientation, or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Expert further agrees to take affirmative action to ensure equal employment opportunities. The Expert agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

5. **AFFIRMATIVE ACTION REQUIREMENTS.** If this contract is twenty-five thousand dollars (\$25,000) or more, and the Expert's annual work force is ten or greater, then, within fifteen (15) days after notification of the award of the contract, the Expert shall submit to the Attorney General a written affirmative action plan.

6. **INDEMNIFICATION.** The Expert hereby agrees to indemnify the States and all of its officers, agents and employees, and hold them harmless against any and all claims, demands, and causes of action, including court costs, attorney's fees, liabilities, judgments, settlement payments and other amounts actually incurred or paid by the State of Wisconsin in connection therewith, arising from any actual or alleged actions and omissions of the Expert and any other person providing contractual services hereunder, subject to Wis. Stat. §895.043(6).

7. **INDEPENDENT CONTRACTOR RELATIONSHIP.** Nothing in this agreement shall be considered to create the relationship of employer and employee between the parties hereto. Expert and Consulting Firm shall be deemed at all times to be an independent contractor. Expert and Consulting Firm are separately responsible for any employment taxes and income tax and local head tax on any monies paid pursuant to this Agreement. Expert and Consulting Firm and their employees are not entitled to unemployment insurance benefits from the Attorney General. Consulting Firm and/or Expert, as applicable, shall provide and keep in force worker's compensation insurance in the amounts required by law, and shall be solely responsible for the acts of the Expert, its employees and agents. Expert and Consulting Firm acknowledge they have no authorization, express or implied, to bind the Attorney General, the State of Wisconsin, or the States to any agreements, liability, or understanding except as expressly set forth herein. The Attorney General assumes no liability for the actions or omissions of Expert under this agreement.

As a result of this agreement, the Expert, Consulting Firm and their agents and employees shall not accrue leave, retirement, insurance, bonding, use State vehicles, or receive any other benefits afforded to employees of the State of Wisconsin.

8. **STATE LIAISON; CONTRACT ADMINISTRATION.** The Expert's liaison with the State of Wisconsin and the Attorney General shall be Assistant Attorney General Gwendolyn Cooley, who shall be responsible for coordinating the Expert's services hereunder and administering this contract in accordance with Wis. Admin. Code § ADM 10.12.

9. **TERMINATION OF EXPERT'S SERVICES.**

(a) The Attorney General may, at any time prior to the completion of services by Expert under this Agreement, suspend or terminate this Agreement with or without cause by giving written notice to Expert.

(b) Expert, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under this Agreement, suspend or terminate all subcontracts relating to the suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and, if requested by the Attorney General, furnish a report, as of the date of receipt of notice of suspension or termination, describing the status of all work under this Agreement, including, without limitation, results, conclusions resulting there from, and any other matters the Attorney General requires.

(c) Expert shall be paid for services rendered up to the date Expert received notice of suspension or termination, less any payments previously made, provided Expert has supported such payments with detailed factual data containing services performed and hours worked. In the event of suspension or termination, any payments for which Expert has not rendered services shall be refunded. Should Expert terminate the contract prior to completion, for reasons other than a breach of the agreement by the States, Expert shall return all payments made during the course of the current Work Plan to the States.

(d) In the event this Agreement is terminated prior to its completion, Expert, upon payment as specified, shall deliver to the Attorney General all work products and documents which have been prepared by Expert in the course of providing services under this Agreement. All such materials shall become, and remain the property of, the Attorney General, to be used in such manner and for such purpose as the Attorney General may choose.

(e) Expert agrees to waive any right to, and shall make no claim for, additional compensation against the States, Expert Committee, Milk Fund or the Attorney General by reason of such suspension or termination.

(f) Expert may terminate this Agreement upon sixty (60) days prior written notice to the Attorney General.

(g) Notwithstanding any exercise by the States of their right of early termination pursuant to this section, Expert shall not be relieved of any liability to the States for damages due by virtue of any breach of this Contract by Expert or for amounts otherwise due to the States by expert.

