

## SOLE SOURCE DETERMINATION

The Purchasing Division has been requested to approve a sole source purchase for the commodity or service described below. Pursuant to West Virginia Code 5A-3-10c, the Purchasing Division is attempting to determine whether the commodity or service is a sole source procurement. If you believe your company meets the required experience and qualification criteria stated below, please e-mail the Purchasing Division at [team@wvadmin.gov](mailto:team@wvadmin.gov) to express your interest in the project. Please forward any and all information that will support your company's compliance with required qualification and eligibility criteria along with any other pertinent information relative to this project to the Purchasing Division no later than 8/25/06.

Requisition Number: INS07022

Department/Agency: Office of the Insurance Commission

Detailed Description of the Project: Claims management data warehousing, analysis of claims data, and provide medical and technical consulting services.

Proposed Sole Source Vendor: WVU Research Corporation

Specific Eligibility Criteria: N/A

Specific Qualification Criteria: N/A

# PURCHASE REQUISITION

Req. No.	INS07-022	Req. Date	8/4/2006	Buyer	4/1	PURCHASING DIVISION'S USE ONLY	
FIMS Account #	7152-2007-7893-099-025					Instructions:	
Agency/Invoice To:	TEAM Code WV OFFICES OF THE INSURANCE COMMISSIONER ATTN: ACCOUNTS PAYABLE PO BOX 11681 CHARLESTON WV 25339-1681						
Agency/Ship To:	TEAM Code WV INSURANCE COMMISSION 1124 SMITH STREET, ROOM 100 CHARLESTON WV 25301						
This Section Only For: Releases, Direct Purchases, Emergency Purchases & Agreements							
Vendor Name & Address:							
WVU Research Corporation Post Office Box 6845 Morgantown, WV 26506							
Commodity Code:							
WVFIMS Vendor #:	233195	TEAM Vendor #			Bid Opening Date	Bid Opening Time	
SBPO #	Terms		F.O.B.		Advertising Dates		

Item No.	Quantity	Description	Unit Price	Amount
		<b>Data Warehousing Services</b>  The West Virginia Department of Revenue, Office of the Insurance Commissioner ("OIC") is requesting West Virginia University Research Corporation ("WVURC") to perform certain claims management data warehousing, analysis of claims data, and provide medical and technical consulting services as defined in the attached Data Warehousing Services Agreement.  The core process components are: 1) Maintenance and operation of a data warehouse. This includes use of and training in Oracle Discoverer and/or Oracle Portal for ten OIC staff as identified by the OIC Project Manager. 2) Collaborative OIC-WVURC provider identification and performance criteria including development of web-based Oracle Portal and Discoverer tools for independent use by select OIC staff. 3) Analysis and trending of OIC and other entities performance using indicators defined by OIC and WVURC, including national Workers' Compensation Research Institute (WCRI) formats. 4) WVURC will provide data which will enhance analyses by OIC personnel interested in trends, hazards, duplication, waste, and related aspects of employer, provider, and claimant behavior.  Term of Contract will be for the time period March 1, 2006-December 31, 2006. with a renewal for one (1) year as allowed in Section 8.1 of the attached Data Warehousing Services Agreement.  Cost of Contract will not exceed \$ _____		

Entered in Req Track/Team  
 By jl Date 8-4-06

PURCHASING DIVISION  
 STATE OF WV  
 2006 AUG -4 A 10:48  
 RECEIVED

Authorized Signature *James M. Whitener*  
 Title Director of Administration  
 Telephone (304) 558-6279 x1217

Total Estimated Value of this Requisition \_\_\_\_\_  
 Suggested Vendors:  
 1.  
 2.  
 3.

Additional Vendors on Reverse Side

**West Virginia Insurance Commission-West Virginia University  
Research Corporation Data Warehousing Project.**

**Data Contract 2006**

**DATA WAREHOUSING SERVICES AGREEMENT**

THIS DATA WAREHOUSING SERVICES AGREEMENT is effective as of the 17th day of March, 2006 among West Virginia University Research Corporation, located at P.O. Box 6845, Morgantown, West Virginia 26506 (hereinafter referred to as "WVURC"), and the West Virginia Offices of the Insurance Commissioner with its principal office at 1124 Smith Street, Charleston, West Virginia, 25305("OIC"). This Agreement is made pursuant to and under the respective authorizations of W. Va. Code §§ 18B-12-1 through 10 and W. Va. Code § 33-2-2.

**AUTHORITY**

1. The Commissioner has the power and duty to supervise the fiscal affairs and responsibilities of the OIC. The powers and duties of the Commissioner provide the specific authority to incur such expenses as may be necessary in the discharge of the official duties. W. Va. Code § 33-2-2.

2. The Governing Board of West Virginia University (a state institution of higher education) is authorized under W. Va. Code § 18B-12-3 to, "... enter into agreements and other contractual relationships with one or more corporations formed with respect to such state institution of higher education..." and West Virginia University Research Corporation is such a corporation.

**WITNESSETH:**

WHEREAS, OIC has requested WVURC to perform certain claims management data warehousing, analysis of claims data and provide medical and technical consulting services as defined in this document for OIC; and

WHEREAS, WVURC has agreed to perform such claims management data warehousing, analysis of claims data and provide medical and technical consulting services subject to the terms and conditions as more fully set forth herein;

NOW THEREFORE, in consideration of the terms and conditions hereof, and for other good and valuable consideration, the receipt of which is hereby mutually acknowledged by the parties, OIC and the WVURC Entities agree as follows.

