

Sample -- Draft Contingent Fee Audit Contract – For Informational Purposes Only

THIS AGREEMENT (the “Contract”) is made and entered into effective this ___ day of _____, 2013 by and between the Ohio Department of Commerce, Division of Unclaimed Funds (hereinafter “State”), located at 77 South High Street, 20th Floor, Columbus, Ohio 43215, and _____, (hereinafter “Contractor”), located at _____, and incorporated in the State of _____.

WHEREAS, State desires to engage Contractor for the purpose of conducting unclaimed funds examinations, on behalf of State, voluntarily agreed to by holders and unclaimed funds examinations initiated by other states in which the State of Ohio has joined in as a participant; and

WHEREAS, State desires to engage the services of Contractor as set forth in the Scope of Work attached to the Contract as Exhibit I as necessary to meet its obligations pursuant to the Ohio Revised Code (ORC) and the Ohio Administrative Code; and

WHEREAS, State, pursuant to ORC Section 169.03(F)(3), may enter into contracts to effectuate the purposes of the Division of Unclaimed Funds as codified under ORC Chapter 169 and is expressly authorized to, at reasonable times and upon reasonable notice, to examine, or cause to be examined the records of any “holder,” as defined in ORC Section 169.01(D)(1), to determine compliance with Chapter 169; and

WHEREAS, Contractor desires to perform such services for State in accordance with the terms and conditions prescribed by State;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements set forth herein, the parties hereto agree as follows:

ARTICLE I: NATURE OF CONTRACT

- 1.1 Contractor shall be employed as an independent contractor, to fulfill the terms of the Contract. It is specifically understood that the nature of the services to be rendered under the Contract are of such a personal nature that State is the sole judge of the adequacy of such services. State thus reserves the right to cancel the Contract should State at any time be dissatisfied with Contractor’s performance of its duties under the Contract.
- 1.2 State enters into the Contract in reliance upon Contractor’s representations that it has the necessary expertise and experience to perform its obligations hereunder, and Contractor warrants that it does possess the necessary expertise and experience.
- 1.3 Contractor shall furnish professional services performed in accordance with community standards necessary for the satisfactory performance of the work under the Contract. Contractor shall perform services and State shall not hire, supervise, or pay any assistants to Contractor in its performance under the Contract. State shall not be required to provide any training to Contractor to enable it to perform services required hereunder.
- 1.4 In the event of a cancellation of the Contract by State, Contractor shall be reimbursed in accordance with Article VI, Termination of Contractor’s Services. All provisions of the Contract relating to “confidentiality” shall remain binding upon Contractor in the event of cancellation.
- 1.5 State may, from time to time, communicate specific instructions and requests to Contractor concerning the performance of the work described in the Contract. Upon such notice and within ten business days after receipt of instructions, Contractor shall comply with such instructions and fulfill

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such requests to State's satisfaction. It is expressly understood by the parties that these instructions and requests are for the sole purpose of performing the specific tasks requested to ensure satisfactory completion of the work described in the Contract.

ARTICLE II: STATEMENT OF WORK

- 2.1 Contractor shall identify, collect and deliver unclaimed property to State, as set forth in Exhibit I: Scope of Work, which is attached hereto, made a part hereof, and incorporated by reference as if fully written herein. The identification, collection and delivery of unclaimed property to State by Contractor shall be in accordance with generally accepted accounting principles (GAAP), generally accepted auditing standards (GAAS), and any examination/auditing procedures promulgated pursuant to ORC Section 169.09.
- 2.2 Contractor declares that it is engaged as an independent business and complies with all federal, state and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage that is required in the normal course of business as well as any specialized insurance or other liability coverage that is specified herein, that may be required to carry out its business and perform under the terms of the Contract. Contractor agrees that it does not have any authority to sign contracts, notes, and/or obligations or to make purchases and/or dispose of property for or on behalf of State.
- 2.3 Contractor shall also deliver, assign, transfer and convey to State all rights, title and interest to all documents, data, materials, information, processes, studies, reports, surveys, proposals, plans, codes, scientific information, technological information, regulations, maps, equipment, charts, schedules, photographs, exhibits, software, software source code, documentation and other materials and property prepared or developed or created or discovered under or in connection with the Contract, as described in Exhibit I: Deliverables.
- 2.4 Contractor declares that it is engaged in the same or similar activities for other customers and that State is not its sole and only customer.
- 2.5 Contractor understands that State may contract with other parties and entities to ensure compliance with Revised Code Chapter 169.
- 2.6 The parties understand and acknowledge that Contractor is entering into a personal service contract, and is not a Civil Service employee by entering into the Contract. Contractor, its employees, officers, directors or agents will not at any time, or for any purpose, be considered employees or agents of State, or be entitled to benefits provided to Civil Service employees. Contractor shall furnish its own support staff, materials, tools, equipment and other supplies necessary for the satisfactory performance of the work hereunder, unless stated otherwise in Exhibit I: Scope of Work.
- 2.7 Contractor shall not discuss or disclose any information or material obtained pursuant to its obligations under the Contract without the prior written consent of State.
- 2.8 Contractor acknowledges that State is not obligated to provide unclaimed property reports, research or leads to Contractor regarding or related to unclaimed property or reports of unclaimed property, and further that State in its sole discretion may refuse to provide such information requested by Contractor.
- 2.9 Contractor acknowledges that Contractor, its employees, agents, and subcontractors shall perform

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no services under this Contract outside the United States. Contractor affirms that it understands and will abide by the requirements of Executive Order 2011-12K (EO 2011-12K) Governing the Expenditure of Public Funds for Offshore Services, attached hereto as Exhibit ____, and shall be bound by Article XXV: Prohibition Against Expenditure of Public Funds on Offshore Services of this Contract. Contractor states that it has in good faith completed and signed the required EO 2011-12K Affirmation and Disclosure Form whereby Contractor has disclosed: (a) the location(s) where all services will be performed by Contractor or any subcontractor in the performance of this Contract; (b) the location(s) where any state data associated with any of the services to be provided, or sought to be provided will be accessed, tested, maintained, backed up or stored; and (c) the principal location of business of Contractor and all subcontractors who will supply services to State under this Contract. Contractor shall further disclose any shift in the location of any services being provided by Contractor or any subcontractor.

ARTICLE III: TIME OF PERFORMANCE

- 3.1 The services, as stated in Article II, Statement of Work, shall be commenced on **July 1, 2013** and concluded on or before **June 30, 2015**.
- 3.2 The Contract shall remain in effect until the work described in Article II, Statement of Work, is completed to the satisfaction of State and until Contractor is paid in accordance with Article IV, Compensation, or until suspended or terminated as provided in Article VI, Termination of Contractor's Services, whichever is sooner. The Contract shall be completed no later than the 30th day of June, 2015.
- 3.3 As the current General Assembly cannot commit a future General Assembly to expenditure, the Contract shall expire no later than the end of the current biennium, or June 30, 2015. State may also renew the Contract on the same terms and conditions in the next biennium by giving written notice prior to expiration. Such renewal shall begin at the start of the next biennium and shall not extend beyond the expiration of the biennium in which the renewal commences.
- 3.4 It is expressly agreed by the parties that none of the rights, duties, and obligations herein shall be binding on either party if award of the Contract would be contrary to the terms of ORC Section 3517.13, ORC Section 127.16, or ORC Chapter 102.