Expert agrees that money damages may not be a sufficient remedy for breach or anticipated breach of this contract. The Attorney General and states are entitled to seek injunctive relief without proof of actual damages, and may seek other appropriate relief, including monetary damages and attorneys' fees. All rights and remedies provided for herein shall be cumulative, and may be exercised singularly or concurrently and are in addition to and not in lieu of any and all other rights and remedies available at law, in equity, or otherwise.

10. **EXPERTISE.** The Attorney General enters into this Agreement in reliance upon Expert's representations that he has the necessary expertise and experience to perform his obligations hereunder, and Expert warrants that he does possess the necessary expertise and experience.

11. **OWNERSHIP OF REPORTS, DOCUMENTS AND OTHER MATERIALS.** All reports, documents and other materials produced by the Expert in connection with the professional services provided under this contract shall remain the sole property of the States named in ¶ 1A. The Expert shall not use such reports, documents, and other materials for any other purpose without the prior written consent of the Attorney General and the Expert Committee. The Attorney General and the Expert Committee shall have unrestricted authority to reproduce, distribute, and use (in whole or in part) any reports, data, or materials prepared by Expert pursuant to this Agreement. No such documents or other materials produced (in whole or in part) with funds provided to Expert by the Attorney General and the Expert Committee shall be subject to copyright by Expert in the United States or any other country.

12. **RIGHT TO PUBLISH.** The Expert shall not publish, circulate, or disclose any articles, reports or other writing concerning the subject matter of the professional services provided hereunder without the prior written approval of the Attorney General and the Expert Committee.

13. **ACCESS TO MAINTAINED RECORDS AND RIGHT TO AUDIT.** Expert and/or Consulting Firm shall maintain and preserve for a period of five (5) years after the date of final payment to Expert or Consulting Firm under this agreement all data, books, records, supporting documents, and other evidence pertaining to costs and expenses incurred by the Expert or Consulting Firm in connection with this agreement unless such retention is prohibited by law or court order. During the retention period, upon the request in writing from the Attorney General and the Expert Committee, Expert and Consulting Firm shall produce such data, books, records, supporting documents, and other evidence pertaining to costs and expenses incurred by them in connection with this agreement for purposes of an audit by the Attorney General. The Expert shall fully cooperate in any audit conducted hereunder and provide access to all relevant materials. A failure to maintain and preserve such data, books, records, supporting documents, and other evidence pertaining to costs and expenses incurred by the Expert in connection with this agreement shall establish a presumption in favor of the States to recover any money paid by the Grant as defined in §15(c). The Attorney General shall have the right to audit billings both before and after

payment; payment under this agreement shall not foreclose the right of the Attorney General to recover excessive or illegal payments.

14. **DISCLOSURE OF FINANCIAL INTERESTS.** If a state public official, as defined in Wis. Stat. § 19.42(14), Stats., or an organization in which a state public official or a member of that official's immediate family owns or controls at least a ten (10) percent interest, is a party to this contract, this contract shall be voidable by the State and any amounts paid hereunder may be recovered as provided in Wis. Stat. § 16.77(2), Stats. and Wis. Admin. Code § ADM 10.10(5), unless appropriate disclosure is made to the State of Wisconsin Ethics Board.

15. **COSTS FOR EXPERT'S PROFESSIONAL SERVICES.**

(a) **COMPENSATION RATES.** Expert and Consulting Firm shall be compensated at the rates set forth in Schedule 1, attached to this agreement and incorporated herein.

The Expert may assign work to employees of Consulting Firm who are approved by the Expert Committee to work on any task covered by the Work Plan, provided they work under Expert's direction. Unless directed to the contrary in writing, all individual employees identified on Schedule 1 have been approved by the Expert Committee to provide services under Expert's direction. All fees and costs arising from such work shall be subject to any "cap" set by the Work Plan unless other arrangements superseding this are made by the Expert Committee or the States.

A "week" shall be treated as any consecutive seven-day period for purposes of calculating hourly compensation.

Cost estimates of work to be performed shall be provided to the Expert Committee upon its request in relation to the Work Plan referenced in Section 1(e). Should it become apparent at any time that the cost estimated in the Work Plan will not be sufficient to perform a particular task, the Expert shall promptly advise the Expert Committee.