**SECTION 1. DEFINITIONS**

1.1 CERTAIN DEFINITIONS. As used herein and unless otherwise required by the context, the following terms shall have the following respective meanings.

"OIC Data" shall mean data provided by WVURC to the Main Data Warehouse which is owned by or licensed to WVURC and/or its affiliates. Such data may be of any Data Type.

"Affiliate" means any wholly-owned subsidiary of WVURC, or any other entity of which a majority is owned by WVURC.

"Agreement" shall mean this Data Warehousing Services Agreement, including all Schedules hereto, and any future amendments or supplements thereto.

"Applicable Law" shall mean any applicable federal, state or local law, rule, regulation, administrative interpretation, order, writ, injunction, directive, judgment or decree.

"Base Fee" shall have the meaning set forth in Schedule B hereto.

"Business Day" shall mean any day, except Saturday, Sunday, or any state or federal holiday.

"Commissioner" means the Commissioner for the West Virginia Office of the Insurance Commissioner, as that position is created and defined by W. Va. Code §33-2-1.

"Commission" means the West Virginia Office of the Insurance Commissioner as provided for by W.Va. Code § 33-2-1.

"Contract Year" shall mean the consecutive one-year periods during the Term Commencing on the Effective Date of this Agreement.

"Data" shall mean the WVURC Data and the OIC Data.

"Database System" shall mean the information database system operated by or on behalf of WVURC, including but not limited to hardware, software and other equipment.

"Data Mining" shall mean a class of database applications that look for hidden patterns in a group of data that can be used to shed light on past behavior (e.g. trends, hazards, etc.).

"Effective Date" shall mean March 1, 2006.

"Initial Term" shall have the meaning set forth in Section 8.1 of this Agreement.

"Main Data Warehouse" shall mean the central repository where all Data is assembled, manipulated and maintained.

"Operating Procedures" shall mean those written procedures mutually agreed to by WVURC and OIC, as the same may be modified from time to time by written instrument executed by WVURC and OIC.

"Renewal Term" shall mean each one (1) year renewal term of this Agreement following the completion of the initial one (1) year term hereof.

"Services" shall mean those database services set forth in Schedule A hereto.

"Term" shall mean the Initial Term and any and all Renewal Terms as defined in Section 8.1 of this Agreement.

"WVURC Data" shall mean data provided to WVURC under this Agreement by the OIC and/or insurers or governmental agencies participating in the program. Such data may be of any Data Type and shall include, but not be limited to, the data collected by WVURC.

1.2 OTHER DEFINITIONS. As used herein, terms defined in the introductory paragraph hereof and in other sections of this Agreement shall have such respective defined meanings. Defined terms stated in the singular shall include reference to the plural and vice versa.

## **SECTION 2. DATABASE SERVICES**

2.1 DATABASE SERVICES. Subject to the terms and conditions of this Agreement, WVURC shall perform the Services for the OIC. During the Term, WVURC shall not appoint any third-party to perform any of the Services for OIC without prior written approval from OIC. It is understood and agreed that the OIC may manipulate, evaluate and otherwise utilize any and all Data, including the WVURC Data, in connection with its regulatory activities.

2.2 OPERATING PROCEDURES. The OIC shall observe and comply with the Operating Procedures and such other reasonable procedures mutually agreed to in writing by WVURC and OIC as required by Applicable Law.

2.3 SOFTWARE AND TECHNOLOGY OWNERSHIP. All software or other technology owned, copyrighted, developed by or licensed to WVURC (including, but not limited to, software or other technology developed by or licensed to WVURC in response to a OIC request or to accommodate an insurer or other governmental entity's special requirements) will remain the exclusive property of WVURC, regardless of whether or not OIC is required to pay WVURC for such software or technology development (it being understood that in no event shall OIC be required to pay for any such software or technology development unless the OIC shall have agreed to make such payment in writing in advance). Nothing in this Agreement shall be deemed to convey a proprietary interest to OIC or to any party other than WVURC in any of the software, hardware or technology used or provided by WVURC to permit or facilitate use of the Services, or in any of the derivative works thereof.

2.4 DATA ENTRY AND TRANSMISSION. WVURC shall not be responsible for errors in the Services to the extent such errors result from either OIC's, an insurer's or other governmental agency's error in inputting and/or transmitting Data or either OIC's, an insurer's or other governmental agency's failure to follow WVURC's Operating Procedures. WVURC shall be entitled to rely upon information submitted by the OIC, an insurer or other governmental agency on their behalf.

2.5 WVURC INTELLECTUAL PROPERTY. WVURC intellectual property shall include, without limitation: WVURC's data warehousing system and design, and WVURC's unique segmentation designs and incremental data mining models, other models or modeled data aggregations, and information clustering and profiling products (i.e., Portrait).

2.6 OWNERSHIP RIGHTS OF PARTIES. Except as expressly set forth in this agreement, no Party will, as a result of this Agreement, or of performance hereunder, acquire any property or other right, claim or interest, including any patent right, trade secret, or copyright or other intellectual property right, in any of the information systems, processes, equipment, or computer software of the other, or any service marks or trademarks of the other.

### **SECTION 3. PRICE, PAYMENT AND SUBMISSION OF INVOICES**

3.1 PRICE. The OIC will pay to WVURC NOT TO EXCEED THE AMOUNT (

, as detailed in Schedule B attached hereto and incorporated here during the Term.

