CONTRACT #9
RFS # 301.01-14010
FA # Pending

Treasury
Unclaimed Property Division

VENDOR:
Kelmar Associates, L.L.C.

Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Mary Krause	*Contact Phone:	253-3855
*Contract Number:	Has not been assigned yet. It will be an "FA" contract.	*RFS Number:	30901-14010
*Original Contract Begin Date:	N/A	*Current End Date:	N/A
Current Request Amendment Number: *(if applicable)*		N/A	
Proposed Amendment Effective Date: *(if applicable)*		N/A	
*Department Submitting:		Tennessee Treasury Department	
*Division:		Division of Unclaimed Property	
*Date Submitted:		March 25, 2009	
*Submitted Within Sixty (60) days:		Yes	
If not, explain:		N/A	
*Contract Vendor Name:		Kelmar Associates, L.L.C	
*Current Maximum Liability:		*Proposed* - $500,000	

*Current Contract Allocation by Fiscal Year: *For Proposed Contract*
(as Shown on Most Current Fully Executed Contract Summary Sheet)

FY: 2010	FY: 2011	FY: 2012	FY: 2013	FY: 2014	FY: 2015
$83,340	$100,000	$100,000	$100,000	$100,000	$16,660

*Current Total Expenditures by Fiscal Year of Contract:
(attach backup documentation from STARS or FDAS report)

FY: N/A	FY: N/A	FY: N/A	FY: N/A	FY: N/A	FY: N/A
$ N/A	$ N/A	$ N/A	$ N/A	$ N/A	$ N/A

IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	N/A
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	N/A
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:	N/A

*Contract Funding Source/Amount:	State:	$500,000	Federal:	$00.00
Interdepartmental:		$00.00	*Other*:	$00.00

Supplemental Documentation Required for Fiscal Review Committee

If "*other*" please define:			
Dates of All Previous Amendments or Revisions: *(if applicable)*		Brief Description of Actions in Previous Amendments or Revisions: *(if applicable)*	
N/A		N/A	
Method of Original Award: *(if applicable)*		N/A	

Supplemental Questions Requested by Fiscal Review

Kelmar Associates, LLC
RFS Number 30901-14010

1) A detailed breakdown of the actual expenditures anticipated in each year of the contract, including specific line items, the source of funds (federal, state, or other--if other, please specify source), and the disposition of any excess funds.

This contract is with an auditing group that audits companies all across the United States for unclaimed property on behalf of the state. *The contingency fees pursuant to this contract are not paid unless properties in the form of cash and securities are received from the audit.* Because there is no way to determine how many audits will be conducted or the value of the property that will be recovered from those audits, the estimate of actual expenses is difficult to determine. With 124 audits currently in progress, it is estimated that less than 50% of the fees set out in the proposed contract would be paid. However, if a large amount of unclaimed property were to be discovered in one of the audits, then more fees would be paid. The fewer fees that are paid, then less property will be recovered. As more fees that are paid, then more property will be recovered.

All expenditures are state general fund monies. All cash recovered from audits are state general fund monies.

2) A detailed breakdown in dollars of any savings that the department anticipates will result from this contract, including but not limited to, reduction in positions, reduced equipment costs, travel, or any other item related to the contract.

This contract is with an auditing group that audits companies all across the United States for unclaimed property on behalf of the state. Fees are not paid on this contract unless property in the form of cash and securities is received from the audit. If the Treasury Department was not able to secure this contract and the state wanted to obtain the property, the department would have to hire an undetermined amount of qualified auditors and pay all expenses associated with the audit travel. More than 95% of all audits are for companies outside the State of Tennessee.

These firms have an economy of scale advantage in that they typically audit companies on behalf of several states.

3) A detailed analysis in dollars of the cost of obtaining this service through the proposed contract as compared to other options.

This contract is with an auditing group that audits companies all across the United States for unclaimed property on behalf of the state. Fees are not paid on this contract unless property in the form of cash and securities is received from the audit. If the Treasury Department was not able to secure this contract and the state wanted to obtain the property, the state would have to hire an undetermined amount of qualified auditors and pay all expenses associated with the audit travel. More than 95% of all audits are for companies outside the State of Tennessee.

These firms have an economy of scale advantage in that they typically audit companies on behalf of several states. Accordingly, it is believed that establishing an audit staff within Treasury is not an efficient use of resources. The vast majority of unclaimed property programs utilize third party audit firms, especially for out-of-state audits.

STATE OF TENNESSEE

RECEIVED
MAR 2 0 2009
FISCAL REVIEW

DAVID H. LILLARD, JR.
STATE TREASURER

TREASURY DEPARTMENT
STATE CAPITOL
NASHVILLE, TENNESSEE 37243-0225

MEMORANDUM

TO: The Honorable M. D. Goetz, Jr., Commissioner
Department of Finance and Administration

FROM: David H. Lillard, Jr., Treasurer
Department of the Treasury

DATE: March 16, 2009

RE: ***Noncompetitive Contract Request – Unclaimed Property Processing Services Contract for the Division of Unclaimed Property***

I.
DESCRIPTION OF SERVICE TO BE ACQUIRED

The Tennessee Treasury Department has an existing contract with Kelmar Associates, L.L.C. that will expire on August 31, 2009. Under the contract, Kelmar identifies, recovers, processes and otherwise reports past due abandoned property to the State. Kelmar performs comprehensive audits of holders as authorized by the State (or by another state in which the State of Tennessee desires to participate) that includes a field examination of all applicable unclaimed property types through a review of the appropriate books and records of the respective holder and/or holder's agent.