In the event an agreed "cap" or maximum payment is applied to a Work Plan or other specified tasks, Expert and Consulting Firm will abide by the same and understand that they have no basis for claiming additional compensation for the work therein described. In the event Expert or Consulting Firm requests that others provide any services which may be compensable under this contract, the Expert or Consulting Firm shall advise such other persons on any "cap" and the limitation it places on available compensation in accordance with the terms of this contract.

(b) **EXPENSES.** Expert and Consulting Firm shall be reimbursed for all reasonable, ordinary, and necessary out-of-pocket expenses incurred by the Expert or Consulting Firm (or others approved by the Expert Committee to provide services) in fulfilling the terms of this agreement, provided that, for any such expenses exceeding \$2500.00 in any Work Plan period, *prior approval of the Expert Committee must be obtained*. All such expenses must not exceed the actual costs incurred by Expert. The Expert Committee may require documentation of any expenses claimed by Expert.

Regardless of the above limit, all travel must be approved in advance by the Expert Committee. Actual, reasonable lodging expense associated with approved travel will be reimbursed. Meal expenses incurred during approved travel will be reimbursed to the extent they do not exceed the maximum per diem rate allowable for Wisconsin employees; for travel outside the State of Wisconsin, the per diem rates posted by the United States General Services Administration shall be the maximum reimbursable amounts. All approved travel on common carriers will be reimbursed at actual cost not to exceed coach fare on commercial airlines and other modes of transportation. Expert will make every reasonable effort to arrange for travel sufficiently in advance to realize the lowest transportation fare. Vehicle mileage shall be reimbursed at the maximum state rate of forty-eight and a half cents (\$.485) per mile.

(c) **FUNDING.** Expert and Consulting Firm acknowledge that the States comprising the Expert Committee, and the States in general, have received a grant that is being administered by the National Association of Attorneys General (NAAG) to defray the costs of expert services in the eBook antitrust litigation (“Grant”).² Expert and Consulting Firm understand and agree that all payments to Expert and/or Consulting Firm will be made **exclusively** through the moneys available through the Grant, at least until such time as the Grant funds are depleted. Expert understands that the exclusive source of funds for payment following depletion of the Grant will be a separate Cost Share Account established by the States for general litigation costs. Expert and Consulting Firm acknowledge and agree that no State, including the Attorney General, is separately, individually or collectively, responsible for payment.

Accordingly, Expert and Consulting Firm agree that neither the Attorney General nor the State of Wisconsin, nor the members of the Expert Committee, nor the States, separately or jointly, are responsible or liable for any payments under this agreement and that the Expert and Consulting Firm will look solely to the Grant made to the States for the costs of expert services, and then to the funds available in the Cost Share Account, pursuant to the payment procedures set forth in section 15(d). The amount of the Grant and Cost Share Account will be sufficient to cover any estimated fee payment cap and out-of-pocket expenses described in section 15(b). Upon request of Expert or Consulting Firm, the Expert Committee will provide such assurance or other information about the availability of such funds.

The Attorney General and the States understand that Expert’s fees are not contingent upon the nature of Expert’s findings or the outcome of any proceeding.

(d) **PAYMENT PROCEDURE.** Invoices submitted by Expert hereunder shall itemize categories of expenses actually incurred, including professional fees at stated rates, travel, and other direct costs. Machine printed receipts shall be required for lodging and public transportation reimbursement. No travel time or waiting time shall be reimbursed unless the Expert is engaged in providing services described in this Contract, and reimbursement for that time has been specifically authorized by the Expert Committee.

² As such, Expert agrees not to commence work until authorized by the Attorney General.

Original invoices for services rendered by Expert and Consulting Firm shall be submitted on a monthly basis to the following persons on behalf of the Attorney General:

Gwendolyn Cooley
Assistant Attorney General
Wisconsin Attorney General's Office
P.O. Box 7857
Madison, WI 53707-7857
cooleygj@doj.state.wi.us

The Expert Committee, consulting at its discretion with the Attorney General or any of the States, shall review and approve all invoices submitted by Expert and Consulting Firm before directing that they be paid from the Grant or Cost Share Account. All invoices shall be paid within sixty (60) days of receipt by the Expert Committee, absent disputes. The Expert Committee will use its best efforts to review Expert's and Consulting Firm's invoices within 14 days of receipt and to promptly forward the invoices, if approved, to the National Association of Attorneys General with a request for payment through the Grant or, alternatively, to the States' Finance Committee with a request for payment from the Cost Share Account.