3.2 INVOICES. During the Term, WVURC shall send quarterly invoices to the OIC at the corresponding address initially set forth in Schedule C of this Agreement, and the OIC shall pay WVURC within forty-five (45) days after the date of the corresponding invoice. In the event of a dispute as to the accuracy of an invoice or calculation made pursuant to this Agreement, the OIC shall within thirty (30) days of the date of the invoice, request that WVURC provide such supporting material as would be reasonably designed to ascertain the accuracy of the invoice or calculation. The OIC shall nevertheless pay the portion of the invoice that is not in dispute. The parties shall cooperate to resolve any payment disputes under this Agreement in an expeditious manner. If indicated, WVURC shall either promptly issue invoice credit to the OIC against the earliest subsequent invoices or make prompt payment to the OIC as per the terms of such resolution. Any payment by WVURC to the OIC shall be made to the OIC as set forth in the Notices Section 9.7 of this Agreement. If any amount remains due and unpaid, the OIC shall promptly pay such amount. Invoices not paid within sixty (60) days of the invoice date may be assessed interest by WVURC at a rate equal to the prime interest rate as published for the relevant period in the Wall Street Journal plus one and one-half percent (1-1/2%) per annum.

3.3 SUSPENSION. WVURC shall have the right to suspend its performance of the Services in the event that the OIC fails to pay an undisputed amount due to WVURC hereunder within ninety (90) days after the date of the corresponding invoice.

### **SECTION 4. REPRESENTATIONS AND CERTIFICATIONS OF THE OIC**

OIC Entity hereby represents and certifies on behalf of itself to WVURC as follows:

4.1 ORGANIZATION, POWER AND QUALIFICATION. It is a governmental of the State of West Virginia and is an agency of the West Virginia Department of Revenue and has full power and authority to enter into this Agreement on its own behalf, and to carry out the provisions of this Agreement.

#### 4.2 AUTHORIZATION, VALIDITY AND NON-CONTRAVENTION.

(a) This Agreement has been duly authorized by all necessary governmental proceedings, has been duly executed and delivered and is a valid and legally binding agreement, duly enforceable in accordance with its terms.

(b) No consent, approval, authorization, order, registration or qualification of or with any court or regulatory authority or other governmental body having jurisdiction over it is required for, and the absence of which would adversely affect, the legal and valid execution and delivery of this Agreement, and the performance of the transactions contemplated by this Agreement.

(c) Its execution, delivery and performance of this Agreement by the OIC hereunder, including, without limitation, its provision of OIC Data to WVURC and the compliance by it with all provisions of this Agreement (i) will not conflict with or violate any Applicable Law, and (ii) will not conflict with or result in a breach of or default under any of the terms or provisions of any other contract or agreement.

4.3 ACCURACY OF INFORMATION. All factual information that is generated by it internally and not from a third party and that is furnished by it to WVURC in writing at any time pursuant to any requirement of, or furnished in response to any written request of, WVURC under this Agreement or any transaction contemplated hereby has been, and all such factual information hereafter furnished by it to WVURC will be, based on the OIC's reasonable knowledge, true and accurate in every respect material to the transactions contemplated hereby on the date as of which such information was or will be stated or certified.

### SECTION 5. REPRESENTATIONS AND CERTIFICATIONS OF WVURC

WVURC hereby represents and certifies to the OIC Entity as follows:

5.1 ORGANIZATION, POWER AND QUALIFICATION. WVURC is a corporation duly organized, validly existing and in good standing under the laws of the State of West Virginia and has full corporate power and authority to enter into this Agreement and to carry out the provisions of this Agreement. WVURC is duly qualified and in good standing to do business in all jurisdictions where such qualification is necessary for WVURC to carry out its obligations under this Agreement.

#### 5.2 AUTHORIZATION, VALIDITY AND NON-CONTRAVENTION.

(a) This Agreement has been duly authorized by all necessary corporate proceedings, has been duly executed and delivered by WVURC and is a valid and legally binding agreement of WVURC duly enforceable in accordance with its terms.

(b) No consent, approval, authorization, order, registration or qualification of or with any court or regulatory authority or other governmental body having jurisdiction over WVURC is required for, and the absence of which would adversely affect, the legal and valid execution and delivery of this Agreement, and the performance of the transactions contemplated by this Agreement.

(c) The execution, delivery and performance of this Agreement by WVURC hereunder including the provision, sale, barter or sharing of Data, and the compliance by WVURC with all provisions of this Agreement (i) will not conflict with or violate any Applicable Law, (ii) will not conflict with or result in a breach of the terms or provisions of any other contract or agreement under which WVURC is an obligor or by which its property is bound where such conflict, breach or default would have an adverse effect on WVURC, nor will such execution, delivery or compliance violate or result in the violation of the Articles of Incorporation or by-laws of WVURC.

5.3 ACCURACY OF INFORMATION. All factual information that is generated by WVURC internally and not from a third party that is furnished by WVURC to the OIC in writing at any time pursuant to any requirement of, or furnished in response to any written request of the OIC under this Agreement or any transaction contemplated hereby has been, and all such factual information hereafter furnished by WVURC to the OIC will be, based on WVURC's reasonable knowledge, true and accurate in every respect material to the transactions contemplated hereby on the date as of which such information has or will be stated or certified.