ARTICLE IV: COMPENSATION

- 4.1 The fee for Contractor will be determined by State, after receipt by State of the unclaimed funds and/or securities, and the Unclaimed Property Report detailed in Exhibit I, Item 5. The maximum allowable fee is **ten and a quarter percent (10.25%)** of funds remitted to State.
 - (a) Contractor shall remit the gross proceeds, the Unclaimed Property Report detailed in Exhibit I, Item 5, and the invoice to State for its fee.
 - (b) No fee shall be escrowed by Contractor, nor shall any fee earned from one issue be offset against any uncollected fee from another issue.
 - (c) Fees due Contractor for securities are set forth in Article 4.3.
 - (d) Contractor shall not be entitled to any fees resulting from a particular examination if State finds that the examination was not performed in a commercially reasonable manner and in good faith.

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- (e) If Contractor identifies a holder which maintains its principal place of business and/or its books and records relating to unclaimed property within Ohio, then no payment will be made to Contractor by State unless State expressly requests, or otherwise grants approval to Contractor, that such holder's books and records relating to the unclaimed property be examined.
- (f) Any unclaimed funds that Contractor has identified, but not collected or recovered, prior to the execution of the Contract, may, in the State's sole discretion, be compensated on a case by case basis. Upon execution of the Contract, Contractor shall submit a list of holders that fall within this category, for review by State.
- (g) Contractor shall not charge a fee to State for filing a holder report, remitting property, or reporting property in which Contractor or an affiliate of Contractor has a separate agreement to process a particular holder's unclaimed property reports for the category of property to be examined.
- (h) Contractor shall not charge a fee to State for filing a holder report, remitting property, or reporting property to State for any company, or subsidiary, or parent company of Contractor, who would be obligated to report or remit property to State.
- (i) Contractor shall not charge a fee to State if no unclaimed funds are remitted or a "none" or "negative" report is filed.
- (j) Contractor is authorized to charge State for funds delivered when due in the reporting cycle in which State has approved an examination only when said deliveries occur before the expiration of the 15-month examination approval period. Unless otherwise expressly approved by State in writing, Contractor shall not charge State a fee for delivery of funds due in a subsequent reporting cycle for the same company.

4.2 Failure to Execute Contract Timely; Penalties.

- (a) The maximum allowable fee is **ten and a quarter percent (10.25%)** if Contractor submits audit reports, funds and securities within thirty (30) business days after receipt of funds by Contractor.
- (b) Audit reports, funds, and securities that are submitted thirty-one (31) to sixty (60) business days after receipt of funds by Contractor will be subject to four percent (4%) fee reduction, from the fee amount in 4.2(a).
- (c) Audit reports, funds, and securities that are submitted sixty-one (61) to ninety (90) business days after receipt of funds by Contractor will be subject to an eight percent (8%) fee reduction, from the fee amount in 4.2(a).
- (d) Audit reports, funds, and securities that are submitted past ninety-one (91) business days after receipt of funds by Contractor will be considered past due, and a forfeiture of any fee amount in 4.2(a). State reserves the right to require Contractor to submit all funds immediately upon reaching past due status. The Director may assess interest and penalties to Contractor based upon the amount of funds located for State. Such penalties and interest will be calculated based upon the language in ORC 169.12.

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- (e) State and Contractor acknowledge that timely disbursement of property may be delayed as a result of a dispute with respect to the delivery, ownership, right of possession and/or disposition of property. Delivery requirements may be suspended at the discretion of State pending the resolution of said disputes or as otherwise requested by State. Contractor shall notify State of any such disputes within thirty (30) days of receipt of funds by Contractor.
- 4.3 The value of a securities issue will be determined by the following:
- (a) Contractor shall determine the value of securities, at the closing bid price of any security traded on an exchange, on the date the security is registered to State; or if traded in the over-the-counter market, then at the bid price as set forth on the NASDAQ, or in the pink sheets, whichever is applicable, on the date the security is registered to State.
 - (b) Contractor shall, contemporaneously with the delivery of property as set forth in Exhibit I: Deliverables, submit to State, official and verifiable documentation supporting the valuation of the securities on the date the securities are registered to State.
 - (c) All securities shall be valued in accordance with generally accepted valuation procedures subject to verification by State.
- 4.4 Contractor shall submit to State, a proper invoice and an Unclaimed Property Report that does not contain gross error, as determined by State, for each request for payment. Contractor's Federal tax identification number shall appear on all invoices, statements and time sheets. The provisions of ORC 126.30 shall also apply to any contract between the parties.

A proper invoice must include the following information and/or attached documentation:

- (a) Name and address of Contractor.
- (b) Federal tax identification number or Social Security number for Contractor.
- (c) Invoice remittance address.
- (d) Description including time period and services actually delivered, as specified in the Contract.
- (e) Unclaimed Property Report, remittances, and all other related property.

If an invoice contains a defect or impropriety and/or it is not a proper invoice as defined in this section, Contractor will be notified of the improper invoice within fifteen (15) business days after receipt thereof. If an Unclaimed Property Report submitted by Contractor contains gross error, as determined by State, Contractor will be notified of the gross error within thirty (30) business days after receipt of the Unclaimed Property Report containing gross error. Contractor will be given a description of the defect or impropriety and any additional information necessary to correct the defect or impropriety. The corrected invoice shall be submitted within thirty (30) days, unless an extension is granted by State. The corrected Unclaimed Property Report shall be submitted within thirty (30) days, unless an extension is granted by State.

Interest on any overdue payments shall be paid by the State according to the requirements of Section 126.30 of the Ohio Revised Code.

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Payments under the Contract shall be due thirty (30) calendar days after the date of actual receipt of a proper invoice in the office designated to receive the invoice, or thirty (30) calendar days after the date services are accepted, whichever is later, in accordance with the terms of the Contract. The date of the warrant issued in payment of the invoice shall be considered the date payment is made. Contractor payment shall not be initiated before an invoice is received.

- 4.5 Invoices shall be sent to: Ohio Department of Commerce
Division of Unclaimed Funds
Attn: James Dowley
77 S. High St., 20th Floor
Columbus, Ohio 43215

ARTICLE V: CERTIFICATION OF FUNDS

- 5.1 It is expressly understood by the parties that none of the rights, duties, and obligations described in the Contract shall be binding on either party until all relevant statutory provisions under the Ohio Revised Code, including but not limited to Section 126.07, have been complied with, and until such time as all necessary funds are made available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that federal funds are used, until such time that State gives Contractor written notice that such funds have been made available to State by State's funding source.

ARTICLE VI: TERMINATION OF CONTRACTOR'S SERVICES

- 6.1 State may, at any time prior to completion of services by Contractor under this Agreement, suspend or terminate the Contract, with or without cause, by giving to Contractor written notice fourteen (14) days prior to such suspension or termination.
- 6.2 Upon providing written notice to Contractor, State may suspend or terminate the Contract, in whole or in part, and may suspend or terminate a specific examination, in whole or in part, if it appears to State that Contractor has failed to perform any of the requirements of the Contract; or that Contractor is in violation of a specific provision of the Contract; or that full and satisfactory performance of the Contract is substantially endangered. State also may suspend or terminate the Contract or a specific examination, in whole or in part, for any reason, including legislative or judicial action which causes delay that prevents performance, or an unforeseen or uncontrollable event, and without offering justification for such suspension or termination.
- 6.3 Contractor, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under the Contract, suspend or terminate all subcontracts relating to such suspended or terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within, sixty (60) days, as of the date of receipt of notice of suspension or termination, describing the status of all work under the Contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as State requires.
- 6.4 In the event of suspension or termination under this Article, Contractor shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination or suspension, which shall be calculated by State in accordance with Article IV less any funds previously paid by or on behalf of State. State shall not be liable for any further claims, and the claims submitted by Contractor shall not exceed the total amount of consideration stated in the Contract. In the event of suspension or termination, any payments made by State in

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which services have not been rendered by Contractor shall be refunded to State.