The Department desires to renew its contract with Kelmar in order to maintain the State's out-of-state unclaimed property search capacity. Under the renewal contract, Kelmar would only be entitled to compensation under the contract if unclaimed property is actually delivered to and received by the State as a result of the examination. Kelmar has agreed to reduce its fee from the present 12% of the value of the abandoned property delivered to the State to a sliding percentage scale. Specifically, the fee would be equal to a certain percentage of the abandoned property actually reported and paid to the State *per holder examination*. The percentage would be as follows:

(i) 12% for the first fifty thousand dollars ($50,000) paid by or on behalf of the holder;

(ii) 10% for the next fifty thousand dollars ($50,000) paid by or on behalf of the holder;

(iii) 8% for the next fifty thousand dollars ($50,000) paid by or on behalf of the holder; then
(iv) 6% for any amounts over one hundred fifty thousand dollars ($150,000) paid by or on behalf of the holder.

Kelmar would be responsible for all direct and indirect costs and expenses it incurs in performing the examination. This proposed fee arrangement is consistent with (if not lower than) the market place, and consistent with (if not lower than) the fee Kelmar charges other state unclaimed property programs. In fact, if Kelmar enters into a similar arrangement with another state that provides for fees that is less than the fees set forth above, then the proposed contract with Kelmar would automatically be amended to substitute the lower fees in place of the fees described above.

II.

EXPLANATION OF THE NEED FOR OR REQUIREMENT PLACED ON THE PROCURING AGENCY TO ACQUIRE THE SERVICE

The Tennessee Treasury Department is responsible for administering Tennessee's Unclaimed Property Act. Under this Act, companies within and outside the State of Tennessee are required to turn over to the State unclaimed property belonging to its residents. Unclaimed property is caused when financial assets are forgotten or lost due to factors that include: change of address, death, name change, clerical errors or lack of action on the part of the owner or heir. Unclaimed property consists of such things as: dormant bank accounts, uncashed payroll checks, securities, unclaimed security deposits, insurance proceeds and etc. Once the statutory dormancy period has elapsed (the period in which there has been no owner generated activity and the owner cannot be found), the assets must be turned over to the State, which acts as custodian in perpetuity until the rightful owner or heir is located to claim their property.

The Unclaimed Property Act authorizes the Treasury Department to enter into contracts with companies for the purpose of assisting the Department in carrying out the Act. Since numerous companies exist outside the State of Tennessee who are not regularly reporting (or not reporting at all) as required, it is necessary the Department procure contracts for the identification and collection from persons, firms and entities that are holding or in possession of unclaimed property subject to report and delivery under the Act.

The Treasury Department has existing contracts with Affiliated Computer Services, Inc. (ACS), Verus Financial, LLC (Verus), Kelmar Associates, L.L.C. (Kelmar), Abandoned Property Experts, LLC (APEX), Audit Services, U.S., LLC (Audit Services), and PRA Government Services (PRA). The Treasury Department through its membership with the National Association of State Unclaimed Property Administrators keeps apprised of any additional viable companies that can perform these services. Once identified, it is the Department's goal to contract with these additional companies in order to increase the State's out-of-state unclaimed property search capacity. Companies that

perform these services are entitled to compensation only if unclaimed property is actually delivered to and received by the State as a result of their examinations. The compensation is a percentage of the value of the net abandoned property actually received by the State. This percentage normally ranges between 12 and 12 ½%. However, as discussed in Item I above, Kelmar's fee would be based on a sliding percentage scale with the highest percentage fee being 12% on the first $50,000 delivered to the State as a result of a holder examination. By entering into the proposed contract, the State would maintain its current out-of-state search capacity, thereby increasing the chances that unclaimed property would not otherwise go unreported to the State.

III.
EXPLANATION OF WHETHER THE PROCURING AGENCY BOUGHT THE SERVICE IN THE PAST, AND IF SO, WHAT PROCUREMENT METHOD IT USED

As explained in Item II above, the Treasury Department has existing contracts with ACS, Verus, Kelmar, APEX, Audit Services and PRA that were procured through non-competitive negotiation. Under these contracts, ACS, Verus, Kelmar, APEX, Audit Services and PRA locate holders of unclaimed property who are subject to the Unclaimed Property Act and who are not regularly reporting (or not reporting at all) to Tennessee.

The Tennessee Treasury Department is a member of the National Association of State Unclaimed Property Administrators, which consists of all the states in the union. Through the Department's active participation in this organization, it is our belief that we have contracted with all viable companies that can perform this service. The Department would welcome any additional such companies that can perform this service since it only aids the State by increasing its out-of-state unclaimed property search capacity. The companies are only entitled to compensation if unclaimed property is actually received by the State as a result of their examinations. The compensation is a percentage of the value of the net abandoned property received by the State.

IV.
NAME AND ADDRESS OF THE PROPOSED CONTRACTOR'S PRINCIPAL OWNER(S)

Mark McQuillen (JD)
401 Edgewater Place, Suite 500
Wakefield, MA 01880

Sam LaRosa (CPA)
223 Wilmington/West Chester Pike
Gateway Corporate Center
Building A Suite 106
Chadds Ford, PA 19317

Mark Russo (MBA)
401 Edgewater Place Suite 500
Wakefield, MA 01880

David Kennedy (JD)
401 Edgewater Place, Suite 500
Wakefield, MA 01880

Michael Leblanc (CPA)
401 Edgewater Place, Suite 500
Wakefield, MA 01880

V.
EVIDENCE OF THE PROPOSED CONTRACTOR'S EXPERIENCE AND LENGTH OF EXPERIENCE PROVIDING THE SERVICE

Kelmar was formed as a limited liability corporation (LLC) in the state of Delaware in October of 2001 and is widely recognized in the United States for "general ledger" unclaimed property services. Kelmar has more unclaimed property examiners than any contract audit firm and its principals are uniquely qualified in conducting unclaimed property examinations on behalf of states.