## SECTION 6. COVENANTS OF WVURC

WVURC agrees that during the Term of this Agreement it will comply with the federal and state laws. WVURC shall do or cause to be done all things necessary to comply with all Applicable Laws (including but not limited to all applicable state and federal privacy laws in connection with its business, its use of the Data and its obligations pursuant to this Agreement. WVURC shall do or cause to be done all things necessary to ensure that its actions with respect to obtaining Data and the provision, sharing, bartering and/or selling of Data to third parties complies with Applicable Law and shall require in its transactions with third parties that the use of Data by such third parties complies with all Applicable Laws.

## SECTION 7. INDEMNIFICATION

### INDEMNIFICATION OBLIGATIONS.

(a) OIC shall be responsible for any and all Losses (as hereinafter defined) incurred by reason of: (i) OIC's breach of any representation, certification or covenant hereunder, (ii) OIC's performance of or failure to perform its obligations hereunder, (iii) any action or failure to act by OIC and its respective officers, directors and/or employees, which results in a claim against WVURC, its officers, employees, and affiliates, unless the proximate cause of any such claim is an act or failure to act by WVURC, its officers, directors or employees.



(b) WVURC shall be responsible for any and all Losses (as hereinafter defined) incurred by reason of: (i) WVURC's breach of any representation, warranty or covenant hereunder, (ii) WVURC's performance or and failure to perform its obligations hereunder, and (iii) any action or failure to act by WVURC and its officers, directors, and employees which results in a claim against OIC or its officers, employees, and affiliates, unless the proximate cause of any such claim is an act or failure to act by OIC and its respective officers, directors or employees.

(c) For purposes of this Section 7 the term "Losses" shall mean any liability, damage, costs, fees, losses, judgments, penalties, fines, and expenses, including without limitation, any reasonable attorneys' fees, disbursements, settlements (which require the other party's consent which shall not be unreasonably withheld), and court costs, reasonably incurred by WVURC or OIC as the case may be, without regard to whether or not such Losses would be deemed material under this Agreement except that Losses may not include any overhead costs that any party would normally incur in conducting its everyday business.

## SECTION 8. TERM AND TERMINATION

8.1 TERM. This agreement will be effective as of March 1, 2006 and shall remain effective through December 31, 2006, unless sooner terminated in accordance with this Section 8. After December 31, 2006 (the "Initial Term") the agreement may be extended for one (1) year Renewal Terms unless any party has notified the other in writing not later than two (2) months prior to the end of the Initial Term or any subsequent Renewal Term, subject to the termination provisions in Section 8 of this Agreement. Notice of termination shall be given in the manner set forth in Section 9.7. Following the initial contract period, either party may cancel the agreement at any time with 90 days' notice to the other party. Upon this contract being terminated, each party agrees to make adjustments to the payment schedule in Schedule B to reflect monies due to either party.

### 8.2 TERMINATION WITH CAUSE BY WVURC; WVURC TERMINATION EVENTS.

Any of the following conditions or events shall constitute a "WVURC Termination Event" hereunder, and WVURC may terminate this Agreement immediately without further action if OIC causes such WVURC Termination Event to occur and be continuing:

- (a) If OIC shall generally not pay its debts as they become due; or
- (b) If OIC shall materially default in the performance of or compliance with any term or violates any of the covenants, representations, warranties or agreements contained in this Agreement and OIC shall not have remedied such default within thirty (30) days after written notice thereof shall have been received by OIC from WVURC; or

(c) If any law, ordinance, regulation or the like, including, without limitation, any applicable state or federal law, prohibits or significantly impacts WVURC's performance of the Services. In the event of termination on this basis, OIC and WVURC shall negotiate in good faith to establish mutually agreeable terms and condition for continued use of the then existing Main Data Warehouse.

### 8.3 TERMINATION WITH CAUSE BY THE OIC; OIC TERMINATION EVENTS.

Any of the following conditions or events shall constitute an "OIC Termination Event" hereunder, and the OIC may terminate this Agreement immediately without further action if WVURC causes such OIC Termination Event to occur and be continuing:

(a) If WVURC shall (i) generally not be paying its debts as they become due; (ii) file or consent by answer or otherwise to the filing against it, of a petition for relief, reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy or insolvency law of any jurisdiction; (iii) make an assignment for the benefit of its creditors; (iv) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers for itself or of any substantial part of its property; (v) be adjudicated insolvent or be liquidated; or (vi) take corporate action in preparation for events set forth in subsections (ii), (iii) or (iv); (vii) have a materially adverse change in its financial condition, including, but not limited to receiving a bond downgrade or being downgraded by a rating agency to a rating below an investment grade rating, or (viii) receive an adverse opinion by its auditors or accountants as to its viability as a going concern or (ix) breach or fail to perform or observe any covenant or agreement contained in any creditor loan agreement, debt instrument or any other contract or agreement to which it is bound; or

(b) If a court or government authority of competent jurisdiction shall enter an order appointing, without consent by WVURC, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or if an order for relief shall be entered in any case or proceeding for liquidation or reorganization or otherwise to take advantage of any bankruptcy or insolvency law of any jurisdiction, or ordering the dissolution, winding up or liquidation of WVURC's, or if any petition for any such relief shall be filed against WVURC and such petition shall not be dismissed within 60 days; or

(c) If WVURC shall materially default in the performance of or compliance with any term or violates any of the covenants, representations, warranties or agreements contained in this Agreement and WVURC shall not have remedied such default within thirty (30) days after written notice thereof shall have been received by WVURC from the OIC Entities.