- 6.5 In the event of suspension or termination under this Article, and upon payment of compensation as specified in Article IV if Contractor is entitled to such compensation, Contractor shall deliver to State all work products and documents that have been prepared by Contractor or any of its subcontractors to the Contract during the course of performance of the Contract. All such materials shall become and remain the property of State, to be used in such manner and for such purposes as State may in its exclusive discretion choose.
- 6.6 Contractor agrees to waive any right to, and shall make no claim for, additional compensation against State by reason of such suspension or termination.
- 6.7 Contractor may terminate the Contract upon 60 days prior written notice to State.

ARTICLE VII: RELATIONSHIP OF THE PARTIES

- 7.1 State and Contractor agree that, during the term of the Contract, Contractor shall be engaged by State solely on an independent contractor basis, and Contractor shall therefore be responsible for all Contractor's business expenses, including, but not limited to, employees' wages and salaries, insurance of every type and description, meals, travel, lodging, equipment and supplies, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any. There shall be no reimbursable expenses associated with the Contract.
- 7.2 Contractor agrees to comply with all applicable federal, state and local laws in the conduct of the work hereunder.
- 7.3 While Contractor shall be required to render services described hereunder for State during the term of the Contract, nothing herein shall be construed to imply, by reason of Contractor's engagement hereunder on an independent contractor basis, that State shall have or may exercise any right of control over Contractor with regard to the manner or method of Contractor's performances of services hereunder.
- 7.4 The management of the work, including the exclusive right to control or direct the manner or means by which the work is performed, remains with Contractor. State retains the right to ensure that Contractor's work is in conformity with the terms and conditions of the Contract. It is fully understood and agreed that Contractor is an independent contractor and neither Contractor nor its personnel shall at any time, or for any purpose, be considered as agents, servants, or employees of the Department of Commerce or the State of Ohio.

ARTICLE VIII: RECORD KEEPING REQUIREMENTS

- 8.1 During performance of the Contract and for a period of seven (7) years after its completion, Contractor shall keep all financial records in a manner consistent with generally accepted accounting procedures. Documentation to support each action shall be filed in a manner allowing it to be readily located.
- 8.2 During the period covered by the Contract, and until the expiration of seven (7) years after final payment under the Contract, Contractor agrees to provide State, its duly authorized representatives, or any person, agency or instrumentality providing financial support to the work undertaken hereunder, with access to and the right to examine any books, documents papers and records of

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Contractor involving transactions related to the Contract, upon reasonable notice by State. Said access shall also be limited to normal business hours. Contractor shall, for each subcontract in excess of twenty-five hundred dollars (\$2,500.00), require its subcontractors to agree to the same provisions of this Article. Contractor agrees that if an appeal is made of the findings of an examination, Contractor shall cooperate with State in the review of all materials containing information relevant to the examination and resulting appeal.

- 8.3 Contractor shall keep a separate account for this project (the “Contract Account”). All disbursements made from the Contract Account shall be only for obligations incurred in the performance of the Contract and shall be supported by contracts, invoices, vouchers and other data, as appropriate to support such disbursements. All disbursements from the Contract Account shall be for obligations incurred only after the effective date of the Contract, unless specific authorization for prior disbursements has been given in writing by State.

ARTICLE IX: RELATED CONTRACTS

- 9.1 The work contemplated in the Contract is to be performed by Contractor, who may subcontract without State's approval for the purchase of articles, supplies, components or special mechanical services that do not involve the type of work or services described in Article II, Statement of Work, but which are required for its satisfactory completion. ***Contractor shall not enter into other subcontracts without written approval by State.*** Such approval shall not be unreasonably withheld. All work subcontracted shall be at the expense of Contractor.
- 9.2 Contractor shall bind its subcontractors to the terms of the Contract, so far as applicable to the work of the subcontractor, and shall not agree to any provision which seeks to bind State to terms inconsistent with, or at variance from, the Contract.
- 9.3 Contractor warrants that it has not entered into, nor shall it enter into other contracts, without written approval of State, to perform substantially identical work for the State of Ohio such that the work product contemplated under the Contract duplicates the work done or to be done under other contracts.
- 9.4 Contractor shall furnish to State a list of all subcontractors, their addresses, tax identification numbers and the dollar amount of each subcontract.
- 9.5 Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.

ARTICLE X: CONFLICTS OF INTEREST AND ETHICS COMPLIANCE

- 10.1 No personnel of Contractor or member of the governing body of any locality or other public official or employee of any such locality in which, or relating to which, the work under the Contract is being carried out, and who exercises any functions or responsibilities in connection with the review or approval of this Agreement or carrying out of any such work, shall, prior to the completion of said work, voluntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge and fulfillment of his or her functions and responsibilities with respect to the carrying out of said work.
- 10.2 Any such person who acquires an incompatible or conflicting personal interest, on or after the effective date of the Contract, or who involuntarily acquires any such incompatible or conflicting personal interest, shall immediately disclose his or her interest to State in writing. Thereafter, he or

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she shall not participate in any action affecting the work under the Contract, unless State shall determine in its sole discretion that, in the light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

- 10.3 Contractor represents, warrants, and certifies that it and its employees engaged in the administration or performance of this Contract are knowledgeable of and understand the Ohio Ethics and Conflicts of Interest laws and certifies that neither Contractor nor any of its employees will do any act that is inconsistent with such laws.

ARTICLE XI: NONDISCRIMINATION OF EMPLOYMENT

- 11.1 In carrying out the Contract, the Contractor, any subcontractor, and any person acting on behalf of the Contractor or a subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, national origin, military status, disability, age, genetic information, or sexual orientation. Contractor will ensure that applicants are hired and that employees are treated during employment without regard to their race, color, religion, gender, national origin, military status, disability, age, genetic information, or sexual orientation. Such action 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.
- 11.2 Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, gender identity, sexual orientation, national origin, disability, or age. Contractor shall incorporate the foregoing requirements of this article in all of its contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials), and will require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

ARTICLE XII: RIGHTS IN DATA, PATENTS AND COPYRIGHTS: PUBLIC USE

- 12.1 The Deliverables provided by Contractor under Article II and Exhibit I: Deliverables shall become the property of State. To the extent that any of the work performed under the Contract would be copyrightable under the 1976 Copyright Act of the United States of America, as amended (the "Copyright Act"), such work shall be considered "work made for hire" as defined by the Copyright Act and any such material shall be the copyrighted property of State. State, and any person, agency or instrumentality providing financial assistance for the work performed under Article II and Exhibit I shall have an unrestricted right to reproduce, distribute, modify, maintain and use the Deliverables, and Contractor shall not obtain copyright, patent or other proprietary protection for the Deliverables. To the extent that Contractor may obtain any copyrights, privileges and/or proprietary rights in the Deliverables, Contractor relinquishes any and all copyrights, privileges, and proprietary rights to the Deliverables. Contractor shall not include in any Deliverable any copyrighted matter, unless the copyright owner and any person, agency or instrumentality providing financial assistance to the work hereunder gives prior written approval to use such copyrighted matter in the manner provided herein.
- 12.2 Neither Contractor nor any of Contractor's employees, agents, subcontractors or assigns shall make a disclosure for the purpose of securing a patent in the United States or any other country for any of the Deliverables, unless such disclosure is approved in writing by the State prior to application for

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the patent. In the event that such patent is obtained, Contractor shall, at the request of State, provide the State written authorization for State and any other person, agency or instrumentality contributing financial support to the work contemplated hereunder to make use of the subject of the said patent disclosure without payment therefore.