One of its principals, Mr. Mark McQuillen, is the former National Practice Leader of Pricewaterhouse Coopers, LLC's Abandoned Property Consulting Services Group and former Deputy Commissioner of Revenue for the Commonwealth of Massachusetts' Department of Revenue. Another principal, Mr. Sam LaRosa, is the former National Director of Ernst & Young, LLC's Unclaimed Property Division and former Escheat Coordinator of CIGNA Corporation. Mr. Mark Russo is the former Manager of Unclaimed Property Services of Deloitte & Touche, LLC's East Coast Unclaimed Property Practice and former Director of Unclaimed Property Audits and Compliance for the Commonwealth of Massachusetts. Mr. David Kennedy was the former Practice Leader of Pricewaterhouse Coopers, LLC's New York's Abandoned Property Consulting Services Group. He is also the former Chief Financial Officer for the Public Safety Secretariat of the Commonwealth of Massachusetts. The final principal, Mr. Michael Leblanc, is the former Practice Leader of Deloitte & Touche's Boston's Unclaimed Property Practice and former Litigation Hearings Officer for the Commonwealth of Massachusetts.

VI.
OFFICE FOR INFORMATION RESOURCES ENDORSEMENT (REQUIRED FOR INFORMATION TECHNOLOGY SERVICE)

N/A

VII.
EHEALTH INITIATIVE ENDORSEMENT (REQUIRED FOR HEALTH-RELATED PROFESSIONAL, PHARMACEUTICAL, LABORATORY, OR IMAGING SERVICE)

N/A

VIII.
DEPARTMENT OF HUMAN RESOURCES ENDORSEMENT (REQUIRED FOR STATE EMPLOYEES TRAINING SERVICE)

N/A

IX.
DESCRIPTION OF PROCURING AGENCY EFFORTS TO IDENTIFY REASONABLE, COMPETITIVE, PROCUREMENT ALTERNATIVES

Kelmar specializes in "general ledger" unclaimed property services and is the primary contract escheat examination firm for the state of Delaware. Kelmar only conducts mandated unclaimed property examinations requested by states. If Tennessee does not enter into a contract with Kelmar, then Tennessee cannot sign onto other state-mandated examinations conducted by Kelmar. Tennessee could request one of its other unclaimed property processing contractors to conduct an examination of the companies directly on behalf of Tennessee. However, the examination would be met with hostility since the companies would have already undergone an extensive examination of their books and records during the examination conducted by Kelmar. The end result is that the unclaimed property otherwise due Tennessee citizens will likely go unreported and undelivered to Tennessee. Further, by entering into a contract with Kelmar, the Department would more than quadruple its out-of-state search capacity.

The Treasury Department through its membership with the National Association of State Unclaimed Property Administrators keeps apprised of viable companies that can perform these services. It is the Treasury Department's belief that it has contracted (or in the process of contracting) with all viable companies that can perform this service.

X.
JUSTIFICATION OF WHY THE STATE SHOULD USE NON-COMPETITIVE NEGOTIATION RATHER THAN A COMPETITIVE PROCESS

The Treasury Department has existing contracts with ACS, Verus, Apex, Audit Services and PRA whereby these companies locate holders of unclaimed Property who are subject to the Unclaimed Property Act and who are not regularly reporting (or not reporting at all) to Tennessee. These contracts were procured through non-competitive negotiation. By entering into the proposed contract, the State would maintain its current out-of-state search capacity, thereby increasing the changes that unclaimed property would not otherwise go unreported to the State. The Department would welcome any additional such companies that can perform this service since it only aids the State by increasing its out-of-state unclaimed property search capacity.

NON-COMPETITIVE CONTRACT REQUEST:

APPROVED
Commissioner of Finance & Administration

1) RFS #	30901-14010
2) Procuring Agency :	Tennessee Treasury Department
3) Service Caption :	Provision of abandoned property examination services for the State in connection with the Uniform Disposition of Unclaimed Property Act.
4) Proposed Contractor :	Kelmar Associates, L.L.C
5) Contract Start Date : (attached explanation required if < 60 days after F&A receipt)	September 1, 2009
6) Contract End Date : (if ALL options to extend the contract are exercised)	August 31, 2014
7) Maximum Cost : (if ALL options to extend the contract are exercised)	$500,000 (Kelmar will only be entitled to compensation if unclaimed property is actually delivered to the State. The compensation will be a % of the value of the property delivered to the State)
8) Approval Criteria : (select one)	☒ use of Non-Competitive Negotiation is in the best interest of the state
	☐ only one uniquely qualified service provider able to provide the service

9) Description of Service to be Acquired :

The Tennessee Treasury Department has an existing contract with Kelmar Associates, L.L.C. that will expire on August 31, 2009. Under the contract, Kelmar identifies, recovers, processes and otherwise reports past due abandoned property to the State. Kelmar performs comprehensive audits of holders as authorized by the State (or by another state in which the State of Tennessee desires to participate) that includes a field examination of all applicable unclaimed property types through a review of the appropriate books and records of the respective holder and/or holder's agent.

The Department desires to renew its contract with Kelmar in order to maintain the State's out-of-state unclaimed property search capacity. Under the renewal contract, Kelmar would only be entitled to compensation under the contract if unclaimed property is actually delivered to and received by the State as a result of the examination. Kelmar has agreed to reduce its fee from the present 12% of the value of the abandoned property delivered to the State to a sliding percentage scale. Specifically, the fee would be equal to a certain percentage of the abandoned property actually reported and paid to the State *per holder examination*. The percentage would be as follows:

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Kelmar would be responsible for all direct and indirect costs and expenses it incurs in performing the examination. This proposed fee arrangement is consistent with (if not lower than) the market place, and consistent with (if not lower than) the fee Kelmar charges other state unclaimed property programs. In fact, if Kelmar enters into a similar arrangement with another state that provides for fees that is less than the fees set forth above, then the proposed contract with Kelmar would automatically be amended to substitute the lower fees in place of the fees described above.