### 8.4 EFFECT OF TERMINATION.

Upon expiration or termination of this Agreement, all of the following provisions shall be applicable:

- (1) The OIC shall pay WVURC the full amount of any and all outstanding invoices for undisputed fees or charges within sixty (60) days;
- (2) within ten (10) Business Days of the expiration or termination of this Agreement, WVURC shall deliver to the OIC all of the OIC Data and all other information or materials reflecting or based upon, in whole or in part, any OIC Data which WVURC developed for the OIC pursuant to this Agreement (the OIC Data and such other information and materials are referred to collectively as the "Relevant Data") in cartridge media or such other format as the OIC shall reasonably request, a copy of WVURC'S data model, table structure, business rules and all other documentation relating to the Services which is reasonably required by OIC for the transition of the Services, and all other promotional or other materials relating, directly or indirectly, to OIC;
- (3) the rights of WVURC to utilize any Relevant Data in any manner whatsoever, directly or indirectly, for internal purposes or otherwise (including, without limitation, the provision, sharing, bartering or selling of any Relevant Data to third parties) shall cease immediately;
- (4) from and after such expiration or termination, WVURC shall take all steps reasonably necessary or appropriate to assist the OIC and at the OIC's expense, in transitioning to another provider of services similar to the Services, including causing WVURC personnel to be reasonably available to the OIC or such new service provider as reasonably necessary or appropriate to respond to inquiries and otherwise to facilitate the transition; and
- (5) all obligations of the parties hereunder except such obligations which survive termination pursuant to Section 9.13, it being understood, however, that the parties shall be obligated to perform all of their obligations hereunder until the effective date of termination.

#### SECTION 9. MISCELLANEOUS (10)

9.1 ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement and supersedes all prior agreements and understandings, whether oral or written, among the parties hereto with respect to the subject matter hereof and merges all prior discussions between them.

9.2 COORDINATION OF PUBLIC STATEMENTS. No party will make any public announcement of this Agreement or provide any information concerning this Agreement to any representative of any news, trade or other media without the prior approval of the other party, and will not respond to any inquiry from any public or governmental authority, except as required by law, concerning this Agreement without prior consultation and coordination with the other party. Notwithstanding the aforementioned restriction, the WVURC may acknowledge the existence of this Agreement through its normal institutional reporting mechanism.

9.3 AMENDMENT. Except as otherwise provided for in this Agreement, the provisions herein may be modified only upon the mutual agreement of the parties, however, no such modification shall be effective until reduced to writing and executed by both parties. In the event an agreed upon amendment effects the duties and obligations of either party, the parties may agree upon a revised fee schedule.

9.4 SUCCESSORS AND ASSIGNS. This Agreement and all obligations and rights arising hereunder shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees and assigns. WVURC shall not assign, subcontract, convey, transfer or delegate any of its responsibilities and obligations under this contract without OIC's expressed written consent. Provided that a party may assign its rights and obligations to any Affiliate of such party without the other parties' consent (it being understood that no assignment pursuant to this proviso shall relieve the assigning party of any of its obligations hereunder).

9.5 WAIVER. No waiver of the provisions hereto shall be effective unless in writing and signed by the party to be charged with such waiver. No waiver shall be deemed to be a continuing waiver in respect of any subsequent breach or default either of similar or different nature unless expressly so stated in writing. No failure or delay on the part of any party in exercising any power or right under this Agreement shall be deemed to be a waiver, nor does any single or partial exercise of any power or right preclude any other or further exercise, or the exercise of any other power or right.

9.6 SEVERABILITY. If any of the provisions or parts of the Agreement are determined to be illegal, invalid or unenforceable in any respect under any applicable statute or rule of law, such provisions or parts shall be deemed omitted without affecting any other provisions or parts of the Agreement which shall remain in full force and effect, unless the declaration of the illegality, invalidity or unenforceability of such provision or provisions substantially frustrates the continued performance by, or entitlement to benefits of, any party, in which case this Agreement may be terminated by the affected party, without penalty.

9.7 NOTICES. All communications and notices pursuant hereto to any party shall be in writing and addressed or delivered to it at its address shown below, or at such other address as may be designated by it by notice to the other party, and shall be deemed given when delivered by hand, or two (2) Business Days after being mailed (with postage prepaid) or when sent by receipted courier service.

The following are individuals identified as the points of contact during the effective life of this contract:

**West Virginia Insurance Commissioner**

*Project Manger*

Gary Griffith, Inspector General  
West Virginia Office of the  
Insurance Commissioner  
One Players Club Drive

*Contract Administration:*

March Tucker  
West Virginia Office of the  
Insurance Commissioner  
One Players Club Drive

P.O. Box 2901  
 Charleston, WV 25330-2901  
 (p) 304-558-8962 x 5039

P.O. Box 2901  
 Charleston, WV 25330-2901  
 (p) 304-558-8962 x 5039  
[March.Tucker@wvinsurance.gov](mailto:March.Tucker@wvinsurance.gov)

**West Virginia University Research Corporation**

*Project Manger:*

Alan Ducatman, M.D., Chairman  
 Department of Community Medicine  
 West Virginia University  
 PO Box 9190  
 Morgantown, West Virginia 26506

*Contract Administration:*

Mary Jane Buckland  
 Department of Community Medicine  
 P.O. Box 6845  
 Morgantown, West Virginia 26506

9.8 CAPTIONS AND CROSS-REFERENCES. The table of contents and various captions and section headings in this Agreement are included for convenience only and shall not affect the meaning or interpretation of any provision of this Agreement. References in this Agreement to any Section are to such Section of this Agreement.