12.3 Contractor hereby assigns, transfers, and conveys all work papers, and all other information, documents, and materials prepared and created by Contractor for or in connection with the Contract to State. Work papers pertaining to the tasks and reports shall be made available, upon request, to State or its representatives for review, inspection, and, if desired, reproduction. Such work papers shall be retained for at least seven (7) years after to delivery of the final reports required under the Contract.

12.4 Contractor acknowledges that some of the data it may be exposed to in the performance of the Contract is of a confidential nature and subject to ORC Section 169.03(F) and ORC Section 1347.15. Contractor shall make all reasonable efforts to ensure that no such confidential information is disseminated or used by Contractor, its employees, agents, or subcontractors, except as authorized in accordance with state and federal law and necessary for the performance of Contractor's authorized work as specified in Article II and the Scope of Work.

Contractor agrees to observe complete confidentiality with respect to all aspects of any proprietary data or trade secrets and any parts thereof, belonging to State, holder, or other contractors with which Contractor or any of Contractor's personnel gain access. The restrictions herein shall survive the termination of the Contract for any reason and shall continue in full force and effect and shall be binding upon Contractor and any party claiming an interest in the Contract on behalf of or under the rights of Contractor following any termination. Contractor shall advise all Contractor's agents, employees, successors, assigns and subcontractors which are engaged by State of the restrictions, present and continuing, set forth herein. Contractor shall indemnify State and incur all costs, including reasonable attorney fees, for actions which arise as a result of noncompliance by Contractor regarding the restrictions herein. Contractor shall assume that all aspects of such proprietary data and trade secrets are confidential unless otherwise indicated.

ARTICLE XIII: LIABILITY

13.1 Contractor agrees to indemnify and to hold the Department of Commerce and the State of Ohio harmless and immune from any and all claims for injury or damages arising from the Contract which are attributable to Contractor's own actions or omissions or those of its trustees, officers, employees, subcontractors, suppliers, third parties engaged by Contractor, or joint venturers while acting under the Contract.

13.2 Contractor shall bear all costs associated with defending Department of Commerce and the State of Ohio against any claims.

13.3 In no event shall either party be liable to the other party for indirect, consequential, incidental, special, or punitive damages, or lost profits.

13.4 Contractor will indemnify State for any damages if a suit is brought against State, including, but not limited to its public officials, State employees, and State departments, based on a claim that the identification and collection of unclaimed property furnished thereunder infringes a United States patent or copyright or constitutes misuse or misappropriation of a trade secret, provided Contractor is given written notice within thirty (30) days of such suit and is given information required for the defense of same, if applicable. Contractor will indemnify the State for any out-of-pocket costs and

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any judgment incurred by State and/or the State's Office of the Attorney General provided Contractor has full opportunity to participate as co-defendant. State's entire liability and Contractor's exclusive remedies for claims related to or arising out of Contract for any cause and regardless of the form of action, whether in contract, tort, or otherwise, shall be as set forth in the Contract. When applicable, Contractor shall reimburse State for any judgments for infringement of patent or copyright rights.

- 13.5 Contractor shall be liable for direct damages, as agreed to by the parties or as awarded by a court of competent jurisdiction, which are incurred due to the fault or negligence of Contractor. Contractor is responsible for satisfactory completion of work as indicated in the Contract, and shall make every effort to correct any deficiencies and complete each assigned task or work as specified in Exhibit I: Scope of Work. Contractor shall bear all costs associated with defending State against any claims. Contractor shall carry insurance against risks of claim or loss as specified in Article XV, Contractor Requirements.

Notwithstanding any language to the contrary, Contractor shall be liable for any personal injury or damage to real property or tangible personal property, caused by the fault or negligence of Contractor. Contractor shall be liable for any personal injury or damage to real property or tangible personal property caused by the fault or negligence of Contractor, its employees or agents in the operation of a motor vehicle. In no event shall State be liable for injuries suffered by Contractor, or Contractor's employees, related to the work performed under the Contract.

ARTICLE XIV: COMPLIANCE WITH LAW

- 14.1 Contractor agrees to comply with all applicable federal, state and local laws, as well as applicable administrative rules promulgated pursuant to ORC 169.09, in the conduct of the work hereunder, as the same are constituted on the effective date hereof, or as the same may be amended after that date and during the term of the Contract. Contractor agrees that State is not liable for any damages, financial or otherwise, that an amendment of any applicable law or administrative rule impacting the work hereunder, has or may have on Contractor. Contractor and its employees are not employees of State with regard to the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code and for state revenue and tax laws, the Child Support Enforcement Act, state workers' compensation laws and state unemployment insurance laws. Contractor waives any claims to rights to participate in the Ohio Public Employees Retirement System. Contractor accepts full responsibility for payment of all taxes including, without limitation, unemployment compensation insurance premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by Contractor in the performance of the work authorized by the Contract. Contractor shall be responsible for obtaining its own workers' compensation coverage for itself and its employees. State is exempt from federal, state and local taxes and shall not be liable for any taxes under the Contract. Further, Contractor shall indemnify, save and hold State harmless from any and all liability or damages arising from Contractor's failure to meet its obligations under this section, and under the provisions of the Contract.

ARTICLE XV: CONTRACTOR REQUIREMENTS

- 15.1 *Unclaimed Property Experience and References:* By entering into the Contract, Contractor agrees that it is knowledgeable of ORC Chapter 169, relevant U.S. and Ohio Supreme Court rulings (Appendix 2), GAAP, GAAS, and any relevant examination/auditing procedures promulgated pursuant to ORC Section 169.09, as they relate to the identification and collection of unclaimed

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- property from holders. Contractor shall provide, upon request by State, a written certification statement to State verifying knowledge of the aforementioned areas, and any practical experience Contractor has in auditing, financial statement preparation, general ledger account review, and other related matters. Contractor shall provide, upon request by State, references that can verify Contractor's knowledge of the aforementioned areas to the State's satisfaction.
- 15.2 *Contractor Records:* Contractor will be required to maintain financial and accounting records and supporting evidence pertaining to the contract in accordance with GAAP. Financial and accounting records must be made available for inspection and audit at all reasonable times to the State during contract period and any extension thereof, and for seven (7) years from the date of final payment on the contract.
- 15.3 *Confidentiality:*
- (a) Contractor agrees to preserve the integrity of State's security and confidentiality. If Contractor is engaged in handling confidential State information or property, Contractor shall exercise appropriate security precautions.
 - (b) Except as allowed otherwise, and subject to Article XIV: Compliance with Law, Contractor shall hold all information provided to State about a holder's property confidential for State (unless such information is already publicly known) and shall advise any party that may be processing such information on behalf of Contractor of the confidential nature thereof.
 - (c) Contractor may disclose information it acquires in connection with its examinations of holders to other states that have entered into similar agreements with Contractor, pursuant to a plan whereby State similarly benefits from such reciprocal disclosures.
- 15.4 *Records Retention:* Contractor shall maintain for a period of not less than seven (7) years after completion of the Contract all records pertaining to the identification and collection of unclaimed property. Contractor shall establish adequate controls to ensure the accuracy and competence of such information or records. State may inspect Contractor's records relating to the performance or subject matter of this agreement at reasonable times and upon reasonable notice using State employees, its designees or employees of other state agencies, as provided by law. Contractor shall fully cooperate with any audit conducted by State or its representative and shall provide full access to all relevant materials. Failure to maintain books, records, and supporting documents required by the Contract shall establish a presumption in favor of State for recovery of any funds paid by State.
- 15.5 Contractor agrees to provide proof (a copy of a current certificate) that Contractor is covered by Worker's Compensation Insurance. Contractor shall also provide proof of Employer's Liability and/or Contractor's Insurance. Sole proprietors are also subject to this requirement.
- 15.6 At its own expense, Contractor must procure and continue in force at all times that the Contract is in effect, the following minimum levels of insurance coverages:
- (a) Workers' Compensation insurance as required by Ohio law, or if some of the project will be done outside Ohio, the laws of the appropriate state(s) where the work will be done. Contractor will also maintain employer's liability insurance with at least a \$1,000,000 limit.
 - (b) General liability insurance against any and all claims for injuries to persons or damages to property occurring or arising out of Contractor's obligations set forth herein. Such insurance shall at all times be in an amount not less than Five Hundred Thousand Dollars