If, in the opinion of the Expert Committee, the Expert or Consulting Firm fails to perform in a satisfactory and timely manner, or there is some other dispute as to an invoice, the Expert Committee shall promptly notify the Expert and Consulting Firm of such non-performance or other dispute and may, in addition to any other remedy, refuse or limit approval of any invoice covering those tasks the Expert has failed to perform (a "Disputed Invoice"), and may cause payments to the Expert and/or Consulting Firm to be reduced or withheld until such time as the Expert and/or Consulting Firm meets performance standards as established by the Expert Committee. Payment of all non-disputed portions of an invoice shall proceed under this Section. The Expert Committee shall provide a reasonable and prompt opportunity for the Expert and/or Consulting Firm to discuss and attempt to resolve any such Disputed Invoice.

If any invoice (including a Disputed Invoice) remains unpaid more than seventy-five (75) days after receipt by the Expert Committee, the Expert and Consulting Firm, without liability, may both withhold delivery of any further services, and may both suspend performance of any or all of their obligations under this agreement pending payment of all charges that are due and unpaid.

The Expert's and Consulting Firm's final invoice for professional services rendered hereunder shall be submitted to the Attorney General not later than sixty (60) days following the termination of the contract.

(e) **CONTENT OF INVOICES.** Each invoice must reflect the Expert's Employer Identification Number or Tax Identification Number, which is

All invoices must be for services completed during the invoice period and for those authorized reimbursable expenses, documented with original copies of receipts for such

reimbursable expenses, incurred during the invoice period. The invoices must be itemized as follows:

(1) hours (broken down at least by quarter hour) listed by month, individual performing the services, and type of activity, with the understanding that, if a court requires time to be kept in other than quarter-hour increments, Expert will itemize all professional time in the increment that the court directs; and

(2) expenses separately itemized, grouped by major category.

(f) **LATE PAYMENTS.** Charges by Expert for late payment fees or interest are prohibited.

(g) **DELIVERY OF PAYMENTS.** Payments under this agreement shall be made payable to Compass Lexecon, LLC, and sent to the address specified on the first page of this agreement unless other directions are agreed to by the Expert Committee.

16. **AUTHORITY OF THE ATTORNEY GENERAL TO CONTRACT.** This agreement is executed under the Attorney General's delegated authority from the Expert Committee of the eBooks Working Group of the NAAG Multistate Antitrust Task Force and under his constitutional and statutory authority as the Attorney General of the State of Wisconsin.

17. **CAPACITY TO CONTRACT.** All actions undertaken by the Attorney General or his agents and employees under this agreement are undertaken in their official capacities as representatives of the State of Wisconsin and on behalf of the Expert Committee, and not personally.

18. **AUTHORITY OF EXPERT.** Any party executing this agreement on behalf of Expert and the Consulting Firm and purporting to bind any principal other than the party executing this agreement hereby represents and warrants that such party possesses the power and authority to act on behalf of Expert and to bind the principal. If at any time during the term of this agreement the Attorney General so requests, such party shall provide documentary evidence of such authority to act on behalf of Expert and to bind the principal.

Expert represents and warrants that he possesses all requisite professional licenses and all other legal authority necessary to perform the services required of her hereunder.

19. **OTHER EMPLOYMENT AND ACTIVITIES.**

Expert agrees that during his engagement on behalf of the States, Expert will not be engaged on behalf of any individual or company engaged in the manufacturing, distribution, or sale of eBooks, unless such engagement is fully disclosed to and approved by the Expert Committee.

The professional staff of the Consulting Firm working on this matter agree not to provide any professional services to any company engaged in the manufacturing, distribution, or sale of eBooks unless such engagement is fully disclosed to and approved by the Expert Committee, which shall not be unreasonably withheld. Nothing in this agreement, however, shall be construed as limiting the scope of expert services that Consulting Firm may provide to other persons or companies engaged in related eBook Litigation as plaintiffs.