10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :

The Tennessee Treasury Department is responsible for administering Tennessee's Unclaimed Property Act. Under this Act,

companies within and outside the State of Tennessee are required to turn over to the State unclaimed property belonging to its residents. Unclaimed property is caused when financial assets are forgotten or lost due to factors that include: change of address, death, name change, clerical errors or lack of action on the part of the owner or heir. Unclaimed property consists of such things as: dormant bank accounts, uncashed payroll checks, securities, unclaimed security deposits, insurance proceeds and etc. Once the statutory dormancy period has elapsed (the period in which there has been no owner generated activity and the owner cannot be found), the assets must be turned over to the State, which acts as custodian in perpetuity until the rightful owner or heir is located to claim their property.

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11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :

As explained in Item 10 above, the Treasury Department has existing contracts with ACS, Verus, Kelmar, APEX, Audit Services and PRA that were procured through non-competitive negotiation. Under these contracts, ACS, Verus, Kelmar, APEX, Audit Services and PRA locate holders of unclaimed property who are subject to the Unclaimed Property Act and who are not regularly reporting (or not reporting at all) to Tennessee.

The Tennessee Treasury Department is a member of the National Association of State Unclaimed Property Administrators, which consists of all the states in the union. Through the Department's active participation in this organization, it is our belief that we have contracted with all viable companies that can perform this service. The Department would welcome any additional such companies that can perform this service since it only aids the State by increasing its out-of-state unclaimed property search capacity. The companies are only entitled to compensation if unclaimed property is actually received by the State as a result of their examinations. The compensation is a percentage of the value of the net abandoned property received by the State.

12) Name & Address of the Proposed Contractor's Principal Owner(s) : (not required for a TN state education institution)

Mark McQuillen (JD)
401 Edgewater Place, Suite 500
Wakefield, MA 01880

David Kennedy (JD)
401 Edgewater Place, Suite 500
Wakefield, MA 01880

Sam LaRosa (CPA)
223 Wilmington/West Chester Pike
Gateway Corporate Center
Building A Suite 106
Chadds Ford, PA 19317

Michael Leblanc (CPA)
401 Edgewater Place, Suite 500
Wakefield, MA 01880

Mark Russo (MBA)
401 Edgewater Place Suite 500
Wakefield, MA 01880

13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :

Kelmar was formed as a limited liability corporation (LLC) in the state of Delaware in October of 2001 and is widely recognized in the United States for "general ledger" unclaimed property services. Kelmar has more unclaimed property examiners than any contract audit firm and its principals are uniquely qualified in conducting unclaimed property examinations on behalf of states.

One of its principals, Mr. Mark McQuillen, is the former National Practice Leader of Pricewaterhouse Coopers, LLC's Abandoned Property Consulting Services Group and former Deputy Commissioner of Revenue for the Commonwealth of Massachusetts' Department of Revenue. Another principal, Mr. Sam LaRosa, is the former National Director of Ernst & Young, LLC's Unclaimed Property Division and former Escheat Coordinator of CIGNA Corporation. Mr. Mark Russo is the former Manager of Unclaimed Property Services of Deloitte & Touche, LLC's East Coast Unclaimed Property Practice and former Director of Unclaimed Property Audits and Compliance for the Commonwealth of Massachusetts. Mr. David Kennedy was the former Practice Leader of

Pricewaterhouse Coopers, LLC's New York's Abandoned Property Consulting Services Group. He is also the former Chief Financial Officer for the Public Safety Secretariat of the Commonwealth of Massachusetts. The final principal, Mr. Michael Leblanc, is the former Practice Leader of Deloitte & Touche's Boston's Unclaimed Property Practice and former Litigation Hearings Officer for the Commonwealth of Massachusetts.

14) Office for Information Resources Endorsement : (required for information technology service; n/a to THDA)

Documentation is ... ☒ **Not Applicable to this Request** ☐ **Attached to this Request**

15) eHealth Initiative Endorsement : (required for health-related professional, pharmaceutical, laboratory, or imaging service)

Documentation is ... ☒ **Not Applicable to this Request** ☐ **Attached to this Request**

16) Department of Human Resources Endorsement : (required for state employees training service)

Documentation is ... ☒ **Not Applicable to this Request** ☐ **Attached to this Request**

17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

Kelmar specializes in "general ledger" unclaimed property services and is the primary contract escheat examination firm for the state of Delaware. Kelmar only conducts mandated unclaimed property examinations requested by states. If Tennessee does not enter into a contract with Kelmar, then Tennessee cannot sign onto other state-mandated examinations conducted by Kelmar. Tennessee could request one of its other unclaimed property processing contractors to conduct an examination of the companies directly on behalf of Tennessee. However, the examination would be met with hostility since the companies would have already undergone an extensive examination of their books and records during the examination conducted by Kelmar. The end result is that the unclaimed property otherwise due Tennessee citizens will likely go unreported and undelivered to Tennessee. Further, by entering into a contract with Kelmar, the Department would more than quadruple its out-of-state search capacity.

The Treasury Department through its membership with the National Association of State Unclaimed Property Administrators keeps apprised of viable companies that can perform these services. It is the Treasury Department's belief that it has contracted (or in the process of contracting) with all viable companies that can perform this service.

18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

The Treasury Department has existing contracts with ACS, Verus, Apex, Audit Services and PRA whereby these companies locate holders of unclaimed Property who are subject to the Unclaimed Property Act and who are not regularly reporting (or not reporting at all) to Tennessee. These contracts were procured through non-competitive negotiation. By entering into the proposed contract, the State would maintain its current out-of-state search capacity, thereby increasing the changes that unclaimed property would not otherwise go unreported to the State. The Department would welcome any additional such companies that can perform this service since it only aids the State by increasing its out-of-state unclaimed property search capacity.

