

**CONSULTING CONTRACT**  
**Professional Court Reporter Services**

This Contract is made effective as of October 1, 2010, by and between the Alabama Department of Insurance of 201 Monroe Street, Suite 1700, Montgomery, Alabama 36104, and \_\_\_\_\_

In this Contract, the party who is contracting to receive services shall be referred to as the “Department” and the party who will be providing the services shall be referred to as “Contractor.” The Contractor has personnel with the qualifications, education, experience, training and certifications necessary in certified court reporting services, specifically personnel properly licensed by the Alabama Board of Court Reporting to provide court reporting services, and is willing to provide services to the Department based on these backgrounds. The Department desires to have services provided by the Contractor.

**1. DESCRIPTION OF SERVICES**

Beginning on October 1, 2010, and ending on September 30, 2012, the Contractor will provide one or more of the following services, (collectively the “Services”) when requested by the Department: certified court reporting services for administrative hearings and depositions; delivery of written and electronic transcripts in a timely manner; videographer services upon request for hearings and depositions; expedited delivery of transcripts as requested; and other related court reporting services.

**2. PERFORMANCE OF SERVICES**

Court reporting services shall be performed upon request of the Department. The Department will rely on the Contractor to work as many hours as may be reasonably necessary to fulfill the Contractor’s obligations under this Contract. All Services are to be performed in accordance with professional ethics and standards of practice and the conflict of interest provision of Section 27-2-13, Code of Alabama 1975. If an assignment is not completed and a written transcript not provided within the budgeted time approved by the Department, the Department reserves the right to refuse making payments under this Contract until a satisfactory written transcript is provided by the contractor.

Contractor will have no authority to act for or on behalf of the Department or the State of Alabama except as expressly provided for in the executed contract; no other authority, power or use is granted or implied. Contractor may not incur any debt, obligation, expenses, or liability of any kind on behalf of the Department or the State of Alabama.

**3. PAYMENT**

The Department will pay a fee to the Contractor of no more than \$\_\_\_\_\_ for services provided by the Contractor, payable at the rates indicated on the attached pricing form.

With completion of each transcript as requested, Contractor will furnish an invoice to the Department for services rendered and expenses incurred. Each invoice or billing statement shall itemize costs incurred in connection with the particular matter for which services were rendered at the prices set forth in the pricing form. The contact person for matters relating to invoicing and payment processing for this Contract shall be Tisha Johnson, Department Accountant. Contractor will submit two (2) copies of an invoice to the Department, Attn: Tisha Johnson. If by hand delivery or courier, invoices shall be delivered to: 201

Monroe Street, Montgomery, AL 36104. If by U.S. Mail, invoices shall be delivered to: P.O. Box 303351, Montgomery, AL 36130-3351. Invoices that are received by the Department which are otherwise received in non-conformance with all of the requirements of the contract will be returned to Contractor unpaid or will be held by the Department until proper documentation is submitted. Contractor will promptly refund or credit within thirty (30) calendar days any erroneously paid funds that are not expressly authorized by the Department.

The Department will not prepay for any services provided by Contractor in its performance under the contract.

Upon termination of this Contract, payments under this section shall cease; provided, however, that the Contractor shall be entitled to payments for periods or partial periods that occurred prior to the date of termination and for which the Contractor has not yet been paid, up to the limits of the Contract.

#### **4. EXPENSE REIMBURSEMENT**

No transportation or other reimbursement will be paid to the Contractor for expenses incurred in attending hearings or depositions conducted within a thirty-mile radius of the Department's offices located at 201 Monroe Street, Montgomery. In the event a hearing or deposition is held outside a thirty-mile radius of the Department's offices located at 201 Monroe Street, Montgomery, the Contractor will be paid transportation and per diem in lieu of reimbursement for actual expenses for intrastate and interstate travel the same as for classified employees of the State of Alabama; said per diem being the rate set in Sections 36-7-20 or 36-7-21, Code of Alabama 1975. The mileage allowance when traveling in privately-owned vehicles shall be the same as that allowed employees under the classified service of the State of Alabama as provided by Section 36-7-22, Code of Alabama 1975. Expenses incurred in commercial travel shall be reimbursed at actual cost. Contractor shall not be reimbursed for travel time or travel expenses not actually incurred in connection with an assignment.