The professional staff of the Consulting Firm not working on this matter may work for any company engaged in the manufacturing, distribution, or sale of eBooks, or any counsel for the same without any disclosure to, and approval by, the Expert Committee, as long as the matter is not directly related to this matter.

The Expert Committee understands that the European division of the Consulting Firm is advising a firm engaged in the manufacturing, distribution, or sale of eBooks with regard to European competition issues. The Expert Committee understands that a U.S. academic affiliate of the Consulting Firm may testify in his or her individual academic capacity for a firm engaged in the manufacturing, distribution, or sale of eBooks and that individual affiliate may utilize the professional staff of the Consulting Firm in a segregated geographic office so long as (a) an ethical wall is put in place and (b) the firm the independent affiliate is working for agrees in writing that the Expert and the Consulting Firm may continue to work for the States on this matter.

Should Consulting Firm or professional staff withdraw support of or stop work in support of Expert for any reason, without limitation, the Expert may continue to represent the States in this matter and, without limitation, the States may retain additional or substitute support for Expert from another consulting firm(s) or individual(s). Consulting Firm must provide all work product developed related to their work for Expert to the States in whatever form the States identify and at no additional cost.

Should Consulting Firm withdraw support of or stop work in support of Expert at Consulting Firm's initiative and for any reason other than nonpayment by the States or a substantive disagreement regarding the issues associated with the matter, Expert shall find suitable support, whether Consulting Firm(s) or individual(s), to continue representation of the States in this matter. Additionally, in retaining this substitute or additional support for Expert and preparing such firm(s) or individual(s) to adequately support Expert, should the States incur costs higher than those previously expended to and refunded by Consulting Firm for replicating the work previously undertaken by the Consulting Firm, Consulting Firm will reimburse the States for this additional expense.

Expert may utilize Compass Lexecon, or such other firm as may be approved by the Expert Committee, to provide additional support, such as research and other services, at the direction of Expert.

Expert and Consulting Firm may separately contract with individual States for the purpose of providing additional expert services relating to the unique analysis and preparation of damages claims on behalf of the individual State's separate represented parties, *e.g.*, governmental purchasers, so long as any such engagement contract and resulting work product is approved by the Expert Committee, which approval shall be granted so long as the Expert Committee concludes the

work will be consistent with any work being provided under this Agreement and does not present additional material litigation risks to the work being performed under this Agreement. It shall be within the Expert Committee's sole discretion as to whether such work may be separately contracted by a State, or whether a State must pursue other expert resources for such additional work, or whether the work may fall within the scope of this Agreement, in which case, applicable directions for Expert and Consulting Firm shall be provided through the Work Plan procedure discussed in Section 1(e). All time and costs attributable to State-specific engagements, including any time which may be billed by Expert and/or Consulting Firm for purposes of facilitating approvals by the Expert Committee, shall be assessed against that individual State and not the Attorney General or States under this Agreement.

20. **SUBCONTRACTS—GENERAL.** Except as otherwise noted above, Expert and/or Consulting Firm shall not subcontract any of the work required under this agreement without the prior written consent of the Attorney General. If such consent is given, Expert and/or Consulting Firm shall prepare and execute an amendment to this agreement stating the names and addresses of the proposed subcontractor(s) and all other terms and conditions of the subcontract including the anticipated cost of the subcontract. Any subcontracts made in violation of this provision are voidable at the Attorney General's sole option.

21. **REQUIRED PROVISIONS.** Every subcontract or other agreement entered into which relates to this agreement by Expert or Consulting Firm and any other party shall contain the following provisions:

(a) A clause or clauses granting the Attorney General access to records and a right to audit relating to said subcontract or other agreement identical to that as set forth in section 13 of this agreement;

(b) A clause or clauses identical to those as set forth in sections 11 and 12 of this agreement; and

(c) A bribery certification clause identical to that in section 32 of this agreement.