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(\$500,000) on account of bodily injury to or death of one (1) person, and One Million Dollars (\$1,000,000) on account of bodily injuries or death of more than one person as a result of any one accident or disaster, and Two Hundred Fifty Thousand Dollars (\$250,000) for property damage in any one accident. Such insurance shall be written by a company or companies authorized to engage in the business of general liability insurance in the State of Ohio with an A.M. Best rating of at least “A” or be otherwise approved in writing by the Attorney General of the State of Ohio.

- 15.7 Contractor shall also furnish certificates of insurance to State for the required coverages. The certificate must be in a form that is reasonably satisfactory to State as to policy contents and the quality of the insurance carriers. The certificates of insurance must contain the following provisions:
- (a) A thirty (30) day notice to State prior to cancellation;
 - (b) An endorsement providing that the insurance is primary insurance and over any coverage held by State; and
 - (c) State is an additional insured.
- 15.8 Contractor shall, pursuant to R.C. 169.03(F)(3), obtain a corporate surety bond for which the amount has been set at \$100,000.00. Said bond, to be issued by a bonding company or insurance company authorized to do business in the State of Ohio, is for the benefit of any holder of unclaimed funds subject to an examination by Contractor and injured by Contractor’s failure to comply with R.C. 169.03(F)(3).

ARTICLE XVI: DRUG-FREE WORKPLACE

- 16.1 Contractor agrees to comply with all applicable federal, state and local laws regarding smoke-free and drug-free workplaces and shall make a good faith effort to ensure that none of its employees or permitted subcontractors engaged in the work being performed hereunder purchase, transfer, use or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

ARTICLE XVII: ENTIRE AGREEMENT; CHANGE OR MODIFICATIONS; WAIVER

- 17.1 The Contract contains the entire agreement between the parties hereto and shall not be modified, amended or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto.
- 17.2 The Contract supersedes any and all previous agreements, whether written or oral, between the parties.
- 17.3 A waiver by any party of any breach or default by the other party under the Contract shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default of the Contract.

ARTICLE XVIII: SUCCESSORS AND ASSIGNS

- 18.1 Neither the Contract, nor any rights, duties or obligations hereunder, may be assigned or transferred by Contractor without the prior express written consent of State.

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ARTICLE XIX: CONTROLLING LAW; CONSTRUCTION; DIRECTOR’S AUTHORITY

- 19.1 The Contract and the rights of the parties hereunder shall be governed, construed and interpreted in accordance with the laws of the State of Ohio, and only Ohio courts shall have jurisdiction over any action or proceeding concerning the Contract and/or performance thereunder. Contractor, its staff and subcontractors, are bound to observe the laws, regulations, and policies of the State of Ohio, as the same are constituted on the effective date hereof or as the same may be amended after that date and during the term of the Contract. Violation of such laws, regulations, or policies may result in the suspension or termination of the Contract or specific examination.
- 19.2 Pursuant to ORC 169.03(F) and 127.16(D)(29), the Director may enter into contracts with persons for the sole purpose of examining the records of holders. The Director may enter into said contracts pursuant to procedures prescribed by the Director. The Director, pursuant to ORC 169.09, may also promulgate rules affecting the examination of the records of holders by such persons.

ARTICLE XX: CERTIFICATION OF COMPLIANCE WITH OHIO ETHICS AND ELECTIONS LAW REQUIREMENTS FOR NONCOMPETITIVE BID CONTRACTS

- 20.1 Contractor, by signature on the Contract, certifies that it is currently in compliance and will continue to adhere to the requirements of Ohio Ethics laws as provided by ORC 102.03 and 102.04.
- 20.2 Contractor hereby certifies that all applicable parties listed in Division (I) or (J) of ORC Section 3517.13 are in full compliance with Divisions (I) and (J) of ORC Section 3517.13.

ARTICLE XXI: SEVERABILITY

- 21.1 The provisions of the Contract are severable and independent, and if any particular provision shall be determined to be unenforceable in whole or in part, then the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

ARTICLE XXII: NOTICES AND HEADINGS

- 22.1 All notices, consents, and communications under the Contract shall be given in writing, shall be deemed to be given upon receipt thereof, and, with the exception of invoices as provided for in Article IV of the Contract, shall be sent to the addresses first set forth above.
- 22.2 The headings in the Contract have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of the Contract.

ARTICLE XXIII: FINDINGS FOR RECOVERY

- 23.1 Contractor hereby affirmatively represents and warrants that it is not subject to an “unresolved” Finding for Recovery under ORC Section 9.24(F) by the Auditor of the State of Ohio. If this warranty is found to be false, the Contract is void *ab initio* and Contractor shall immediately repay to State any funds paid under the Contract.

ARTICLE XXIV: DEBARMENT

- 24.1 Contractor represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either ORC Section 153.02

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or ORC Section 125.25. If this representation and warranty is found to be false, the Contract is void *ab initio* and Contractor shall immediately repay to Agency any funds paid under this Agreement.

ARTICLE XXV: PROHIBITION AGAINST EXPENDITURE OF PUBLIC FUNDS ON OFFSHORE SERVICES

- 25.1 The Contractor affirms that Contractor has read and understands **Governor's Executive Order 2011-12K** and shall abide by its requirements in the performance of this Contract, and shall perform no services required under this Contract outside the United States. The Executive Order is attached to this Contract as Exhibit III.
- 25.2 If Contractor or any of its subcontractors perform services under this Contract outside of the United States, the performance of such services shall be treated as a material breach of the Contract. The State is not obligated to pay and shall not pay for such services. If Contractor or any of its subcontractors perform any such services, Contractor shall immediately return to the State all funds paid for those services. The State may also recover from the Contractor all costs associated with any corrective action the State may undertake, including but not limited to an audit or a risk analysis, as a result of the Contractor performing services outside the United States.
- 25.3 The State may, at any time after the breach, terminate the Contract, upon written notice to the Contractor. The State may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Contract and costs associated with the acquisition of substitute services from a third party.
- 25.4 If the State determines that actual and direct damages are uncertain or difficult to ascertain, the State in its sole discretion may recover a payment of liquidated damages.
- 25.5 The State, in its sole discretion, may provide written notice to Contractor of a breach and permit the Contractor to cure the breach. Such cure period shall be no longer than 21 calendar days. During the cure period, the State may buy substitute services from a third party and recover from the Contractor any costs associated with acquiring those substitute services.
- 25.6 Notwithstanding the State permitting a period of time to cure the breach or the Contractor's cure of the breach, the State does not waive any of its rights and remedies provided the State in this Contract, including but not limited to recovery of funds paid for services the Contractor performed outside of the United States, costs associated with corrective action, or liquidated damages.