The total expense reimbursement under this Contract shall not exceed \$\_\_\_\_\_.

Total payments under this Contract for professional fees and expense reimbursement under this Contract shall not exceed \$\_\_\_\_\_.

#### **5. SUPPORT SERVICES**

The Department will not provide support services, including office space and secretarial services, for the benefit of the Contractor.

#### **6. TERM/TERMINATION**

The contract may be terminated or cancelled for any one of the following circumstances, but in no event shall the term of this contract extend past September 30, 2012:

- Upon the mutual written agreement of both parties, either party may terminate or cancel the contract with thirty (30) days written notice.

- Either party may, upon giving thirty (30) days written notice identifying specifically the basis for such notice, terminate the contract for breach of a material term or condition of the contract, provided the breaching party shall not have cured such breach within the thirty (30) day period. In the event of such termination, Contractor shall be paid for all services provided prior to the date of the termination.
- Contractor agrees that all individuals provided to the Department under any contract are subject to removal from the Department's contract by the Department if, in the sole judgment of the Department, the individual is not performing satisfactorily. The Department shall notify the Contractor by written notice of unsatisfactory performance and removal from the Department's contract for any affected individual. This right of removal is in addition to the Department's rights to terminate this contract.

This contract is subject to termination or cancellation, without penalty to the Department, either in whole or in part, subject to the availability of state funds. The Department is a state agency whose authority and appropriations are subject to actions of the Alabama Legislature. If the Department becomes subject to a legislative change, revocation of statutory authority, proration, or lack of appropriated funds that would render the services to be provided by Contractor under the contract impossible or unnecessary, the contract will be terminated or cancelled and be deemed null and void. In the event of a termination or cancellation under this section, the Department will not be liable to Contractor for any damages that are caused or associated with such termination or cancellation and the Department will not be required to give notice. In the event of such termination, Contractor shall be paid for all services provided prior to the date of the termination.

In the event the Department terminates or cancels the contract for Contractor's nonperformance or for cause, the Department may procure, upon such reasonable terms and in such manner as it deems appropriate, substitute services similar to those so terminated or cancelled and Contractor will be liable to the Department for any excess or additional costs incurred by the Department in acquiring such services plus court costs and attorneys' fees. The Department's recovery of costs under this section is in addition to any other remedies available to the Department under the contract and/or under applicable law.

If the contract is terminated for any reason, the Department and the State of Alabama will not be liable to Contractor for any damages, claims, losses or any other amounts arising from or related to any such termination. The Department expressly reserves any and all legal remedies to which it may be entitled to collect any and all damages directly or indirectly resulting from breach of contract by Contractor or any of its agents, representatives, subcontractors, employees, or any other party acting on behalf of the Contractor. The Department reserves the right to pursue any and all applicable rights and remedies if the contract is terminated for any reason and DOI expressly waives no such rights or remedies.

## **7. RELATIONSHIP OF PARTIES**

It is understood by the parties that the Contractor, including Contractor's employees, partners and business associates, is an independent contractor with respect to the Department, and is not an employee of the Department. The Department will not provide fringe benefits, such as health insurance benefits, paid vacation, or other employee benefits for the benefit of the Contractor. It is agreed that the Contractor

is not subject to the control of the State of Alabama or the Department of Insurance in the performance of its duties and is not entitled to the benefits of the State Personnel System or the State Merit System laws.

### **8. INDEMNIFICATION**

The Contractor agrees to indemnify and hold the Department harmless from all claims, losses, expenses, fees including attorney fees, costs and judgments that may be asserted against the Department that result from the acts or omissions of the Contractor, the Contractor's employees, and the Contractor's agents.

### **9. ASSIGNMENT**

Contractor may not assign this Contract, in whole or in part, and may not assign any right or duty required under the contract without the prior written consent of the Department. Contractor will have no right to transfer, assign, or pledge as security for a debt all or any part of Contractor's interest in any resulting contract without the prior written consent of the Department. Any attempted assignment in violation of this section shall be void and without effect.

### **10. CONFIDENTIALITY**

If the Department requests or indicates that exhibits or transcripts are to be sealed, then Contractor agrees to keep said transcripts, exhibits or other documentation confidential and sealed.