9.9 GOVERNING LAW AND BINDING EFFECT. This Agreement is made and delivered in the State of West Virginia and shall be governed by and construed and interpreted in accordance with the laws of the State of West Virginia, including its statutes of limitations but without regard to its conflicts of law rules, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and may not be changed orally but only in writing signed by the parties hereto. Any action instituted against OIC as a result of, or in connection with this Agreement shall be brought in the West Virginia Court of Claims pursuant to West Virginia Code §§ 14-2-1 through 29.

9.10 COUNTERPARTS. This Agreement may be signed in one or more counterparts, all of which shall be taken together as one agreement.

9.11 FORCE MAJEURE. No party will be responsible for any failure or delay in performance of its obligations under this Agreement because of circumstances beyond its control, including, but not limited to, acts of God, flood, criminal acts, fire, riot, computer viruses, computer hackers, accident, strikes or work stoppage, embargo, sabotage, inability to obtain material, equipment or phone lines, government action (including any laws, ordinances, regulations or the like which restrict or prohibit the providing of the services contemplated by this Agreement), and other causes whether or not of the same class or kind as specifically named above. In the event a party is unable to perform substantially for any of the reasons described in this Section, it will notify the other party promptly of its inability so to perform, and if the inability continues for at least thirty (30) consecutive days, the party so notified may then terminate this Agreement forthwith. This provision shall not, however, release the party unable to perform from using its best efforts to avoid or remove such circumstance and such party unable to perform shall continue performance hereunder with the utmost dispatch whenever such causes are removed.

9.12 RELATIONSHIP OF PARTIES. This Agreement does not constitute the parties as partners or joint venturers and no party will so represent itself.

9.13 SURVIVAL. No termination of this Agreement shall in any way affect or impair the powers, obligations, duties, rights, indemnities, liabilities, covenants or warranties and/or representations of the parties with respect to times and/or events occurring prior to such termination. No powers, obligations, duties, rights, indemnities, liabilities, covenants or warranties and/or representations of the parties with respect to times and/or events occurring after termination shall survive termination except for the following Sections: Section 3, Section 7, Section 9.7 and Section 9.18.

9.14 MUTUAL DRAFTING. This Agreement is the joint product of WVURC and OIC and each provision hereof has been subject to mutual consultation, negotiation and agreement of WVURC and OIC.

9.15 INDEPENDENT CONTRACTOR. The parties hereby declare and agree that WVURC is engaged in an independent business, and shall perform its obligations under this Agreement as an independent contractor; that any of WVURC's personnel performing the services hereunder are agents, employees, affiliates, or subcontractors of WVURC and are not agents, employees, affiliates, or subcontractors of the OIC; that WVURC has and hereby retains the right to exercise full control of and supervision over the performance of WVURC's obligations hereunder and full control over the employment, direction, compensation and discharge of any and all of the WVURC's agents, employees, affiliates, or subcontractors, including compliance with workers' compensation, unemployment, disability insurance, social security, withholding and all other federal, state and local laws, rules and regulations governing such matters; that WVURC shall be responsible for WVURC's own acts and those of WVURC's agents, employees, affiliates, and subcontractors; and that except as expressly set forth in this Agreement, WVURC does not undertake by this Agreement or otherwise to perform any obligation of the OIC, whether regulatory or contractual, or to assume any responsibility for the OIC's business or operations.

9.16 NO THIRD PARTY BENEFICIARIES. The provisions of this Agreement are for the benefit of the parties hereto and not for any other person or entity.

9.17 COUNTERPARTS. This Agreement may be executed in several counterparts all of which taken together shall constitute one single agreement between the parties.

9.18 CONFIDENTIALITY. (a) No party shall disclose any information not of a public nature concern the business or properties of any other party which it learns as a result of negotiating or implementing this Agreement or the transactions contemplated hereby, including, without limitation, the terms and conditions of this Agreement, trade secrets, business and financial information, business methods, procedures, know-how and other information of every kind that relates to the business of any party except to the extent disclosure is required by applicable law, is necessary for the performance of the disclosing party's obligation under this Agreement, or is agreed to in writing by the other party; provided that: (i) prior to disclosing any confidential information to any third party, the party making the disclosure shall give notice to

the other party of the nature of such disclosure and of the fact that such disclosure will be made; and (ii) prior to filing a copy of this Agreement with any governmental authority or agency, the filing party will consult with the other party with respect to such filing and shall redact such portions of this Agreement which the other party requests be redacted, unless, in the filing party's reasonable judgment based on the advice of its counsel (which advice shall have been discussed with counsel to the other party), the filing party concludes that such request is inconsistent with the filing party's obligations under applicable laws. No party shall use the other party's name for advertising or promotional purposes without such other party's written consent. None of the foregoing shall preclude any party from disclosing Data in the course of exercising its rights under Section 2.4 hereof.

(b) The obligations of this Section, shall not apply to any information:

(i) which is generally known to the trade or to the public at the time of such disclosure; or

(ii) which becomes generally known to the trade or the public subsequent to the time of such disclosure; provided, however, that such general knowledge is not the result of a disclosure in violation of this Section; or

(iii) which is obtained by a party from a source other than the other party, without breach of this Agreement or any other obligation of confidentiality or secrecy owed to such other party or any other person or organization; or

(iv) which is independently conceived and developed by the disclosing party and proven by the disclosing party through tangible evidence not to have been developed as a result of a disclosure of information to the disclosing party, or any other person or organization which has entered into a confidential arrangement with the non-disclosing party.