22. **SUBJECT DATA.** The term "subject data" when used in this agreement means recorded data or information, regardless of the medium, and whether or not copyrighted, that is acquired in the performance of this agreement or specified to be or is delivered under this agreement, whether such data is final or preliminary. The term includes all analyses, reports, storage tapes, discs or other media, studies, graphs or other documents or information prepared, supplied, commissioned, gathered or generated by Expert or Consulting Firm for the Attorney General or States in the performance of its obligations under this agreement, and all documents, materials and computer discs provided by the Attorney General or the States to Expert or Consulting Firm in order that it may perform the services required under this agreement.

23. **RIGHTS IN FIRST PRODUCED DATA.** Subject data first produced in the performance of this agreement shall be the sole property of the States and shall be delivered to the Attorney General of the State of Wisconsin no later than the termination date of this agreement. Expert and Consulting Firm agree that they do not acquire and will not assert or

claim any rights in subject data and that it will not establish or assert any claim to statutory copyright in subject data. The States may, at their discretion and by agreement among themselves, copyright subject data in the names of their respective States.

24. **INTERESTS IN NON-FIRST PRODUCED DATA.** For material over which Expert or Consulting Firm has the authority to grant licenses for use, Expert agrees to grant, and does hereby grant, to the Attorney General and the States a royalty free, non-exclusive and irrevocable license throughout the world to publish, translate, reproduce, deliver, perform, use, store, and dispose of, any and all data not first produced or composed in the performance of this agreement, but which is incorporated in any work or service provided under this agreement.

25. **DATA FURNISHED TO EXPERT.** All data supplied to Expert or Consulting Firm by the Attorney General or by any State shall remain the sole property of the Attorney General or such State and shall be returned to the Attorney General or such State upon demand of the Attorney General or State. In all cases Expert will return all such supplied data at the termination of this agreement. However, to the extent that the Expert submits an expert report to any court or government agency, the Expert may keep one copy for his records, subject to any applicable confidentiality obligations with regard to disclosure of such report or its underlying data.

Material furnished to Expert or Consulting Firm by the Attorney General or by any State and incorporated in the work or service provided under this agreement shall remain the exclusive property of the Attorney General or such State.

26. **INDEMNIFICATION BY ATTORNEY GENERAL AND PLAINTIFF STATES.** Unless required by applicable law, neither the Attorney General nor the applicable State, nor any other States, shall indemnify and save and hold harmless the Expert and Consulting Firm and its officers, agents and employees against any liability, including costs and expenses, (1) for violation of proprietary rights, copyrights, or a right of privacy, arising out of the publication, translation, reproduction, delivery, performance, use, or disposition of any data legally furnished by the Attorney General or the applicable State, respectively, under this agreement, or (2) based upon any defamatory or any unlawful matter contained in such data.

27. **CONFIDENTIALITY AND NON-DISSEMINATION OF CONTRACT INFORMATION.** Except for their own internal use, Expert and Consulting Firm shall not publish, permit to be published, or distribute any data or information, oral or written, concerning this agreement or derived during the performance of this agreement or dealing with any findings, results, conclusions, recommendations or opinions concerning this agreement without the written consent of the Attorney General.

Information which is confidential by or pursuant to law or by agreement, including any data produced by this agreement or supplied to Expert or Consulting Firm by the Attorney General or by States, shall be held confidential at all times by Expert and Consulting Firm. Expert, Consulting Firm, and all other persons working under the direction of Expert shall not disclose information or data provided to them and/or generated by Expert or Consulting Firm unless it is at the direction of the States or pursuant to court order. All persons working with Expert or Consulting Firm pursuant to this Agreement shall be required by Expert or Consulting

Firm to sign an agreement acknowledging that they have read and will abide by the terms of this Agreement.

The Expert, Consulting Firm and their agents are hereby designated as the authorized representatives of the Attorney General and the States for the purposes of all applicable privileges and confidentiality statutes.

28. **EFFECTS ON EXISTING RIGHTS.** Nothing contained in this contract shall imply a license to Expert or Consulting Firm under any patent or copyright or be construed as affecting the scope of any license or other right otherwise granted to the Attorney General under any patent or copyright.