### **11. NOTICES**

All notices required or permitted under this Contract shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

Department:	John F. McDonald, III, Chief Counsel Alabama Department of Insurance
Street address:	201 Monroe Street, Suite 1700 Montgomery, AL 36104
Mailing address:	PO Box 303351 Montgomery, AL 36130-3351

Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Such address may be changed from time to time by either party by providing written notice to the other in the manner set forth above.

## 12. ADDITIONAL REQUIREMENTS

In addition to the specifications otherwise included in this contract, Contractor will provide professional services to the Department under a contract in accordance with the following:

**Immigration.** Contractor will comply with the requirements of the Immigration Reform and Control Act of 1986 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the contract.

**Equal Opportunity.** The Contractor will comply with the Civil Rights Act in giving equal opportunity without regard to race, color, creed, sex or national origin.

**ADA.** Contractor will comply with the requirements of the Americans with Disabilities Act (ADA).

**Payment of Taxes and Insurance by Contractor.** Contractor will be responsible for payment of all taxes, including, but not limited to, state, federal, foreign, or local taxes, including income tax, withholding tax, social security tax, pension contributions, and any other form of payroll or other taxes, for all Contractor's employees. At Contractor's sole cost and expense, Contractor will secure and maintain any and all insurance that is required by the contract or is necessary to protect the interests of the State of Alabama and the Department or that Contractor may need or desire for Contractor or Contractor's Employees.

## 13. ENTIRE AGREEMENT

This Contract contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Contract incorporates by reference the Request for Proposals and supersedes any prior written or oral agreements between the parties. This Contract will be binding upon and inure to the benefit of the Department and Contractor and to their respective heirs, executors, administrators, legal representatives and successors.

## 14. AMENDMENT

This Contract may be modified or amended if the amendment is made in writing and is signed by both parties. To the extent the laws of the State of Alabama require the Department to include additional language in its contracts, Contractor agrees to amend any resulting contract and to cooperate in the execution of any contract amendments necessary to effectuate such state law.

## 15. SEVERABILITY

If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

## **16. WAIVER OF CONTRACTUAL RIGHT**

The failure of either party to enforce any provision of this Contract shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Contract. The failure to enforce or any delay in the enforcement of any privileges, rights, defenses, remedies, or immunities detailed in the contract or otherwise available to the Department by law will not constitute a waiver of said privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. The Department does not waive any privileges, rights, defenses, remedies, or immunities available to the Department as an agency of the State of Alabama or otherwise available to the Department.

## **17. APPLICABLE LAW**

This Contract shall be governed by the laws of the State of Alabama. It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article XI, Section 213, of the Constitution of Alabama, 1901, as amended by Amendment 26. It is further agreed that if any provision of this contract shall contravene any statute or constitutional provision or amendment, either now in effect or which may, during the course of this Contract, be enacted, then any conflicting provision in the Contract shall be deemed null and void. The Contractor's sole remedy for settlement of any and all disputes rising under the terms of this Contract shall be limited to the filing of a claim with the Board of Adjustment for the State of Alabama. The Contractor shall not incur any liability on behalf of the State of Alabama.

## **18. EXEMPTION**

The Department, notwithstanding any provisions of this Contract, incorporations or amendments hereto, does not release or waive, expressly or impliedly, its right to assert sovereign immunity or any other affirmative or defensive right or claim it may have under law.

## **19. AUTHORITY**

This Contract is made pursuant to and under the authority of Section 27-2-10, Code of Alabama, 1975.

## **20. EFFECTIVE DATE**

This Contract shall not become effective until approved by the Governor of Alabama. The Contractor acknowledges and understands that this contract is not effective until it has received all the requisite state government approvals and the Contractor shall not begin performing work under this contract until notified to do so by the Department. The Contractor is entitled to no compensation for work performed under this contract prior to the effective date of this contract.

DEPARTMENT:

CONTRACTOR:

By: \_\_\_\_\_  
Jim L. Ridling  
Commissioner  
Alabama Department of Insurance

By: \_\_\_\_\_

Taxpayer ID Number: \_\_\_\_\_

APPROVED AS TO FORM ONLY:

\_\_\_\_\_  
Legal Counsel  
Alabama Department of Insurance

APPROVED:

\_\_\_\_\_  
Bob Riley  
Governor, State of Alabama