(c) If any disclosure is made pursuant to the provisions of this Section, to any parent company, subsidiary, affiliate or third party, the disclosing party shall be responsible for ensuring that such parent, subsidiary, affiliate or third party keeps all such information in confidence and that any third party executes a confidentiality agreement provided by the non-disclosing party. Each party covenants that at all times it shall have in place procedures designed to assure that each of its employees who is given access to the other party's confidential information shall protect the privacy of such information. Each party acknowledges that any breach of the confidentiality provisions of this Agreement by it will result in irreparable damage to the other party and therefore in addition to any other remedy that may be afforded by law any breach or threatened breach of the confidentiality provisions of this Agreement may be prohibited by restraining order, injunction or other equitable remedies of any court. The provisions of this Section will survive termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in manner and form sufficient to bind them as of the date first above written.

THE WEST VIRGINIA OFFICE OF THE INSURANCE COMMISSIONER

By: /s/ Jane L. Cline

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Title: Insurance Commissioner

WEST VIRGINIA UNIVERSITY RESEARCH CORPORATION.

By: /s/ Alan B. Martin

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Title: Secretary



## SCHEDULE A

### DATA SERVICES

West Virginia University will perform the following tasks for the West Virginia Insurance commission during the time period March 1, 2006 through December 31, 2006.

#### **Scope of Work:**

1. WVURC Core Components: The scope of work is comprised of four process components and a set of administrative procedures to support them. The core process components are:

- Maintenance and operation of a data warehouse. This includes use of and training in Oracle Discoverer and/or Oracle Portal for ten OIC staff as identified by the OIC Project Manager.
- Collaborative OIC-WVURC provider identification and performance criteria including development of web-based Oracle Portal and/or Discoverer tools for independent use by select OIC staff.
- Analysis and trending of OIC and other entities performance using indicators defined by OIC and WVURC, including national Workers' Compensation Research Institute (WCRI) formats.
- WVURC will provide data which will enhance analyses by OIC personnel interested in trends, hazards, duplication, waste, and related aspects of employer, provider, and claimant behavior.

#### **Technical Enhancement/Support and Data Warehouse**

The OIC Data Warehouse will be maintained using weekly or monthly mirroring of its data files which will be cleaned and integrated using techniques developed by WVURC staff. The data cleaning and integration activities will incorporate several value added processes such as filtering and conversion of data types.

Most of the filtering process will occur prior to integration of data that were previously recommended and approved by the OIC's personnel. (Upon request, details of the script will be provided. However, OIC agrees that request will be limited to specific instances and that the script is the property of WVURC and will not be shared with any third party.) Data conversion will also help in refine filtering. Claim numbers will be converted from numeric form to character strings that permit pattern matching. (e.g. if interested only in 2002 cases, wherein the pattern to be matched would be the value "2002" of the first four characters of the claim number. If the claim number is numeric, it would be very difficult to filter only 2002 cases. However, the claim number in a character-variable format is much easier to filter the sub-strings.)

The data warehouse project will include the use of Oracle Discoverer and Oracle Portal. These tools will be designed to meet OIC's requirements for data retrieval and analysis. WVURC staff will train up to ten designated OIC staff in the use of both tools in order to enable the staff to generate queries using the data warehouse. Initial training will be accomplished within the first

two months of the contract or as soon as the OIC can designate trainees. Once those staff members to be trained have been identified by OIC, WVURC will offer training quarterly. OIC is responsible for training attendance.

**Discussion of Task Area 1:**

Historically WVURC's data services were useful to the former the West Virginia Workers' Compensation Commission "WV WCC." WVURC proposes to continue this effort with the OIC.

**Task Area 1:**

WVURC will maintain the replicated database(s) of Insurance Company data and the database of the OIC for which BrickStreet, or its successor, operates as the third party administrator. WVURC will perform the following tasks:

- 1A. Weekly download of the previous identified data.
- 1B. Cleansing and integration of medical and indemnity related Workers' compensation Information System (WCIS) data tables
- 1C. This data will be made available to the Fraud Unit of the OIC on a site maintained by WVURC.
- 1D. WVURC will make modifications or additions to the database at the direction of the OIC
- 1F. Future additions to the database will include extracted data from other governmental agencies and insurance companies that volunteer to participate in the project with the approval of the OIC.

**Discussion of Task 2**

Note: the OIC has new responsibility for the cases that existed in WV WCC prior to July 1, 2005 date of injury. We propose to assist with the management of these cases in Task 2. If directed by the OIC, WVURC will compile data from injuries occurring after June 30, 2005 for claimants with an injury prior to July 1, 2005.

**Task Area 2:**

- 2A. WVURC will be given access to claims data from WCIS for relevant claims.
- 2B. WVURC will generate data tables at the direction of the Inspector General of the OIC or its designee.

- 2C. WVURC will develop value-added data from the WCIS database that mirrors work previously done by WVURC.
- 2D. WVURC will perform timely (as mutually agreed upon, i.e. weekly or monthly) updates of data in the warehouse, as access to the primary data permits.
- 2E. WVURC will develop new data applications with mutual consent between the OIC and WVURC.
- 2F. WVURC will prepare data for downloading in appropriate format(s), as requested by the OIC.