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ARTICLE XXVI: EXECUTION

The Contract is not binding on State unless executed in full.

In Witness Whereof, the parties hereto have caused the Contract to be executed by their duly authorized officers.

**STATE OF OHIO
DEPARTMENT OF COMMERCE**

CONTRACTOR

By: _____
Director

By: _____

Date: _____

Date: _____

By: _____
Yaw Obeng, Superintendent
Division of Unclaimed Funds

Federal Tax I.D. Number

APPROVED AS TO FORM

By: _____

Department of Commerce Legal Counsel

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EXHIBIT I

SCOPE OF WORK AND DELIVERABLES

The terms of the Contract shall commence on **July 1, 2013** and terminate on **June 30, 2015**.

Contractor hereby agrees that the scope of work under the Contract shall be as follows:

1. *Statement of Work:* Contractor shall undertake to identify, collect and deliver to State all types of unclaimed funds from persons, firms and entities (collectively, “holders”) who are holding, or have in their possession unclaimed funds (“property”) which are subject to report and delivery under ORC Chapter 169 and regulations contained in OAC Chapter 1301:10 (collectively, the “Ohio Unclaimed Funds Law” or the “Law”), and pertinent U.S. Supreme Court and Ohio Supreme Court rulings. The Nature of Funds Codes in Appendix 4D lists specific types of unclaimed funds and their dormancy periods.

In conjunction with the identification and collection of property not initiated or planned by the State, Contractor:

- (a) Is not prohibited from entering into voluntary compliance agreements with holders in order to comply with Unclaimed Property Laws nor is Contractor prohibited from offering other services to a holder. However, Contractor shall not solicit a holder to enter into such an agreement or purchase other services in regard to its unclaimed funds reporting liability during the period in which the holder is under an involuntary examination being conducted by Contractor on behalf of and at the initiation of the State, when Contractor has been notified that such an examination is being conducted by another Contractor or auditor on behalf of and at the initiation of the State, if Contractor has been notified in writing by the State that an examination of the holder is planned, or if the holder has been contacted within the scope of State’s Compliance Section’s Audit Program;
- (b) Shall inform the State of agreements with other states. Contractor may only include Ohio in such agreements if Contractor obtains prior written consent of the State;
- (c) Shall identify and review records of holders and/or their agents relating to unclaimed property;
- (d) Shall prepare and submit to the State reports of property in accordance with the requirements of the statute, and Exhibit I: Deliverables;
- (e) Shall request holders and/or their agents to relinquish to Contractor, or their custodian, property deemed owing under the statute;
- (f) Shall forward the property to the State or its designee; and
- (g) Shall advise holder(s) that all property reported and remitted must conform to ORC Chapter 169. Holder is not exempt from any section of the Ohio Unclaimed Funds Law, including but not limited to ORC 169.12, which grants the State the authority to charge penalties and interest to delinquent holders. Contractor shall not represent to holders that penalties and interest will be waived without express written authorization from the State.

The identification of unclaimed property from the records of holders, the processing of records, the

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collection of unclaimed property, and the demands for payment of the property shall be made pursuant to and in accordance with generally accepted accounting principles (GAAP), generally accepted auditing standards (GAAS), any examination/auditing procedures promulgated pursuant to ORC 169.09, and Appendix 2 hereto. Any exceptions to these provisions must be approved in writing by the State.

2. *Work in Progress Report:* Contractor shall provide the State, on a monthly basis, a Work in Progress Report substantially similar to the format set forth in Appendix 3 or in such other format authorized by State; which sets forth all new record processing to be commenced, and all record processing not yet completed, including reports in process.

State may, in accordance with Article VI: Termination of Contractor's Services, direct Contractor not to process records on behalf of the State for a potential holder or a holder listed on the Work in Progress Report Instructions, Section B – Audit Approval Request Form (Appendix 3) at any time prior to the 30th day after the State receives notification of such report.

3. Contractor acknowledges that:

- (a) The State has the final and sole authority to decide who, if anyone, will represent the State in the unlikely event that more than one contractor or another state wants to identify and collect unclaimed property from the same holder.
- (b) The State, in accordance with OAC 1301:10-3-04(D) and any rules promulgated pursuant to ORC 169.09, shall determine when an examination of a holder is appropriate. The State may approve or disapprove authorization to attempt to identify and locate unclaimed property from any holder without offering justification for such approval, denial or disapproval. The State may also, after authorization has been granted to conduct an examination of a holder, suspend or terminate the examination, regardless of whether it has commenced, for any reason, including legislative or judicial action which causes delay that prevents performance, or an unforeseen or uncontrollable event, and without offering justification for such suspension or termination.
- (c) If Contractor identifies a holder that maintains its principal place of business in Ohio, then Contractor may not cause the holder's records of unclaimed property to be examined on behalf of the State, unless Contractor first receives prior written authorization from the State.
- (d) If Contractor identifies a holder that maintains its books and records relating to unclaimed property within Ohio, then no payment will be made to Contractor by the State unless the State expressly requests that such holder's books and records relating to the unclaimed property be examined.
- (e) Contractor must receive approval of all examinations, regardless of state of domicile or incorporation of holder, when any unclaimed funds are reportable.

4. *Due Diligence:* Contractor shall advise each holder of the provisions of the statute for notifying owners of their property. Contractor shall require each holder to confirm, in writing, that the statute's due diligence provisions have been carried out, prior to demanding any property, and Contractor shall certify the holder's compliance with ORC 169.03(D). Contractor shall provide a copy of such certification to the State. Contractor shall advise such holder of its continuing obligation to report property to the State. Contractor shall notify the State if due diligence has not

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been carried out by the holder, or if there is no confirmation letter on file.

5. *Unclaimed Property Report:*

- (a) State has adopted procedures for the reporting of unclaimed property via magnetic media. Contractor shall provide all reports to the State on magnetic media, unless written permission has been granted, in advance, by the State to report in a non-electronic or other format. Permission will not be unreasonably withheld.
- (b) Contractor shall provide reports of the property to be forwarded to the State in a format prescribed by the State pursuant to ORC Chapter 169. The State will provide reporting instructions, forms, and any specifications needed for automated reporting. Contractor shall use the State's format (Appendix 4A, 4B, and 4C) for non-electronic reporting of unclaimed property.
- (c) The Unclaimed Property Report shall not be submitted in gross error, as determined by the State. A report is in gross error if the unclaimed funds detail within the report does not balance with the remittance of funds and/or shares. Such a report cannot be posted to State's data processing system.
- (d) Contractor shall remit a separate payment, which reconciles to the total dollar amount due, for each holder report submitted to the State. If Contractor submits multiple holder reports on magnetic media, a separate payment, one for each holder report, shall be submitted to the State.
- (e) If Contractor is reporting mutual fund shares, the report must be allocated to reflect each individual owner's shares and reconciled to the actual redemption sale proceeds remitted to the State at the time of filing of the report. Contractor shall clearly inform the holders that at no time are the holders to merely transfer mutual funds to an account by book entry, but must liquidate and remit mutual funds with the Unclaimed Property Report.
- (f) Contractor shall instruct holders, who remit property to the State through Contractor, to report property directly to the State after the initial report has been completed and filed. Contractor will further instruct such holders to file a "None" or "Negative" report with the State if there is no property to be reported in the year(s) following completion of Contractor's reporting.