REQUESTING AGENCY HEAD SIGNATURE & DATE :
(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)

David H. Lillard, Jr., State Treasurer

Date 03/23/2009

CONTRACT SUMMARY SHEET

021908

RFS #	Contract #
30901-14010	FA-
State Agency	**State Agency Division**
Tennessee Treasury Department	Unclaimed Property Division
Contractor Name	**Contractor ID # (FEIN or SSN)**
Kelmar Associates, L.L.C.	☐ C- or ☒ V- 04-3577426

Service Description

The Contractor will provide abandoned property examination services for the State in connection with the Uniform Disposition of Unclaimed Property Act.

Contract Begin Date	Contract End Date	SUBRECIPIENT or VENDOR?	CFDA #
September 1, 2009	August 31, 2014	Vendor	

Mark Each TRUE Statement

☒ **Contractor is on STARS** ☒ **Contractor's Form W-9 is on file in Accounts**

Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
313.20	88	083	11		

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2010	$83,340				$83,340
2011	$100,000				$100,000
2012	$100,000				$100,000
2013	$100,000				$100,000
2014	$100,000				$100,000
2015	$16,660				$16,660
TOTAL:	$500,000				$500,000

— COMPLETE FOR AMENDMENTS ONLY —

FY	Base Contract & Prior Amendments	THIS Amendment ONLY
TOTAL:		
End Date:		

State Agency Fiscal Contact & Telephone #

Mary Roberts-Krause, General Counsel
10th Floor, Andrew Jackson Building
(615) 253-3855

State Agency Budget Officer Approval

Funding Certification (certification, required by T.C.A., § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)

Contractor Ownership (complete for ALL base contracts— N/A to amendments or delegated authorities)

☐ African American ☐ Person w/ Disability ☐ Hispanic ☐ Small Business ☐ Government
☐ Asian ☐ Female ☐ Native American ☒ NOT Minority/Disadvantaged ☐ Other

Contractor Selection Method (complete for ALL base contracts— N/A to amendments or delegated authorities)

☐ RFP ☐ Competitive Negotiation * ☐ Alternative Competitive Method *
☒ Non-Competitive Negotiation * ☐ Negotiation w/ Government (ID, GG, GU) ☐ Other *

*** Procurement Process Summary** (complete for selection by Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)

The Department believes it negotiated the best possible terms and price. The Contractor ("Kelmar") will only be entitled to compensation under the contract if unclaimed property is actually delivered to and received by the State as a result of an unclaimed property examination conducted by Kelmar on behalf of the State. Kelmar agreed to reduce its fee from the previous 12% of the value of the abandoned property delivered to the State to a sliding percentage scale. Specifically, the fee would be equal to a certain percentage of the abandoned property actually reported and paid to the State *per holder examination*. The percentage would be as follows: (i) 12% for the first $50,000 paid by or on behalf of the holder; (ii) 10% for the next $50,000 paid by or on behalf of the holder; 8% for the next $50,000 paid by or on behalf of the holder; *then* 6% for any amounts over $150,000 paid by or on behalf of the holder.

Kelmar would be responsible for all direct and indirect costs and expenses it incurs in performing the examination. This fee arrangement is consistent with (if not lower than) the market place, and consistent with (if not lower than) the fee Kelmar charges other state unclaimed property programs. In fact, if Kelmar enters into a similar arrangement with another state that provides for fees that is less than the fees set forth above, then the proposed contract with Kelmar would automatically be amended to substitute the lower fees in place of the fees described above.

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
TREASURY DEPARTMENT
AND
KELMAR ASSOCIATES, L.L.C.

This Contract, by and between the State of Tennessee, Treasury Department, hereinafter referred to as the "State", and Kelmar Associates, L.L.C., hereinafter referred to as the "Contractor", is for the provision of identifying, recovering, processing and otherwise reporting past due abandoned property to the State, as further defined in the "SCOPE OF SERVICES".

The Contractor is a limited liability company.
Contractor Federal Employer Identification or Social Security Number: 04-3577426
Contractor Place of Incorporation or Organization: State of Delaware

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.

A.2. Appointment as Agent. The State hereby appoints the Contractor as agent for the State of Tennessee pursuant to Tennessee Public Acts of 1987, Chapter 43, for the purpose of assisting the State in carrying out certain provisions of the Tennessee Uniform Disposition of Unclaimed Property Act.

A.3. Identification of Abandoned Property.

a. Subject to the State's written authorization, the Contractor shall undertake to examine and identify unclaimed property subject to report and delivery to the State under Tennessee Code Annotated, Title 66, Chapter 29 from persons, firms and entities that are holding or in possession of such property (all such property is hereinafter referred to as Abandoned Property). Abandoned Property includes the following:

(1) Unclaimed dividends.

(2) Unclaimed or unpaid interest owing on debt obligations.

(3) Principal sums unclaimed or unpaid in connection with matured debt obligations.

(4) Unclaimed or undelivered securities, warrants, rights, unconverted preferred stock and other intangible interests in business associations.

(5) Outstanding securities and other intangible interests in a business association ("underlying shares").

(6) Liquidations and any other distributions resulting from the liquidation or reorganization of a business association.

(7) Unclaimed interests in mutual funds.

(8) General ledger credit balances such as customer accounts, patient accounts, refunds, and discounts.

(9) Outstanding checks and electronic transactions issued for payroll, commissions, vendor and other payments.

(10) Deposits, unearned revenues, unallocated remittances, gift certificates and balances due to others.

(11)Unclaimed life insurance proceeds.

