

## **Sample/Draft Short-Term Investment Services Contract – For Informational Purposes Only**

**THIS AGREEMENT** 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 \_\_\_\_\_ (collectively referred to as the “Parties”). This Contract is for banking services; specifically the investing of the State’s liquid operating funds on a short-term basis.

**Whereas**, the State desires to engage the services of the Contractor as set forth in the Scope of Work attached to this Contract as Exhibit I as necessary in order to meet its obligations under the Ohio Revised Code and the Ohio Administrative Code; and

**Whereas**, the Contractor desires to perform such services for the State in accordance with the terms and conditions prescribed in this Contract and as may be otherwise imposed by law;

**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 this Contract. It is specifically understood that the nature of the services to be rendered under this 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 this Contract should State at any time be dissatisfied with Contractor’s performance of its duties under this Contract.
- 1.2 State enters into this 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 The Contractor shall furnish professional services performed in accordance with community standards necessary for the satisfactory performance of the work under this Contract. Contractor shall perform services and State shall not hire, supervise, or pay any assistants to Contractor in its performance under this 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 this Contract by State, Contractor shall be reimbursed in accordance with Article VI, Termination of Contractor’s Services. All provisions of this 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

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concerning the performance of the work described in this Contract. Upon such notice and within ten (10) days after receipt of instructions, Contractor shall comply with such instructions and fulfill 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 this Contract. 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 the Contractor. State retains the right to ensure that Contractor's work is in conformity with the terms and conditions of this 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 II: STATEMENT OF WORK**

- 2.1 The Contractor shall undertake the work and activities set forth herein, and in Exhibit I, Scope of Work, which is attached hereto and made a part hereof, and incorporated by reference as if fully written herein.
- 2.2 The Contractor declares that it is engaged as an independent business and has complied with all federal, state and local laws regarding business permits and licenses of any kind necessary to perform the Contract including, but not limited to, any insurance coverage that is required by law in the normal course of business, as well as any specialized insurance that is specified herein that may be required to carry out its business, and perform under the terms of Contract. The 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 the State.
- 2.3 The Contractor declares that it is engaged in the same or similar activities for other customers and that the State is not its sole and only customer.
- 2.4 The Contractor hereby delivers, assigns, transfers and conveys to the State all right, title and interest to all documents, data, materials, information, processes, studies, reports, surveys, proposals, plans, scientific information, technological information, regulations, maps, equipment, charts, schedules, photographs, exhibits, documentation, and other materials and property prepared, developed, created or discovered in connection with this Contract (the "Deliverables").
- 2.5 The 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 herein. Neither the Contractor nor its personnel shall at any time, or for any

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purpose be considered as employees or agents of the State.

### **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 This Contract shall remain in effect until the work described in Article II: Statement of Work, Exhibit I, Scope of Work, and elsewhere herein is completed to the satisfaction of the State and the Contractor is paid in accordance with Article IV: Compensation, or until terminated as provided in Article VI: Termination of Contractor's Services, whichever is sooner. This Contract must be completed no later than June 30, 2015.
- 3.3 As the current General Assembly cannot commit a future General Assembly to expenditure, this Contract shall expire no later than the end of the current biennium. State may renew this Contract on the same terms and conditions 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 this 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 Contractor will be compensated for its services, directly or indirectly, by the money market mutual fund. The Contractor will not directly assess any fees or charges to the State for any services rendered in the performance of the Contractor's obligations under this Contract. The Contractor may not modify or change the aforementioned fee arrangement during the term of this Contract unless by a properly executed amendment. All amendments must be in writing and signed by the Director and the Contractor. No payment for new services shall be made until an amendment has been signed by both Parties.
- 4.2 Fees incurred which are the result of any error by the Contractor shall be absorbed by the Contractor and shall not be assessable to the State.
- 4.3 Unless expressly provided for elsewhere in this Contract, the Contractor shall be responsible for and assume all office and business expenses of the Contractor that are incurred as a result of the performance of this Contract.

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**ARTICLE V: CERTIFICATION OF FUNDS**

- 5.1 It is expressly understood by the Parties that none of the rights, duties, and obligations described in this Contract shall be binding on either Party until all statutory provisions under the ORC, 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 the State gives the Contractor written notice that such funds have been made available to the State by the State's funding source.

**ARTICLE VI: TERMINATION OF CONTRACTOR'S SERVICES**

- 6.1 This Contract may be suspended or terminated unilaterally by the State upon provision to Contractor of thirty (30) calendar days written notice. Under no circumstances will suspension or termination of the Contract give the Parties the right to collect any damages from the other.
- 6.2 In the event of a management or financial takeover of the Contractor by any government supervisory agency, the Director has the right to immediately terminate the Contract, subject to written notification from the Director to the Contractor.
- 6.3 If, in the reasonable judgment of the Director, the Contractor is materially adversely affected by circumstances, and such circumstances could have a detrimental material impact on the Account, the Director has the right to immediately terminate this Contract, upon written notice to the Contractor.
- 6.4 Upon providing written notice to the Contractor, the Director may suspend or terminate this Contract, in whole or in part, if it appears to the Director that the Contractor has failed to perform any of the requirements of the Contract; or that the Contractor is in violation of a specific provision of the Contract; or that full and satisfactory performance of the Contract is substantially endangered; or if the Ohio General Assembly fails to appropriate funds for any part of the work contemplated under the Contract; or due to any unforeseen or uncontrollable event; or if legislative or judicial action causes delay that prevents performance, and without offering justification for such suspension or termination.
- 6.5 The Contractor, upon receipt of notice of suspension or termination, shall cease work on the suspended or terminated activities under this Contract, suspend or terminate all subcontracts relating to such suspended or terminated activities, take all reasonably necessary or appropriate steps to limit disbursements and minimize costs, and, if requested by the Director, furnish a report within sixty (60) days, as of the date of receipt of notice of

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suspension or termination, describing the status of all work under this Contract, including without limitations, results accomplished, conclusions resulting therefrom, and such other matters as the Division may reasonably require.

- 6.6 In the event of suspension or termination under this Article, the Contractor shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to or resulting from receipt of notice of termination or suspension, which shall be calculated by the Division in accordance with provisions for Contractor compensation as stated herein, less any funds previously paid by or on behalf of the Division. The Division shall not be liable for any further claims, and the claims submitted by the Contractor shall not exceed the total amount of consideration stated in this Contract. In the event of suspension or termination, any payments made by the Division, for which services have not been rendered by the Contractor, shall be returned to the Division.

### **ARTICLE VII: RELATIONSHIP OF THE PARTIES**

- 7.1 State and Contractor agree that, during the term of this 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 this 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 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 VIII: INTERNAL CONTROLS AND RECORD KEEPING REQUIREMENTS**

- 8.1 The Contractor has, and shall maintain, a strong internal control system which includes policies and procedures adopted to ensure continuous safety of assets, the accuracy and

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- reliability of accounting data, operational efficiency and adherence to prescribed managerial policies.
- 8.2 The Contractor shall keep a full accounting of activity and records for Account, in accordance with instructions from the Auditor of State.
- 8.3 The Contractor shall permit the State, or the State's designee, upon prior notice and subject to the Contractor's security procedures, to conduct a periodic review of the internal control system of Contractor.
- 8.4 The Contractor shall, for a period of three (3) years, 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.
- 8.5 The Contractor shall keep an accounting for its work for the State (the "Contract Account".) All disbursements made from the Contract Account shall be only for obligations incurred in the performance of this 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 this contract, unless specific authorization for prior disbursements has been given in writing by the State.
- 8.6 At the request of the State, the Contractor shall furnish to the State current retention schedules for all applicable records, including, but not limited to, records of purchases and redemptions, records of corrections and adjustments to Account, and Account activity statements.
- 8.7 The Contractor agrees that the State, or the State's designee, may visit Contractor during normal business hours to observe and inspect the operation of the Contractor in services provided under this Contract with twenty-four (24) hours notice and subject to the Contractor's security procedures.
- 8.8 The Contractor agrees to make space available for, and to reasonably cooperate with, auditors when audits are made of the State with seventy-two (72) hours notice. The Contractor shall retain customary records for periods of time required by law and shall provide such pertinent records as requested by the auditors during such audit.
- 8.9 The Contractor has a disaster recovery plan which is designed to protect against a discontinuation of the services provided under this Contract.
- 8.10 During the period covered by this Contract, and until the expiration of three (3) years after final payment under this Contract the Contractor agrees to provide the State, its duly Authorized Representatives, or any person, agency or instrumentality indicated by the

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Director as providing financial support to the work undertaken hereunder, with reasonable access to and the right to examine any books, documents, papers and records of the Contractor involving transactions related to this Contract, subject to prior notice and the Contractor's security procedures. The Contractor shall, for each subcontract with an unaffiliated company in excess of \$2,500.00, require its subcontractors to agree to the same Internal Control provisions as stated herein.

### **ARTICLE IX: RELATED CONTRACTS**

- 9.1 The work contemplated in this Contract is to be performed by the Contractor, who may subcontract without the State's approval with affiliated companies or with third parties 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 and Exhibit I, Scope of Work, and elsewhere herein, but which are required for its satisfactory completion. The Contractor shall not enter into other subcontracts without written approval by the State. All work subcontracted shall be at the expense of the Contractor.
- 9.2 Contractor shall bind its subcontractors to the terms of this Contract, so far as applicable to the work of the subcontractor, and shall not agree to any provision which seeks to bind the State to terms inconsistent with, or at variance from, this Contract.
- 9.3 Contractor warrants that it has not entered into, nor shall it enter into other contracts, without written approval of the State, to perform substantially identical work for the State such that the work product contemplated under this Contract duplicates the work done or to be done under the other contracts.
- 9.4 Contractor shall furnish to the State a list of all subcontractors, their addresses, tax identification numbers and the dollar amount of each subcontract.

### **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 this 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 this Contract, or who involuntarily acquires any such incompatible or

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conflicting personal interest, shall immediately disclose his or her interest to State in writing. Thereafter, he or she shall not participate in any action affecting the work under this 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 represents, warrants, 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, religion, color, gender, national origin, military status, disability, age, genetic information, or sexual orientation. The Contractor will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, 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 The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause. The 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, gender, national origin, military status, disability, age, genetic information, or sexual orientation. The 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 the Contractor under Article II shall become the property of the State. To the extent that any of the work performed under this 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



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Copyright Act and any such material shall be the copyrighted property of the State. The State, and any person, agency or instrumentality providing financial assistance for the work performed under Article II shall have an unrestricted right and authority to reproduce, distribute, modify, maintain and use the Deliverables in whole or in any part, and the Contractor shall not obtain copyright, patent or other proprietary protection for the Deliverables in the United States or in any other country. To the extent that the Contractor may obtain any copyrights, privileges and/or proprietary rights in the Deliverables, the Contractor hereby relinquishes any and all such copyrights, privileges and proprietary rights in the Deliverables to the State. The Contractor shall not include in any Deliverables any copyrighted or patented matter, unless the copyright or patent owner and any person, agency or instrumentality providing financial assistance to the work hereunder gives prior written approval to use such copyrighted or patented matter in the manner provided herein.

- 12.2 Neither the Contractor nor any of the 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 the patent. In the event that such patent is obtained. The Contractor shall, at the request of the State, provide the State written authorization for the 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 agrees that all Deliverables shall be made freely available to the general public to the extent permitted or required by law.

### **ARTICLE XIII: RESPONSIBILITY FOR CLAIMS**

- 13.1 The Contractor agrees to indemnify and shall hold the State harmless from any and all claims for injury or damages resulting from the Contractor's activities in furtherance of the work hereunder, and from wages or overtime compensation due the Contractor's employees in rendering services pursuant to this Contract, including payment of all costs in defense of any claim made under the Fair Labor Standards Act or any other federal or state law. When applicable, the Contractor shall reimburse the State for any judgments for infringement of patent or copyright rights.

### **ARTICLE XIV: COMPLIANCE WITH LAW**

- 14.1 The 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

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be amended after that date and during the term of this Contract. The Contractor agrees that the 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. The Contractor and its employees are not employees of the 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, for state revenue and tax laws, state workers' compensation laws, state unemployment insurance laws, the Child Support Enforcement Act, and all rules and regulations governing the Americans with Disabilities Act. The Contractor waives any eligibility for participation in the Ohio Public Employee Retirement System.

- 14.2 The 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 the Contractor in the performance of the work authorized by this Contract. Contractor shall be responsible for obtaining its own workers' compensation coverage for itself and its employees. Contractor acknowledges that it is not eligible for participation in the Ohio Public Employees Retirement System. Further, the Contractor shall indemnify, save and hold State harmless from any and all liability or damages arising from the Contractor's failure to meet its obligations under this section.
- 14.3 The State is exempt from federal, state and local taxes and shall not be liable for any taxes under this Contract.

### **ARTICLE XV: LIMITATION OF LIABILITY**

- 15.1 The 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 the Contractor. The Contractor is responsible for satisfactory completion of work as indicated in this Contract, and shall make reasonable effort to correct any deficiencies and complete each assigned task or work as described herein. The Contractor agrees to indemnify and to hold the State harmless and immune from any and all claims for injury or damages arising out of or related to the Contractor's performance of this Contract and that are attributable to the Contractor's own actions or omissions or to those of its trustees, officers, employees, subcontractors, suppliers, third parties used by the Contractor, or joint venturers while acting pursuant to this Contract. Such claims shall include any claims made under the Fair Labor Standards Act or under any other federal or state law involving wages, overtime, or employment matters and any claims involving patents, copyrights, and trademarks. The Contractor shall bear all costs associated with defending the State against any claims. The

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Contractor shall carry insurance against risks of claim or loss as specified herein.

- 15.2 The Contractor shall not be responsible for the State's timeliness or transmittal or due authorization of any transmission or payment, or the acts or omissions of any other person or entity. The State agrees to indemnify the Contractor against loss, liability or expense (including attorney's fees and expenses) resulting from or arising out of any claim by any person that the Contractor is responsible for any act or omission of the State, but only to the extent provided by ORC Sections 169.07 and 2743.02.
- 15.3 In no event shall either Party be liable for any indirect, consequential, or punitive damages, including loss of profits, even if the other party knew or should have known of the possibility of such damages.
- 15.4 Notwithstanding any language to the contrary, the Contractor shall be liable for any personal injury or damage to real property or tangible personal property, caused by the fault or negligence of the Contractor. In no event shall the State be liable for injuries suffered by the Contractor, or the Contractor's employees, related to the work performed under this Contract.
- 15.5 In conjunction with this Contract, the Contractor agrees, at its own cost, to procure and to continue in force at all times that this Contract is in effect, in its name, general liability insurance against any and all claims for injuries to persons or damage to property occurring or arising out of the Contractor's obligations set forth herein. Such insurance shall at all times be in an amount not less than Five Hundred Thousand Dollars (\$500,000) on account of bodily injury to or death of one 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 damages 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. A certificate reflecting the continuing coverage of all such policies procured by the Contractor in compliance herewith shall be delivered to the State. Such insurance shall name the State as defined in this Contract and the State of Ohio as additional insured parties.

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**ARTICLE XVI: ENTIRE AGREEMENT; CHANGE OR MODIFICATIONS; WAIVER**

- 16.1 This 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.
- 16.2 This Contract supersedes any and all previous agreements, whether written or oral, between the parties.
- 16.3 A waiver by any party of any breach or default by the other party under this Contract shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default of this Contract.

**ARTICLE XVII: SUCCESSORS AND ASSIGNS**

- 17.1 Neither this Contract nor any rights, duties or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.

**ARTICLE XVIII: CONTROLLING LAW; CONSTRUCTION**

- 18.1 The validity, construction and performance of the Contract and the legal relations among the Parties to the Contract shall be governed by and construed in accordance with the laws 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 this Contract. Only Ohio courts shall have jurisdiction over any action or proceeding concerning this Contract and/or performance thereunder. If any provision of the Contract or the application of any such provision shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of the Contract shall remain in full force and effect; however, the State may enter into an addendum, at State's discretion, and if appropriate.
- 18.2 Any addenda attached hereto and properly executed, but not otherwise referenced herein are hereby incorporated into this Contract, and shall be deemed to be part of this Contract.
- 18.3 The terms contained in this Contract shall supersede any and all conflicting terms contained in any addendum hereto.

**ARTICLE IX: SEVERABILITY**

- 19.1 The provisions of this 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,

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nevertheless by binding and enforceable.

**ARTICLE XX: NOTICES AND HEADINGS**

- 20.1 All notices, consents, and communications under this Contract shall be given in writing, shall be deemed to be given upon receipt thereof, and shall be sent to the addresses first set forth above.
- 20.2 The headings in this Contract have been used for convenient reference and shall not be considered in any questions of interpretation or construction of this Contract.

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

- 21.1 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.
- 21.2 Contractor hereby certifies that all applicable parties listed in Division (I) or (J) of O.R.C. Section 3517.13 are in full compliance with Divisions (I) and (J) of Section 3517.13.

**ARTICLE XXII: DRUG-FREE WORKPLACE**

- 22.1 Contractor agrees to comply with all applicable state and federal laws regarding smoke-free and drug-free workplaces. Contractor shall make a good faith effort to ensure that all Contractor employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol, or abuse prescription drugs in any way.

**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, this Contract is void *ab initio* and Contractor shall immediately repay to State any funds paid under this 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 O.R.C. Section 153.02 or O.R.C. Section 125.25. If this representation and warranty is found to be false, this Agreement is void *ab initio* and Contractor shall immediately repay to

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Agency any funds paid under this Agreement.

**ARTICLE XXV: PROHIBITION AGAINST OFFSHORE SERVICES EXPENDITURES OF PUBLIC FUNDS FOR 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 \_\_\_\_.
- 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**

This Contract is not binding upon the State unless executed in full.

**In Witness Whereof**, the parties hereto have caused this 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 I.D. Number

Date: \_\_\_\_\_

**APPROVED AS TO FORM**

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

Chief Legal Counsel, Department of Commerce

**Sample/Draft Short-Term Investment Services Contract – For Informational Purposes Only**

**EXHIBIT I**

**SCOPE OF WORK**

**DEFINITIONS**

Except as otherwise provided in this Contract, the following words and/or phrases have the definitions given in this section:

- A) "Account"- account opened pursuant to Exhibit 1, Scope of Work, at Contractor as a result of this Contract, and any and all related sub-accounts.
- B) "Contract"- this Contract, dated July 1, 2013, and all properly executed amendments, addenda, or any other form of modification;
- C) "Authorized Representative"- those individuals identified in the section of the Contract entitled "Assignment of Personnel";
- D) "Day"- a business day;
- E) "Director" - the Director of the State of Ohio, Department of Commerce;
- F) "FRB" - a Federal Reserve Bank;
- G) "Item" - any instrument denominated in U.S. Dollars for the payment of money even though it is not negotiable but does not include money; and
- H) "ORC" - the Ohio Revised Code, as constituted on the effective date hereof, or as may be amended after that date and during the terms of this Contract.



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### ACCOUNT AND BALANCE INFORMATION

#### A. General

1. The Contractor agrees to establish and maintain such Account as is necessary to accommodate the State from time to time. Said Account is to be in the form of a Money Market Mutual Fund, and is for the purpose of short term investment and accounting of monies belonging to or due the Account listed below. Said Account is the following:

**Ohio Department of Commerce  
Division of Unclaimed Funds - MIF  
77 South High St., 20th Floor  
Columbus, OH 43215**

**Account Number: To be determined  
Account Description: To be determined  
To be determined**

2. Account is subject to all applicable federal and state laws and regulations and to all customs and practices, except as otherwise provided herein.
3. The Contractor will safely keep and account for all monies deposited to Account. The Contractor further agrees to pay over any moneys in Account on the demand of the State, subject to being withdrawable and available as provided in the terms of the applicable money market fund, this Contract and under applicable law.
4. Account portfolio will be comprised solely of direct obligations of the U.S. Treasury. The Contractor will notify the State in writing of any changes in the portfolio of the Account that includes investments other than direct obligations of the U.S. Treasury. Notice shall be made as soon as the Contractor is advised of the change.
5. Account will earn income, in the form of dividends, declared daily, and automatically reinvested to the Account on the first business day of the next month.

#### B. Purchase, Redemption, Balance and Transaction Information

1. Purchase and Redemption
  - a. Purchases and redemptions may be made at any time during normal business hours of the Contractor up to **(To be determined)** each day; excluding days

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the money market fund is closed due to market holidays.

- b. The Contractor has the capability to accept multiple transactions up to (**To be determined**) each day. The State may make purchases or redemptions of any amount at any of the Contractor's offices.

### 2. Balance and Transaction Reporting

The State may obtain balance and transaction information daily by contacting the personnel assigned to the Account by the Contractor.

### 3. Adjusting Entries

All corrections and any other miscellaneous adjustments made to the Account by the Contractor shall be sent to the State not later than two (2) Days after adjustment to the Account by the Contractor.

## C. Assignment of Personnel

### 1. Contractor Personnel

The Contractor has assigned the following personnel to assume responsibility for proper maintenance of Account, and for compliance with the terms and conditions of this Contract. These personnel will provide prompt assistance in problem resolution. These personnel may change in the Contractor's discretion. The Contractor will send written notice to the State within a reasonable time frame after any change.

Contractor – **To be determined.**

### 2. State Personnel

- a. The Director will provide the Contractor a certificate setting forth the names of the Authorized Representatives of the State for the Account. The Authorized Representatives of the State are in the attached Exhibit A. Written notification of changes in the Authorized Representatives of the State will be forwarded to the Contractor. The Contractor may rely on such notification if the notification is or appears in the Contractor's good faith judgment to be signed by the Director until the Contractor receives notice of any change sent in accordance with this Contract.

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- b. If the signatures of any Authorized Representative are to be made by electronic authorization, the Director shall certify the names which may appear by electronic authorization to the Contractor. The certified names are in the attached Exhibit B. The Contractor is authorized to rely on these certifications as being in effect until written notice of any change therein shall be delivered to and acknowledged by the Contractor upon request.

**RECONCILIATION**

**A. Information to be Available Daily**

The Contractor shall provide to the State daily confirmation statements showing all transactions occurring within the Account each day. The Contractor will retain detailed historical information for all daily transactions until the monthly Account statement is received and reconciled by the State.

**B. Information to be Available Monthly**

The Contractor shall provide monthly to the State a regular Account statement showing all the related daily activity in the Account within five (5) Days of the end of the month.

**FEDERAL RESERVE REQUIREMENTS**

The Contractor will detail any recent changes implemented by the FRB which would impact the financial relationship between the State and the Contractor.

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**Exhibit A1**

**CERTIFICATE OF APPOINTMENT FROM THE OHIO SECRETARY OF STATE**

Attesting to the appointment of Director, Ohio Department of Commerce.

**Exhibit A2**

**CERTIFIED RESOLUTION AUTHORIZING REPRESENTATIVES TO ACT  
ON BEHALF OF STATE**

**Exhibit A3**

**CERTIFICATE OF INCUMBENCY**

**Exhibit B**

**CERTIFIED RESOLUTION FOR FUNDS TRANSFER REQUESTS BY TELEPHONE  
OR BY ELECTRONIC MEANS**