**Task Area 3:**

WVURC has expertise in data mining which includes, but is not limited to, both predictive modeling and classification analysis. In particular, WVURC has experience in predicting both high cost cases and provider non-compliance with established treatment guidelines based on worker's compensation databases. This task area requires the expertise of statistical and epidemiological faculty.

- 3A. WVURC will provide consultative services and analysis to evaluate the appropriate relationship between diagnosis, treatment and pharmacy.
- 3B. At the direction of the OIC, WVURC will conduct "data mining" analysis to identify existing practice or claimant behavior.

**Task Area 4:**

- 4A. If requested by the OIC, WVURC will seek access to data from additional sources to such as PEIA, Medicaid, CHIPS, other governmental entities, a other private insurance company data.
- 4B. Tasks defined in Area 2 B through F will be performed on any new claims data.
- 4C. As new data and related tasks are created, a new budget will be agreed upon pursuant to provisions of Section 9.3 of this agreement.

**Task Area 5:**

WVURC, with the collaboration and direction of OIC personnel, will develop a data warehouse consisting of aggregated data from sources available to WVURC and provided by the OIC. The data warehouse will be built using Oracle's Discoverer 10g. The availability of a data warehouse will substantially increase the OIC's ability to monitor the behavior of vendors and claimants relevant to OIC responsibilities. A data warehouse will provide facilities to do trend analysis using historical data from data sources available to WVURC and the OIC. Moreover, the Discoverer tool support "pivoting" and "slicing and dicing" of the aggregated data.

Effectively, the two concepts of pivoting and slicing and dicing will enable OIC personnel to view data by focusing on aspects of the data of specific interest to the individual user.

- 5A. Create "cubes" of aggregated data as determined by the needs of the OIC.
- 5B. Provide support to OIC personnel in the design and use of data cubes.
- 5C. Build additional cubes as needs arise or modify existing cubes as requirements change.

**Contract Administration:**

The WVURC Project Director will be Alan M. Ducatman, MD, MSc. Day-to-day organization, transactions, and communications with the OIC will be managed by Mr. Cecil Pollard, Program Manager. Requests for meetings, new products, revisions of products, or education will be transmitted by the OIC project director or project officer to the WVURC program manager. The leader of the WVURC technical support group is Ms. Wen Hu. She can be contacted directly for technical information or changes in technical aspects of programs that do not impact policies. John Atkins, PhD, will provide database programming capability and supervision. Questions about database administration should be directed to Dr. Atkins.

**Joint Implementation Processes:**

WVURC personnel will attend planning meetings at the OIC as needed. WVURC will propose dates, and the OIC will be responsible for confirming dates and meeting times/places. WVURC products will be presented to the OIC and validated by the OIC.

The WVURC Project Manager will meet in person or with OIC members at least bi-monthly so that requests can be clarified and easily transmitted. The Project Managers of WVURC and the OIC will collaborate to avoid duplication of work and to prioritize requests for special studies.

WVURC Staff will regularly participate in on-site or by other agreed upon methods working committee meetings with OIC personnel assigned to the committee by the OIC Project Manager. The dates for these meetings and the topics of discussion will be agreed upon prior to the meetings.

WVURC will provide the OIC with three database research questions for each term of the agreement.

**SCHEDULE B  
FEES**

## Insurance Commission - WVU Data Analysis Project

3/1/06-12/31/06

## COMBINED BUDGET

Name	Role	Effort	Salary	Fringe	Total
Alan Ducatman, MD, MS	Principal Investigator				
Cecil Pollard	Co-Investigator, Project Manager				
Jim Harner, PhD	Co-Investigator- Statistical Consultant				
Edward Doyle, MD, MS	Co-Inv; Medical Analysis Consultant				
Chuanfang Jin, MD	Co-Inv; Medical Analysis Consultant				
John Atkins, PhD	Co-Inv; Database Admin. and Developer				
Gerry Hobbs, PhD	SAS / Data Miner				
Wen Hu	Database Administrator/ Analyst				
Jun Tan	System/ Network Support				
Steve Giessler	UNIX Security Analyst				
Yaping Wang	Database Analyst				
TBA - Epidemiologist	Epidemiologist				
Robin Altobello	Project Assistant				
Melissa Mitchell	Administration/Finance				
<b>Total Personnel</b>					
<b>Non-Personnel</b>					
Other Expenses	UHA Provided Services: Alan M. Ducatman, MD, MSc Edward J. Doyle, MD, MSc Chuanfang Jin, MD, MSc Melissa Mitchell				
Supplies	General Office supplies, printing, copying, zip disks, writable cd's, books, statistical and medically related reference materials				
Communication	Long Distance @ \$85/mth. (10 months) Postage and Federal Express @ \$35 per month (10 months)				
Licenses & Maintenance	ORACLE License SAS License (10 months) Sun Maintenance Agreement (2 machines) (10 months)				
Travel	Travel to Charleston and the Insurance Commission 5 Rd. trips x 350 miles @.445 cents/miles 5 overnight (lodging meals) @\$180/trip				
Equipment	Computer				
<b>Total Non-Personnel</b>					
<b>Subtotal Direct Costs</b>					
<b>Indirect Costs (10%)</b>					
<b>Total</b>					

**SCHEDULE C  
BILLING ADDRESS**

West Offices of the Insurance Commissioner  
P.O. Box 50540  
Charleston, WV 25305-0540