(12) Such other property as covered under Tennessee Code Annotated, Title 66, Chapter 29.

b. For purposes of this Contract, the examination and identification of Abandoned Property means a comprehensive audit initiated by the State (or by another state in which the State of Tennessee, Treasury Department has agreed to participate) that includes a field examination of all applicable Abandoned Property types through a review of the appropriate books and records of the respective holder and/or holder's agent.

c. In conjunction with the examination and identification of Abandoned Property, the Contractor shall:

(1) Process records of Abandoned Property obtained from holders and/or their agents;

(2) Prepare reports of Abandoned Property in accordance with the requirements of the State's unclaimed property law; and

(3) Direct holders and/or their agents to obtain instructions as to how and where to deliver Abandoned Property deemed owing to the State in accordance with Section A.9 below.

d. The Contractor shall notify the State if a holder files for bankruptcy before or during an approved examination. Said notification shall be made within seven (7) calendar days of discovery by the Contractor of the bankruptcy filing. In such case, the Contractor shall prepare a proof of claim or provide such information to enable the State to file a proof of claim within seven (7) calendar days of discovery by the Contractor of the bankruptcy filing.

A.4. Enforcement Efforts.

a. The State agrees to send such notices that may be required to each holder examination candidate naming the Contractor as its agent and to assist the Contractor in obtaining access to the records that are necessary to complete its examination. If a holder refuses to subject itself to an examination by the Contractor, or is uncooperative in an ongoing examination by the Contractor hereunder, then the Contractor shall notify the State within seven (7) calendar days of such occurrence.

b. The Contractor acknowledges and agrees that it cannot initiate legal action or enter into an agreement with a holder on behalf of the State without the prior written consent of the State. In the event the State decides to file suit to recover the property, such suit shall be filed by the Tennessee State Attorney General. The Contractor shall cooperate fully with State attorneys, and shall provide such attorneys with all records and other information in the Contractor's possession regarding the property sought to be obtained.

c. The Contractor may inform a holder of Tennessee law regarding penalties and interest. Provided, however, the Contractor shall not impose or threaten to impose such penalties or interest without the State's prior written consent.

d. The Contractor shall commence the examination of the holder within ninety (90) calendar days from the date the holder is notified of the Contactor's intent to examine and identify unclaimed property. If the Contractor has not commenced such examination within the ninety-day period, the Contractor shall inform the State in writing as to the reasons why and shall request the assistance and direction of the State as to the next appropriate course of action.

e. The Contractor shall complete the identification and reporting of Abandoned Property to the State as soon as is practical after commencing the examination, but in no event more than one (1) year from the starting date of the examination, except for a showing of good cause otherwise.

A.5. Joint Efforts with Participating States.

a. The State hereby acknowledges and agrees that the services contemplated hereby are being undertaken concurrently with several other states which have entered into similar agreements with the Contractor (hereinafter referred to as the Participating States) having similar demands in connection with their respective unclaimed property laws. The Contractor represents and warrants that it shall act as the sole agent of the State and the other Participating States in performing the services hereunder and shall not act as an agent for holders of Abandoned Property.

b. If the holder has unclaimed property for states not participating in an audit initiated by the State hereunder, it will be the holder's responsibility to report the property to the appropriate states. If Tennessee has reciprocity with certain states and wants the Contractor to report the property to such states, the Contractor shall honor Tennessee's request.

c. If Tennessee is the initiating state and one or more other states choose to notify the holder that it also wishes to conduct an Abandoned Property examination using the services of the Contractor, then the Contractor shall provide Tennessee a copy of the letter of examination intent of those other states.

A.6. Examination Procedures. The examination of the books and records of the holders of Abandoned Property, and the findings in connection with the review of such records shall be made pursuant to the following procedures:

a. 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 abandoned property shall be followed.

(1) Where the name and last known address of the apparent owner according to the books and records of the holder is in Tennessee, it shall be deemed to be reportable to Tennessee. With respect to Abandoned Property resulting from life insurance policies, if a person other than the insured or annuitant is entitled to the property and no address of such person is known to the holder or if it is not definite and certain from the records of the holder what person is entitled to the property, it is presumed that the last known address of the person entitled to the property is the same as the last known address of the insured or annuitant according to the records of the holder. The Contractor shall obtain assurance from the holder or its transfer agent that it has complied with the due diligence requirements of Tennessee Code Annotated, Section 66-29-113(f) with respect to finding the owner of the property prior to remitting the property to the State. All types of Abandoned Property shall be identified and due diligence shall be performed prior to remitting the same to the State.

(2) If the holder has no records whatsoever setting forth the name and last known address of the apparent owner, the property shall be deemed reportable to the state of incorporation of the holder. An address shall be deemed to mean a description of location sufficient for the delivery and receipt of mail..

(3) Where no address exists, but the records of the holder establish that the apparent owner resided in Tennessee, the Contractor shall advise Tennessee and the holder's state of incorporation for the purpose of determining which state possesses the priority claim to the abandoned property.

(4) 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. This allocation shall apply only to those time periods where addresses in fact do exist in the books and records, but are not readily ascertainable. 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. The Contractor shall notify the State when sampling techniques under this Paragraph are being used.

(5) In the event a state with a superior priority claim provides for an exemption, deduction, exclusion or otherwise does not choose to assert jurisdiction over the Abandoned Property, Tennessee shall be the state for reporting this property if the holder is incorporated in Tennessee or if the transaction out of which the property arose occurred in Tennessee. Further, Tennessee shall be a state of proportion for reporting such property as described in Paragraph (4) above where it is not the state of incorporation. Where no address information exists at all with respect to such property as required by Paragraph (4) above, Tennessee shall be a state of proportion by some other allocation technique as approved by Tennessee.

(6) If a circumstance arises in which the above priority rules and allocation methodologies do not apply, or the state having the priority claim cannot be determined, the Contractor shall notify the State of such fact if the holder is incorporated in Tennessee or if an address in Tennessee may be established from the books or records of the holder.

