

**CONSULTING CONTRACT**  
**Professional Lockbox Banking Services**

The Alabama Department of Insurance is empowered by Section 41-14-4, Code of Alabama 1975, to pay any state depository for the transfer or removal of funds to or from the state depository, item handling charges, or for other services performed by the state depository.

This Agreement is made effective as of July 1, 2010, by and between the Alabama Department of Insurance (hereinafter the “Department”) of 201 Monroe Street, Suite 1700, Montgomery, Alabama 36104, and

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\_\_\_\_\_ (hereinafter the “Contractor”), a state depository according to Alabama law.

The Department and the Contractor have entered into this contract for the provision of professional lockbox banking services. The Contractor has the necessary expertise to perform the services under this contract.

In consideration of the services to be performed and payments to be made, together with the mutual covenants and conditions hereinafter set forth, the parties agree as follows:

**1. SCOPE OF CONTRACT**

Beginning on July 1, 2010, and ending on June 30, 2012, the Contractor will provide lockbox banking services for the Department. The services provided in the Request for Proposals which relate to lockbox processing operations and the proposal of Contractor to provide lockbox banking services are hereby incorporated by reference into this Contract.

**2. PAYMENT**

The parties agree that this Contract is a Fee for Services Contract and the sum total of the professional services to be provided during the operation of this contract shall not exceed \$\_\_\_\_\_ annually based on processing fees as set forth below. The Contractor shall submit itemized written invoices for services provided during the course of the contract on a monthly basis.

**Box 691**

<b>BOX 691 FEE SCHEDULE</b>			
<b>Services</b>	<b>Annual Volume</b>	<b>Per Item Charge</b>	<b>Total Annual Fee</b>
Non-ACH items processed	7,000		
Exception Handling	4,000		

**Box 707**

<b>BOX 707 FEE SCHEDULE</b>			
<b>Services</b>	<b>Annual Volume</b>	<b>Per Item Charge</b>	<b>Total Annual Fee</b>
Non-ACH items processed	1,700		
Exception Handling	100		

**ACH**

<b>EFT FEE SCHEDULE</b>			
<b>Services</b>	<b>Annual Volume</b>	<b>Per Item Charge</b>	<b>Total Fee</b>
ACH items processed	780		

Upon termination of this Agreement, payments under this paragraph 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.

**3. TERM/TERMINATION**

The Agreement may be terminated by either party upon 30 days written notice to the other party but in no event shall the term of this Agreement extend past June 30, 2012. Any Contract whose term includes or runs more than one fiscal year is subject to termination in the event that funds should not be appropriated for the continued payment of the Contract in a subsequent fiscal year. In case of proration of the funds from which payment under this Contract is to be made, the Contract will be subject to termination.

**4. RELATIONSHIP OF PARTIES**

It is understood by the parties that the Contractor 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.

## **5. INDEMNIFICATION**

The Contractor agrees to indemnify and hold the Department harmless from all claims, losses, expenses, fees including attorney fees, costs and judgment 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.

## **6. ASSIGNMENT**

The Contractor's obligations under this Agreement may not be assigned or transferred to another person, firm, or corporation without the prior written consent of the Department.

## **7. CONFIDENTIALITY**

Unless contrary to the laws of the State of Alabama or the United States, the Contractor agrees that the Contractor will not at any time or in any manner, either directly or indirectly, use any information, data and reports for the Contractor's own benefit, or divulge, disclose, or communicate in any manner any information, data and reports to any third party without the prior written consent of the Department. The Contractor will protect all information, data and reports given to or prepared and assembled by the Contractor under this Agreement and treat it as strictly confidential. A violation of this paragraph shall be a material violation of this Agreement.

## **8. UNAUTHORIZED DISCLOSURE OF INFORMATION**

If it appears that the Contractor has disclosed (or has threatened to disclose) information in violation of this Agreement, the Department shall be entitled to an injunction to restrain the Contractor from disclosing, in whole or in part, such information, or from providing any services to any party to whom such information has been disclosed or may be disclosed. The Department shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.

**9. CONFIDENTIALITY AFTER TERMINATION**

The confidentiality provisions of this Agreement shall remain in full force and effect after the termination of this Agreement.

**10. RETURN OF RECORDS**

Upon termination of this Agreement, the Contractor shall deliver to the Department all records, notes, data, memorandum, models and equipment of any nature that are in the Contractor's control and that are the Department property or relate to the Department's business.

**11. NOTICES**

All notices required or permitted under this Agreement 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: \_\_\_\_\_  
Alabama Department of Insurance  
201 Monroe Street, Suite 1700  
Montgomery, AL 36104

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. LIQUIDATED DAMAGES.**

The measure of damages in the event of a default by Contractor may be difficult or impossible to calculate, depending on the nature of the default. In the event Contractor fails to perform services or complete deliverables in accordance with the response times required in this contract, the Department may require Contractor to pay the Department \$500.00 per calendar day of delay. For any other failure to perform in accordance with the terms of the contract after having been notified in writing by the Department of the specific deficiency, the Department may require the Contractor to pay the Department the sum of \$500.00 per day until the deficiency is corrected. The Department may, but is

not obligated to, recover these liquidated damages in lieu of any other monetary remedies the Department has under the contract or applicable law.

### **13. ENTIRE AGREEMENT**

This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

### **14. AMENDMENT**

This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.

### **15. SEVERABILITY**

If any provision of this Agreement 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 Agreement 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 Agreement 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 Agreement.

### **17. APPLICABLE LAW**

This Agreement 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 Agreement shall be limited to the filing of a claim with the Board of Adjustment for the State of Alabama. For any and all disputes arising under the terms of this Agreement, the parties hereto agree, in compliance with the recommendations of the Governor and Attorney General, when considering settlement of such disputes, to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation by and through the Attorney General's Office of Administrative Hearings or, where appropriate, private mediators. The Contractor shall not incur any liability on behalf of the State of Alabama.

#### **18. EXEMPTION**

The Department, notwithstanding any provisions of this Agreement, 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.

Alabama Department of Insurance  
Contract No.:  
Contractor:  
Page 7

DEPARTMENT:

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

CONTRACTOR:

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

APPROVED AS TO FORM ONLY:

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

APPROVED:

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