29. **ASSIGNMENT OF SPECIFIC PERSONNEL.** Where a particular person or group of persons is specifically designated under this agreement to provide services hereunder, such person or group of persons shall not be removed or substituted by Expert or Consulting Firm without the prior written consent of the Attorney General.

30. **BRIBERY CERTIFICATION AND REFERENCE TO PROCUREMENT CODE.** Expert and Consulting Firm certify that neither they nor any agent or employee thereof has been convicted of bribery or attempting to bribe an officer or employee of the Attorney General or of any State, or of any other government, and that none of them has made an admission of guilt of such conduct which is a matter of public record.

31. **BID RIGGING AND BID ROTATING.** Expert and Consulting Firm certify that they are not barred from bidding on contracts with any Plaintiff State as a result of a conviction under any law.

32. **EMPLOYER IDENTIFICATION NUMBER CERTIFICATION.** Expert and Consulting Firm certify that the Employer Identification Number or Tax Identification Number presented on any invoices submitted for payment under this agreement is their own and is valid.

33. **MODIFICATION OF AGREEMENT.** No modification, change, subtraction, addition, or waiver of the terms, conditions, and specifications herein contained, including, but not limited to, the services to be provided by Expert and Consulting Firm and the time in which such services are to be completed, shall be binding on the Attorney General or the States unless such modification, change, subtraction, addition, or waiver is first approved in writing by the Attorney General.

34. **WAIVERS.** The waiver of the Attorney General or the States of any breach or default or failure of the Attorney General or the States to enforce any of the terms and conditions of this agreement shall not in any way affect, limit, or waive the right of the Attorney General thereafter to enforce and compel strict compliance with every term and condition hereof.

35. **REMEDIES.** In the event that either party breaches any term, provision, or condition of this agreement, the other party may exercise any right, remedy, or privilege available to it under applicable law in addition to any remedy specifically provided herein. However in no case shall the total combined liability the States, or of Expert or Consulting Firm, under any aspects of this contract, exceed the total fees received by the Expert and Consulting Firm.

36. **ENTIRE AGREEMENT.** The terms and conditions of this agreement and all appendices, documents, and attachments, which are made a part hereof, shall constitute the entire agreement between the parties. No other agreements, promises, or representations, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or bind the Attorney General or States. This agreement may be signed in counterparts by the parties.

37. **BINDING UPON SUCCESSORS.** This agreement shall be binding upon the successors, heirs, executors, administrators, and assigns of all parties hereto.

38. **CHOICE OF LAW; SAVINGS CLAUSE.** This contract is and shall be governed by and construed in accordance with the laws of the State of Wisconsin including, without limitation, Wis. Stat. §§. 16.705, 16.76, 16.765 and 16.77, and Wis. Admin. Code ch. ADM 10. The Expert shall, at all times, comply with and observe all applicable federal, state, and local laws which, in any manner, govern or affect the professional services to be provided hereunder. If any provisions of this contract are determined to be prohibited by or invalid under Wisconsin law, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without affecting the validity or enforceability of the remaining provisions of this contract.

39. **VENUE; JURISDICTION.** Any judicial action relating to the construction, interpretation, or enforcement of this contract shall be brought and venued in the Dane County Circuit Court in Madison, Wisconsin; provided, however, that nothing herein shall be construed to waive any sovereign immunity or other defenses that the States or the Attorney General may have under applicable Wisconsin law. The Expert hereby consents to personal jurisdiction in the Dane County Circuit Court, and waives any jurisdictional defenses that the Expert otherwise might have relating thereto.

40. **EFFECTIVE DATE.** This contract shall become effective upon acceptance and execution by the Attorney General and the States.

41. **CAPTIONS.** The captions in this contract are for convenience of reference only and shall not define or limit any of the terms and conditions set forth herein.

IN WITNESS WHEREOF, the parties have executed this contract as of the first set date set forth above.

Dated: August ___, 2012

*

Jonathan Baker

Expert's Tax Identification Number _____
(Social Security Number for Individuals)



Jonathan M Orszag, Senior Managing Director
Representative for Compass Lexecon

**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

By: _____
Gwendolyn J. Cooley
Assistant Attorney General