(7) If for certain periods the amount of demandable or reportable abandoned property cannot be ascertained from the books and records of the holder, projection and estimation techniques may be used to determine the demandable and/or reportable amounts for such periods. If names and addresses exist with respect to the abandoned property used in the projection and estimation, the names and addresses shall not be used to determine which state has the priority claim to the abandoned property estimated to be due. All sampling and projection and estimation techniques used by the Contractor shall be a method approved by the State prior to their use.

(8) If the State's Unclaimed Property Law provides an express cutoff date setting forth when the obligation of a holder to report commenced, it will be used.

(9) If the Unclaimed Property Law does not set forth a cutoff date, the holding in *Douglas Aircraft Co. v. Cranston*, 58 Cal.2d 462, 4 Cal.Rptr. 851, 374 P.2d 819 (1962) will be followed and the obligations of the holder will be deemed to require the reporting of all unclaimed 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 State's Unclaimed Property Act. However, in those instances where the State advises the Contractor that state law permits retroactive extension or abolition of the statute of limitations, the longest period otherwise permitted by law shall be used (subject to the availability of the records of the holder).

b. Notwithstanding the provisions of Subsection a. of this Section, nothing contained therein shall prevent, waive or otherwise affect the right of the State to claim from any other state property reported and delivered to such state according to the provisions of Subsection a. The Contractor shall, upon request of the State, provide the State with such information as may have been obtained relevant to such claim.

A.7. Progress Reports. At the end of each month, the Contractor shall provide the State with a progress report, which sets forth all compliance reviews assigned, work in progress and compliance reviews completed. Said report shall contain such information and shall be in such format as the State may reasonably require. The contract administrator nominated by the Contractor shall consult either by telephone or in person with the State at least once each calendar quarter to discuss the status of open and pending audits.

A.8. Report Forms.

a. Upon completion of an examination, the Contractor shall deliver to the State a completed examination report ("Special Report"). The results of the examination shall be contained in the Special Report. The Special Report shall only be issued after the due diligence requirements of Tennessee Code Annotated, Section 66-29-113(f) have been met, the holder has had an opportunity to respond to the findings, and an exit conference has been held with

the holder. The Special Report shall contain the findings resulting from the examination including the application of any sampling techniques and any other information, including contested matters not resolved with the holder and the holder's position thereon, necessary to explain the findings to the State.

b. The Contractor shall notify the State if a holder's records are out-of-proof. Out-of-proof reports may be substituted with the State's consent, but only if pro-rated by the Contractor prior to submission to the State and only if allocated for each individual owner in order to reflect the actual dollar/share amount submitted. Any such report shall be marked by the Contractor as an "out-of-proof report".

c. The Contractor shall make a report of property payable to the State within thirty (30) calendar days once the property is identified and the holder agrees that it is subject to report and delivery under the Tennessee Uniform Disposition of Unclaimed Property Act (the "Act"). In reporting such property, the Contractor shall adhere to all reporting requirements of the Act. All necessary unclaimed property reporting forms and software are available from the State's unclaimed property web site, which is located at www.treasury.state.tn.us/unclaim or at such other website address as the State may hereinafter specify by notice to the Contractor.

A.9. Delivery of Abandoned Property to the State.

a. Once the examination is completed, the Contractor shall direct the holder or its transfer agent to promptly transfer or otherwise deliver the Abandoned Property to the State in accordance the deliver instructions contained on the State's unclaimed property website described in Section A.8.c. above. In the event a holder or transfer agent does not have Internet access, the Contractor shall supply the holder or transfer agent with a hard copy of the State's Uniform Disposition of Unclaimed Property Reporting Package. The Contractor shall further direct the holder or its agent to have all such Abandoned Property properly endorsed or placed in such other form as necessary for the proper transfer of the property to the State. This requirement shall also include, where possible, deleting the name of an owner from securities held by a transfer agent or in a vault or storage area of a bank, or lost securities held by a safe deposit company or bank, and substituting in lieu thereof "State Treasurer of Tennessee", or in the nominee name established for the sole use of the State.

b. The Contractor shall advise holders and their transfer agents, if any, of their continuing obligation to report Abandoned Property directly to the State.

A.10. Valuation of Property. The Contractor shall determine the value of securities delivered hereunder at the closing price of any security traded on an Exchange on the date the security is received by the State, as described in Section A.9 above, or if traded in the over-the-counter market, at the bid price as set forth in the pink sheets on the date the security is received by the State pursuant to Section A.9 above. Unlisted securities or other personal property without a listed value applicable to such property shall be valued in accordance with generally accepted valuation procedures applicable to such property, subject to verification by the State. The Contractor shall submit to the State documentation supporting the valuation of such property.

A.11. Disclosure of Findings. The Contractor may disclose information it acquires hereunder to the Participating States pursuant to a plan whereby the State similarly benefits from such reciprocal disclosures. Except as expressly allowed in this Contract, the Contractor shall not disclose any information it may obtain hereunder and all such information is acknowledged to be held confidentially for the State. It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

B. CONTRACT TERM:

This Contract shall be effective for the period commencing on September 1, 2009 and ending on August 31, 2014. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed five hundred thousand dollars ($500,000). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.

b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

(1) Contingency Fee Rate. In consideration of the services performed as required in this Contract, the State shall pay the Contractor a contingency fee based on each holder examination performed by the Contractor hereunder. The fee shall be equal to a certain percentage of the value of the Abandoned Property actually reported and paid to the State per holder examination. Said percentage shall be as follows:

(i) 12% for the first fifty thousand dollars ($50,000) paid by or on behalf of the holder;
(ii) 10% for the next fifty thousand dollars ($50,000) paid by or on behalf of the holder;
(iii) 8% for the next fifty thousand dollars ($50,000) paid by or on behalf of the holder; then
(iv) 6% for any amounts over one hundred fifty thousand dollars ($150,000) paid by or on behalf of the holder.

The fee payable for each holder examination shall be determined by the State after receipt of the Abandoned Property and the associated report of property described in Section A.8.c above.