6. *Out of Proof Reports:* Out of proof reports are those in which inaccurate record keeping results in more accounts listed in the report than actual accounts exist, for which property is remitted to the State.

Out of proof reports will be accepted only with prior approval from the State, and if Contractor prepares the report prior to submittal to the State, and only if allocated for each individual owner, in order to reconcile to the actual dollar and/or share amount submitted by Contractor to the State.

Out of proof reports will only be accepted if the reports are clearly marked as out of proof, and the reason the report is out of proof is certified by the holder or holder's agent.

7. *Custody of Unclaimed Property:*

- (a) If Contractor does not provide safekeeping custodial services, Contractor shall enter into an

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agreement with a custodian to provide said services for Contractor. Contractor must obtain approval from the State in advance prior to entering into a contractual relationship with any custodian.

- (b) Contractor and/or custodian shall:
 - (i) Maintain all property delivered by holders to the custodian segregated into a separate account or accounts for the State on the date of receipt; and
 - (ii) Acknowledge that the provisions referred to in this section are for the benefit of the State, which shall have all rights of a third party beneficiary with respect to the benefit and enforcement of such provisions, and that such provisions and the provision referred to in this subsection (b) may only be amended with the written consent of the State.
- (c) Contractor or custodian shall not pay claims against the property. Contractor shall advise the holder that the holder is responsible for paying all claims up to the time the holder and agent have agreed to a final report. The State will reimburse the holder after the reconciled report and property have been received.
- (d) During the period of reconciliation, transfers may be made from the State’s account(s), for erroneous deposits or changes, only upon prior written approval by the State.
- (e) Contractor, or its custodian, shall not pledge, assign, hypothecate or otherwise encumber property without the prior written consent of the State, nor shall Contractor take any ownership position in any securities constituting property.

Any transactions relating to securities and mutual funds after the issue is in the name of the State shall be processed only upon obtaining an executed Stock Power from the State.

- (f) Contractor shall not co-mingle funds received as a result of unclaimed property recovery efforts with any other unclaimed property that may be in safekeeping with Contractor’s custodian.

8. *Remittance of Unclaimed Property:*

- (a) Contractor shall reconcile the report with the holder and remit all property with the reconciled report to the State within thirty (30) business days after receipt of the funds by Contractor. Contractor shall promptly remit unclaimed property to the State via electronic funds transfer, depository transfer corporation transfer, or in a manner prescribed by the State. Maximum allowable fees, and penalties and interest for untimely submission of funds, are described in Article 4.2 of the Contract.
- (b) State shall receive an earnings credit equal to an approved, verifiable interest rate on all cash funds held by Contractor on behalf of the State. The interest shall be no less than that which is earned on a money market account. The interest shall be figured from the date such funds were originally received from the holder, to the date such funds are electronically transferred by Contractor to the State.
- (c) Certificates for securities must be registered, if at all possible, in the name of the State: “Ohio Department of Commerce Division of Unclaimed Funds.” Those certificates that

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cannot be transferred must still be remitted to the State of Ohio in the nominee or original owner's name.

The ORIGINAL DATE that certificates are registered in the name of the State or credited in book entry form must be retained and must become a part of all reports relating to such certificates.

9. *Delivery of Unclaimed Property Information to the State:* The following constitutes a complete delivery of unclaimed property. Each issue must be separated and placed in an individual security envelope.
- (a) Electronic Unclaimed Property Report or Unclaimed Funds Report in Appendix 4A through 4C, if approved.
 - (b) All securities, including but not limited to, stock certificates, reinvested dividend information, or a combination of each.
 - (c) The actual remittance or a copy of the “faxed” electronic fund transfer information, whichever is applicable.
 - (d) Summary of Amount Remitted - by Issue – and providing the value of the liquidated securities on the date they are registered to the State, as well as the date of the sale/liquidation of said securities by Contractor.
 - (e) Summary of Issue Delivered to the State.
 - (f) Corporate Contact Information Sheet.
 - (g) Summary of Delivery Invoice.
 - (h) Summary of Accrued Interest by Issue, if any.
10. *Payment of Fees:*
- (a) Contractor will submit a Summary by Delivery invoice with each delivery. The invoice must summarize the delivery by Issue/Holder. Payment of the invoice will be processed only on completed deliveries, as defined in Exhibit I, Items 5 through 10. If Contractor fails to remit/deliver ANY of the unclaimed property associated with the invoice, the invoice will be considered improper in accordance with Article IV of the Contract, and will not be paid until such time as all unclaimed property has been received by the State.
 - (b) No fees shall be escrowed by Contractor, nor shall any fee earned from one issue be offset against any uncollected fee from another issue.
 - (c) State will audit the invoice to the delivery, and will make payment for completed deliveries, in accordance with Article IV: Compensation.
11. *Legal Services:* Only the Ohio Attorney General (OAG) is authorized to provide legal services on behalf of the State. Legal services may be used to enforce ORC Chapter 169 pursuant to the

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following procedures:

Contractor shall notify the State in writing if it believes that legal services are required for the collection of a particular claim. Notification shall include a statement of the nature of the services requested, and a projected range of monetary recovery from the claim. Contractor shall make available all records and supporting documentation and necessary personnel in the event that the State seeks litigation against a holder. The State shall determine in its exclusive discretion whether to request legal services from the OAG to pursue the claim. Contractor's fees for a claim requiring legal services will be based upon the total amount identified and submitted by Contractor.

DELIVERABLES

1. *Property and Reports:* Upon forwarding of property and reports to the State, the following items must be delivered for each holder audited by Contractor:
 - (a) All funds and securities identified as unclaimed funds in ORC 169.01(B);
 - (b) Completed Unclaimed Property Report detailed in Exhibit I, Item 5 and Appendix 4A through 4C;
 - (c) Holder due diligence certification detailed in Exhibit I, Item 4; and
 - (d) A proper invoice detailed in Article 4.4 of the Contract.
2. *Out of Proof Reports:* For holders whose Unclaimed Property Reports are out-of-proof, the following must be delivered to the State:
 - (a) Unclaimed Property Report detailed in Exhibit I, Item 5 and Appendix 4A through 4C, prorated for each individual owner, and clearly marked as an out-of-proof report detailed in Exhibit I, Item 6; and
 - (b) Certification of the reason the report is out-of-proof, by the holder or holders agent detailed in Exhibit I, Item 6.
3. *Work in Progress Reports.* On a monthly basis, the following must be delivered to the State: Work in Progress report detailed in Exhibit I, Item 2 and Appendix 3.

APPENDIX-2

IDENTIFICATION AND COLLECTION PROCEDURES

The identifying and locating of unclaimed property from the books and records of the holders and the demand for delivery of property shall be made pursuant to the following procedures:

- A. Contractor shall identify and examine, and may collect unclaimed property from persons, firms and entities required to report to State
 1. Which are incorporated, have their principal place of business, and have records located outside the state of Ohio, except as noted in Exhibit I, Item 3 and Appendix 2, Section B. below; and

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2. Concurrently, for all escheatable property types, per ORC Chapter 169, as applicable, regardless of location of records, unless otherwise agreed to in advance in writing by State.
- B. Contractor shall not:
1. Identify and locate unclaimed property from any holder (parent or subsidiary) where its principal place of business is in the State of Ohio (as evidenced by the latest Annual Report or Form 10-K filed by such holder) without obtaining the prior written approval from State;
 2. Solicit a holder to enter into a voluntary compliance agreement or purchase other services in regard to holder's unclaimed funds reporting liability if:
 - (a) The holder is under an involuntary examination being conducted by Contractor on behalf of and at the initiation of the State, or if Contractor has been notified that such an examination is being conducted by another Contractor or auditor on behalf of and at the initiation of the State, or
 - (b) Contractor has been notified in writing by the State that an examination of the holder is planned, or
 - (c) The holder has been contacted within the scope of State's Compliance Section's Audit Program.
 3. Interfere with any on going examination initiated by State; or
 4. Waive any rights or statutory entitlement on behalf of State.
 5. Identify and locate unclaimed property from any holder if Contractor has been notified by the State that the examination of such holder is suspended or terminated.
- C. Contractor:
1. Is not prohibited from entering into a voluntary compliance agreement with a holder in order to comply with Unclaimed Property Laws nor is Contractor prohibited from offering other services to a holder when an examination of the holder has not been initiated or planned by the State.
 2. Shall inform State of agreements with other states. Contractor may only include Ohio in such agreements if Contractor obtains prior written consent of State.
 3. Shall commence processing of records within ninety (90) days from when State is notified of Contractor's intent to identify and collect unclaimed property from a holder, except on a showing of good cause.
 4. Shall complete the identification, collection, and reporting of unclaimed property to State within one (1) year of the date the records processing began, except on a showing of good cause.
 5. Shall notify the State if a holder company files for bankruptcy before or during an approved audit within seven (7) calendar days of discovery by Contractor of the bankruptcy filing. In such a case, Contractor will prepare a proof of claim or provide such information to enable

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the State to file a proof of claim within seven (7) calendar days of discovery by Contractor of the bankruptcy filing.

D. The period in which Contractor shall attempt to locate property shall be determined according to the following:

1. Contract Period

The period in which Contractor attempts to locate unclaimed property shall consist of the current reporting cycle as of the Contract date and in accordance with Contract Article III: Time of Performance, as well as any prior reporting cycles for which property remains unclaimed, subject to Article 4.1 of the Contract, and Section D-2 of Appendix 2.

2. Statute of Limitations

- (a) If the Statute provides an express date setting forth when the obligation of a holder to report commenced, it will be used.
- (b) If the Statute does not set forth such a date, the obligations of the holder will be deemed to require the reporting of all property in the possession of the holder on which the statute of limitations had not yet run as of the effective date of the adoption of the statute. However, in those instances where State advises Contractor that state law permits retroactive extension or abolition of the statute of limitations, the longest period otherwise permitted by law will be used (subject to the availability of the records of the holder).

E. The holdings of the U.S. Supreme Court in *Texas v. New Jersey*, 85 S. Ct. 1136, (1965), *Pennsylvania v. New York*, 92 S. Ct. 2880, (1972), and *Delaware v. New York*, 113 S. Ct. 1550, (1993), and any applicable federal legislation regarding which state has the right to escheat property shall be followed.

- (a) Where the name and last known address of the apparent owner according to the books and records of the holder is in the State of Ohio, it shall be deemed to be reportable to the State of Ohio.
- (b) If the holder has not maintained records setting forth the name and last known address of the apparent owner, the property shall be deemed reportable to the holder's state of incorporation or domicile consistent with the laws of that state. Where no address exists, but the records of the holder establish that the apparent owner resided in Ohio, Contractor shall advise State of Ohio and the holder's state of incorporation, for the purpose of determining which state possesses the priority claim to the funds.
- (c) Where the address of the apparent owner cannot be readily ascertained, but in fact exists in the books and records of the holder, sampling techniques will be used to allocate the property among the states participating in the review. In such event, if required, sampling techniques will also be utilized to ascertain the proportion of the total reportable property for which the holder has names and last known addresses.

F. If the amount of reportable property cannot be ascertained from the books and records of the holder, statistical estimation techniques may be used for such periods.

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All sampling and statistical estimation techniques used by Contractor shall be in accordance with AICPA Professional Standards AU Section 350, or an agreed methodology approved in writing by State.

- G. Contractor shall not make a demand for the delivery of property upon a holder until such time as the holder and Contractor reconcile and agree upon the report to be filed with State. It is acknowledged and agreed that State reserves the right to participate in a joint audit of a holder, at any time, with Contractor.
- H. Notwithstanding the provisions of paragraphs A through G of Appendix 2, nothing contained herein shall prevent, waive, or otherwise affect the right of State to claim from any other state, property reported and delivered to such state, according to the provisions of paragraphs A through G. Contractor shall, upon request of State, provide State with such information as may be relevant to such claim.

APPENDIX-3

WORK IN PROGRESS REPORT INSTRUCTIONS

A. Work in Progress Report

The Work in Progress Report, to be submitted on a monthly basis, shall be submitted both on paper and in an electronic format that is mutually agreeable to the State and Contractor. Each holder's name and other required information shall encompass only one (1) line in the spreadsheet to allow State to sort the data for proper analysis. The Work in Progress Report shall contain the following information:

1. FEIN number
2. Holder name – complete legal name of entity
3. Street address
4. Additional address
5. City
6. State
7. Zip code + 4
8. Contact/title
9. Area code
10. Phone number and extension
11. Transfer agent

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12. Audit start date – first day of fieldwork
 13. Audit cut-off – June 30 of applicable reporting year
 14. Audit completion date – last day of fieldwork when audit findings are presented to the company
 15. Potentially reportable dollars – total of dormant accounts identified prior to company research or due diligence mailing
 16. Potentially reportable shares – total of dormant accounts identified prior to company research or due diligence mailing
 17. Report due date – date set for report to be delivered to the Division
 18. Report/property received date
 19. Dollars reported
 20. Shares reported
 21. Status – the following descriptions shall be used to indicate the status of the work performed with each holder:
 - (a) Agreed to participate – holder which has committed to utilizing Contractor for the identification and collection of unclaimed property. Processing of records will commence at an agreed upon date, which must be provided.
 - (b) Objection pending – holder which has objected to the identification and collection of unclaimed property by Contractor.
 - (c) In process – actual audit work has commenced.
 - (d) Property received – some property has been received by the custodian on behalf of a holder. This property, all other property, and reconciled reports will be delivered to State within the thirty (30) days as specified in Exhibit 1, item 8.
 - (e) Property delivered to State – all property and reports have been submitted to State. Pursuant to Contract Article IV: Compensation, Contractor is awaiting payment of fees pending State’s reconciliation of delivery.
 - (f) Completed – Contractor or holder has delivered property to State and received payment for services provided. No additional work will be performed, on behalf of the State, for this holder.
 - (g) Suspended or terminated – the examination has been suspended or terminated at the direction of the State.
- B. Audit Approval Request Form

The Audit Approval Request Form is a separate schedule to be included as part of the Work in

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Progress Report, submitted on a monthly basis. The Audit Approval Request Form shall be submitted both on paper and in an electronic format that is mutually agreeable to the State and Contractor. Each prospective holder's name and other required information shall encompass only one (1) line in the spreadsheet to allow State to sort the data for proper analysis. The Audit Approval Request Form shall contain the following information:

1. FEIN
2. Holder name – complete legal name of entity
3. Contact
4. Street address
5. City
6. State
7. Zip code + 4
8. Number of Contractor's employees on site
9. Property type
10. State of incorporation
11. State where headquartered
12. Transfer agent
13. Sic code
14. Number of outstanding shares
15. Number of share holders
16. Gross revenues (in thousands)

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