(2) Value of Abandoned Property. The value of Abandoned Property, if other than cash, shall be the closing price of any security traded on an exchange on the date the property is received by the State as described in Section A.9 above. If the property is a security traded over-the-counter, it shall be the bid price as set forth in the pink sheets on the date the property is received by the State pursuant to Section A.9. For any other property, the value shall be determined according to generally accepted valuation procedures.

(3) Fee Waiver. Notwithstanding any provision of this Contract to the contrary, the Contractor shall not be entitled to any fees resulting from a particular examination if the State finds that the examination was not performed in a commercially reasonable manner and in good faith.

(4) Non-Exclusive Contract. The Contractor recognizes that the State has or may contract with other parties or entities to provide the same or similar services and agrees that the State shall be liable for only one fee for the report and delivery of any particular property, regardless of the number of contractors who may claim responsibility for each report and delivery. Similarly, the State recognizes and agrees that the Contractor may contract with other states or jurisdictions to ensure compliance with the unclaimed property laws of such other states or jurisdictions.

(5) Contingency of Fees. All fees of the Contractor under this Section C.3 shall be contingent on the State's recovery and collection of Abandoned Property, and the Contractor shall be responsible for the payment or making provision for the payment of all expenses incurred in connection with all services provided herein.

(6) Refund of Fees. In the event a holder has failed to perform due diligence and in the event, within two years of receipt of the report by the State, the owner is located at the last known address as shown on the records of the holder, the Contractor shall refund, upon written notice from the State, its fees received under Section C.3.a. in connection with property reported by the Contractor and claimed by that owner. Such written notice shall include a copy of the paid claim of the State. A holder shall be deemed to have failed to perform due diligence if the State locates the owner at the owner's last known address as shown on the holder's records, unless the Contractor furnishes the State with a copy of the notice mailed to the owner by the holder as required in Tennessee Code Annotated, Section 66-29-113(f).

(7) Impermissible Charges. Notwithstanding any provision of this Contract to the contrary, it is expressly agreed and understood that the Contractor shall not charge a fee to the State for auditing a holder, or processing records voluntarily provided by the holder or the holder's agent, for which the Contractor, an affiliate of the Contractor, or other related party has a separate agreement to process that holder's unclaimed property report.

(8) Reduction in Fees. If the Contractor, during the term of this Contract, enters into a similar arrangement with any other Participating State that provides for fees to the Contractor that is less than the fees set forth above, then this Section shall be deemed automatically amended to substitute said fees in place of the fees provided for herein. This paragraph is not intended to apply to arrangements negotiated by a Participating State that result in lower fees to the Contractor based on that state assuming or retaining more of the obligations that the Contractor is required to perform under the terms of this Contract.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Tennessee Treasury Department
Unclaimed Property Division
9th Floor, Andrew Jackson State Office Building
502 Deaderick Street
Nashville, Tennessee 37243-0203

b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

(1) Invoice/Reference Number (assigned by the Contractor);
(2) Invoice Date;
(3) Invoice Period (period to which all invoiced charges are applicable);
(4) Contract Number (assigned by the State to this Contract);
(5) Account Name: Tennessee Treasury Department, Division of Unclaimed Property;
(6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
(7) Contractor Name;
(8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
(9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
(10) Contractor Remittance Address;
(11) Complete Itemization of Charges, which shall detail the following:

i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
iv. A statement of the value of the Abandoned Property delivered to the State for the period invoiced;
v. Amount Due by Service; and
vi. Total Amount Due for the invoice period.

c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

(1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
(2) not include any future work but will only be submitted for completed service; and
(3) not include sales tax or shipping charges.

d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.

D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any

Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.

b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or

provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.

D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.

D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter

specified by written notice.

The State:

John Gabriel, Director of Unclaimed Property Division
Tennessee Treasury Department
9th Floor, Andrew Jackson State Office Building
502 Deaderick Street
Nashville, Tennessee 37243-0203
john.gabriel@state.tn.us
Telephone # (615) 253-5354
FAX # (615) 401-7657

The Contractor:

Mark S. McQuillen, President
Kelmar Associates, L.L.C.
401 Edgewater Place, Suite 500
Wakefield, Massachusetts 01880
mark.mcquillen@kelmarassoc.com
Telephone # (781) 213-6926 ext. 203
FAX # (781) 928-9103

With a copy to:

David P. Kennedy, General Counsel
Kelmar Associates, L.L.C.
401 Edgewater Place, Suite 500
Wakefield, Massachusetts 01880
david.kennedy@kelmarassoc.com
Telephone # (781) 213-6926 ext. 205
FAX # (781) 928-9105

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

E.5. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who

received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.

a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.

b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.

c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

E.6 Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

E.7. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

E.8. Transition Upon Termination. Upon the expiration or termination of this Contract for any reason other than for cause as provided in Section D.4 above, the Contractor shall be entitled to the fees provided for in Section C.3 of this Contract for all property subsequently delivered to the State by a holder as a result of the Contractor's performance of its obligations hereunder.

E.9. Ownership of Materials. All records, reports, documents and other material delivered or transmitted to the Contractor by the State shall remain the property of the State, and shall be returned by the Contractor to the State, at the Contractor's expense, at termination or expiration of this Contract. All records, reports, documents, or other material related to this Contract and/or obtained or prepared by the Contractor in connection with the performance of the services hereunder shall become the property of the State, and shall, upon request, be returned by the Contractor to the State, at the Contractor's expense, at termination or expiration of this Contract.

IN WITNESS WHEREOF:

KELMAR ASSOCIATES, L.L.C.:

CONTRACTOR SIGNATURE **DATE**

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

TREASURY DEPARTMENT:

DAVID H. LILLARD, JR., STATE TREASURER **DATE**

ATTACHMENT 1

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Kelmar Associates, L.L.C.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	04-3577426

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION