

CONTRACT #10
RFS # 309.01-13809
FA # 09-27436-00

Treasury
Unclaimed Property

VENDOR:
ACS State & Local Solutions,
Inc.

STATE OF TENNESSEE



RECEIVED

DEC 03 2009

FISCAL REVIEW

DAVID H. LILLARD, JR.
STATE TREASURER

TREASURY DEPARTMENT
STATE CAPITOL
NASHVILLE, TENNESSEE 37243-0225

MEMORANDUM

TO: The Fiscal Review Committee

FROM: Steve Curry, Assistant to the Treasurer
Department of the Treasury 

DATE: December 3, 2009

RE: *Amendment to Unclaimed Property Processing
Services Contract with ACS State & Local Solutions, Inc.*

BACKGROUND

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.

December 3, 2009

Page 2

The Treasury Department has existing contracts with ACS State & Local Solutions, Inc. (ACS), Verus Financial, LLC (Verus), Kelmar Associates, L.L.C. (Kelmar), Abandoned Property Experts, LLC (APEX), Audit Services, U.S., LLC, 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%. By entering into these contracts, the State maintains its out-of-state search capacity, thereby increasing the chances that unclaimed property would not otherwise go unreported to the State.

The State entered into the contract at issue with ACS on March 15, 2009 based on a better fee arrangement than as described above. Specifically, the compensation is 11.1% (rather than the normal 12 to 12½ %) of the value of the net abandoned property actually delivered to and received by the State. ACS is responsible for all direct and indirect costs and expenses it incurs in performing the unclaimed property processing services.

I.

DESCRIPTION OF THE PROPOSED AMENDMENT EFFECTS & ANY ADDITIONAL SERVICE

The proposed amendment would not include additional services. Instead, the Department needs to increase the maximum liability of the contract to cover compensation ACS may earn during the remaining seven (7) months of the contract. The maximum liability is currently \$249,000. However, the State has paid ACS \$198,253.85 as of today's date and has been invoiced an additional \$223,91 for unclaimed property recently received from ACS, thereby leaving a remaining balance of \$50,522.24 under the maximum liability provision. See attached Supplemental Documentation. The Department believes the maximum liability needs to be increased by \$111,000. The fees earned by ACS under the contract have averaged approximately \$23,000 per month. If this trend continues, then ACS will earn an additional \$161,000 by the end of the contract term. Accordingly, the Department believes the maximum liability needs to be increased in order to pay ACS for its expected fees.

II.

EXPLANATION OF NEED FOR THE PROPOSED AMENDMENT

See Response to Item I above.

**III.
NAME AND ADDRESS OF CONTRACTOR'S CURRENT
PRINCIPAL OWNER(S)**

ACS State and Local Solutions, Inc. is a wholly owned subsidiary of ACS. ACS is a publicly traded company, which means that ACS is owned by numerous individual investors who have purchased its stock.

**IV.
OFFICE OF INFORMATION RESOURCES ENDORSEMENT (REQUIRED FOR
INFORMATION TECHNOLOGY SERVICES; N/A TO THDA)**

N/A

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

N/A

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

N/A

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

N/A

**VIII.
JUSTIFICATION FOR THE PROPOSED NON-COMPETITIVE AMENDMENT**

See Response to Background and Item I above.

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Mary Krause	*Contact Phone:	253-3855
*Original Contract Number:	FA-09-27436-00	*Original RFS Number:	30901-13809
Edison Contract Number: <i>(if applicable)</i>	4333	Edison RFS Number: <i>(if applicable)</i>	
*Original Contract Begin Date:	March 15, 2009	*Current End Date:	June 30, 2010
Current Request Amendment Number: <i>(if applicable)</i>	Two (2)		
Proposed Amendment Effective Date: <i>(if applicable)</i>	February 2, 2010		
*Department Submitting:	Treasury Department		
*Division:	Unclaimed Property		
*Date Submitted:	December 3, 2009		
*Submitted Within Sixty (60) days:	Yes.		
<i>If not, explain:</i>	N/A		
*Contract Vendor Name:	ACS State & Local Solutions, Inc.		
*Current Maximum Liability:	\$249,000		
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>			
FY: 2009	FY: 2010		
\$121,830.47	\$127,169.53		
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>			
FY: 2009	FY: 2010		
\$121,830.47	\$76,423.38		
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		

Supplemental Documentation Required for
Fiscal Review Committee

*Contract Funding Source/Amount:	State:	\$249,000	Federal:	
Interdepartmental:			Other:	
If "other" please define:				
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
September 15, 2009		Term extension and name change		
Method of Original Award: <i>(if applicable)</i>		Non-competitive request		
*What were the projected costs of the service for the entire term of the contract prior to contract award?		\$249,000		

Supplemental Documentation Required for
Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

Deliverable description:	FY:	FY:	FY:	FY:	FY:
This contract amendment does not make any changes to Sections A or C.3. of the original or any previously amended contract document.					

Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.

Deliverable description:	FY:	FY:	FY:	FY:	FY:
This contract amendment does not make any changes to Sections A or C.3. of the original or any previously					

Supplemental Documentation Required for
Fiscal Review Committee

amended contract document.					
Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.					
Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
This contract amendment does not make any changes to Sections A or C.3. of the original or any previously amended contract document.					
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
See above.					
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
See above.					



C O N T R A C T A M E N D M E N T

Agency Tracking # 30901-13809	Edison ID 4333	Contract # FA-09-27436-00	Amendment # # 2
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Contractor ACS State & Local Solutions, Inc.	Contractor Federal Employer Identification or Social Security # <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 13-1996647
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Amendment Purpose/ Effects
Increases the maximum liability of the contract.

Contract Begin Date March 15, 2009	Contract End Date June 30, 2010	Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA #(s) N/A
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FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2009	\$121,830.47				\$121,830.47
2010	\$238,169.53				\$238,169.53
TOTAL:	\$360,000				\$360,000

American Recovery and Reinvestment Act (ARRA) Funding - YES NO

— COMPLETE FOR AMENDMENTS —			Agency Contact & Telephone # Mary Roberts-Krause - 253-3855		
END DATE AMENDED?	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO				
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred)		
2009	\$121,830.47	\$00.00			
2010	\$127,169.53	\$111,000			
TOTAL:	\$249,000	\$111,000	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Speed Code</td> <td style="width: 50%;">Account Code</td> </tr> </table>	Speed Code	Account Code
Speed Code	Account Code				

OCR USE —	<p>Procurement Process Summary (non-competitive, FA- or ED-type only)</p> <p>This is not a non-competitive amendment since it does not change the terms and conditions of the scope of services under the base contract.</p>
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**AMENDMENT TWO
TO CONTRACT FA-09-27436-00
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TREASURY
AND
ACS STATE & LOCAL SOLUTIONS, INC.**

This Contract Amendment is made and entered by and between the State of Tennessee, Department of Treasury, hereinafter referred to as the "State", and ACS State & Local Solutions, Inc., hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The text of Contract Section C.1 is deleted in its entirety and replaced with the following:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed three hundred sixty thousand dollars (\$360,000). 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.

The revisions set forth herein shall be effective on the date of final approval by the appropriate State officials in accordance with applicable Tennessee State laws and regulations. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

ACS STATE & LOCAL SOLUTIONS, INC.:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF TREASURY:

DAVID H. LILLARD, JR., STATE TREASURER

DATE



CONTRACT AMENDMENT

Agency Tracking # 30901-13809	Edison ID 4333 <i>12425</i>	Contract # FA-09-27436-00	Amendment # #1
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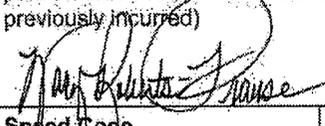
Contractor ACS State & Local Solutions, Inc. (as amended)	Contractor Federal Employer Identification or Social Security #. <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 13-1996647
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Amendment Purpose/ Effects
 Extends the contract term through June 30, 2010 pursuant to Section B.2 of the Contract, and involves a contractor name change and FEIN change.

Contract Begin Date March 15, 2009	Contract End Date June 30, 2010	Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA #(s) N/A
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FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2009	\$121,830.47		OCF RELEASED		\$121,830.47
2010	\$127,169.53		SEP 9 8 2009		\$127,169.53
TOTAL:	\$249,000				\$249,000

American Recovery and Reinvestment Act (ARRA) Funding - YES NO

— COMPLETE FOR AMENDMENTS —			Agency Contact & Telephone # Mary Roberts-Krause - 253-3855
END DATE AMENDED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred)  Speed Code _____ Account Code _____
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	
2009	\$124,500	(\$2,669.53)	
2010	\$124,500	\$2,669.53	
TOTAL:	\$249,000	\$00.00	

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 2009 SEP 23 PM 3:
 CONTRACTS
 MANAGEMENT

OCR USE —

Procurement Process Summary (non-competitive, FA- or ED-type only)
 This is not a non-competitive amendment since it does not change the terms, conditions, or requirements of the base contract from those that are clearly and specifically documented, provided, and permitted in the text of the base contract.

OCR
 SEP 18 2009
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**AMENDMENT ONE
TO CONTRACT FA-09-27436-00**

This Contract Amendment is made and entered by and between the State of Tennessee, Department of Treasury, hereinafter referred to as the "State", and ACS State & Local Solutions, Inc. (as amended herein), hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The text of Contract Section B is deleted in its entirety and replaced with the following:

B. CONTRACT TERM:

This Contract shall be effective for the period commencing on March 15, 2009 and ending on June 30, 2010. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

2. The following is added as Contract Section E.14.:

E.14. Contractor Name: All references to "Affiliated Computer Services, Inc." shall be deleted and replaced with "ACS State & Local Solutions, Inc."

3. The following is added as Contract Section E.15.:

E.15. Federal Employer Identification Number: All references to FEIN "51-0310342" shall be deleted and replaced with FEIN "13-1996647."

The revisions set forth herein shall be effective September 15, 2009. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

ACS STATE & LOCAL SOLUTIONS, INC.:



CONTRACTOR SIGNATURE

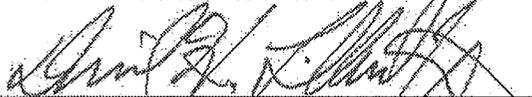
8/19/09

DATE

Nancy A. Froude Vice President

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF TREASURY:



DAVID H. LILLARD, JR., STATE TREASURER

Sept. 8, 2009

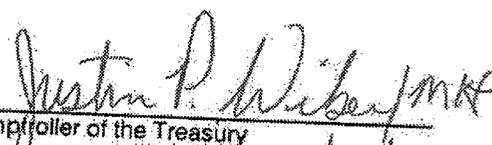
DATE

APPROVED

SEP 22 2009



M.D. Goetz, Jr., Commissioner
Department of Finance and Administration



Comptroller of the Treasury
9/24/09

CONTRACT SUMMARY SHEET

RFS #	Contract #
30901-13809	FA-0927436
State Agency	State Agency Division
Tennessee Treasury Department	Unclaimed Property Division
Contractor Name	Contractor ID # (FEIN or SSN)
Affiliated Computer Services, Inc.	<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 51-0310342

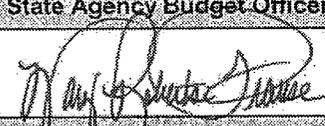
Service Description
 The Contractor will provide abandoned property examination services for the State in connection with the Uniform Disposition of Unclaimed Property Act.

Contract Begin Date	Contract End Date	SUBRECIPIENT or VENDOR?	CFDA #
March 15, 2009	September 14, 2009	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
2009	\$124,500				\$124,500
2010	\$124,500				\$124,500
TOTAL:	\$249,000				\$249,000

— COMPLETE FOR AMENDMENTS ONLY —			State Agency Fiscal Contact & Telephone #
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Mary Roberts-Krause, General Counsel 10 th 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)
TOTAL:			
End Date:			

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 ("ACS") 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 ACS' services under the contract. ACS agreed to reduce its fee from the previous 12.5% of the value of the abandoned property delivered to the State to 11.1% of such value.

ACS 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 ACS charges other state unclaimed

property programs. In fact, if ACS enters into a similar arrangement with another state that provides for fees that is less than the fees set forth above, then the contract with ACS would automatically be amended to substitute the lower fees in place of the fees described above.

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TREASURY
AND
AFFILIATED COMPUTER SERVICES, INC.**

This Contract, by and between the State of Tennessee, Department of Treasury, hereinafter referred to as the "State" and Affiliated Computer Services, Inc., hereinafter referred to as the "Contractor," is for the provision of abandoned property processing services, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit corporation.

Contractor Federal Employer Identification or Social Security Number: 51-0310342

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 and Collection of Abandoned Property.
- a. The Contractor shall undertake to identify and collect 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) Such other property as covered under Tennessee Code Annotated, Title 66, Chapter 29.
- b. In conjunction with the identification and collection 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) Demand from holders and/or their agents delivery of the Property deemed owing under the State's unclaimed property law in accordance with Section A.13 below.

A.4. Examination Procedures. The examination of the books and records of the holders of Abandoned Property, the findings in connection with the review of such records, and the demand for delivery of reportable property 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) and *Pennsylvania v. New York* (92 S.Ct. 2880) 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.
 - (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.
 - (3) An address shall be deemed to mean a description of location sufficient for the delivery and receipt of mail.
 - (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 may be used to allocate the property among the states participating in the review. In such event, if required, sampling techniques will also be utilized to ascertain the proportion of the total reportable property for which the holder has names and last known addresses. The Contractor agrees that any sampling technique shall be subject to the State's prior consent.
 - (5) 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.
 - (6) If the Unclaimed Property Law does not set forth a cutoff date, the holding in *Douglas v. Cranston* (58 Cal.2d.462) 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).
 - (7) If the amount of reportable unclaimed property cannot be ascertained from the books and records of the holder, statistical estimation techniques may be used for such periods.
- 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.5. Work in Progress Reports. The Contractor shall provide the State on a monthly basis with a Work in Progress Report, which sets forth all new record processing to be commenced and all record processing not yet completed, including reports in process, property requested, property

in reconciliation, and property pending delivery. On a semi-monthly basis, the Contractor shall provide the State with an Agreed to Participate ("ATP") list setting forth all holders that have agreed to work with the Contractor since the last ATP list. The State may direct the Contractor not to process records on behalf of the State for a particular holder, provided the Contractor has not commenced record processing of such holder.

- A.6. Joint Efforts with Participating States. 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.
- A.7. Executive Committee of Participating States. The Contractor shall assist in the formation and organization of an Executive Committee of the Participating States and will regularly advise the Executive Committee of common issues of policy, fact and law relating to the matters covered by this Contract. The Executive Committee will consist of a representative from each Participating State. The Executive Committee will provide advice and guidance regarding the performance of the obligations hereunder and particularly as to formal holder examinations and litigation matters. The Executive Committee will meet semi-annually or more often as required. It is the intent of this Contract that whenever possible each of the Participating States, and the Contractor on their behalf, shall attempt to comply with the policies of the Executive Committee. Provided, however, it is agreed and understood that the State shall not be bound by any policy decision made by the Contractor or the Executive Committee unless the State agrees to such decision in writing to the Contractor.
- A.8. Provision of Report Forms. The Contractor shall provide to potential holders of Abandoned Property, identified through procedures described in Section A.9.c below, with a compliance manual describing the operation and effect of the pertinent provisions of the State's abandoned property law as it applies to such property. Such manual shall be reviewed and approved in advance by the State prior to the Contractor's distribution of the same to potential holders.
- A.9. Unified Report Forms.
- a. Where possible, in order to promote compliance and facilitate reporting, the State shall agree to the use of a common report format to be utilized in conjunction with the Participating States in these joint reporting and collection efforts. Such forms shall be developed with the assistance of the Executive Committee of the Participating States and shall be subject to the approval of this State.
 - b. If the State has adopted or hereafter adopts procedures for the reporting of Abandoned Property via magnetic medium, the Contractor shall provide the State with the information contained in its report via magnetic medium.
 - c. The Contractor shall identify potential holders of Abandoned Property through procedures based on the analysis of cash and stock dividend payment information, capital reorganizations, liquidations, bond issuance and other transactions likely to result in Abandoned Property.
- A.10. Due Diligence and Subsequent Reporting. The Contractor shall advise holders identified through procedures described in Section A.9.c above of their obligation to exercise due diligence to ascertain the whereabouts of Abandoned Property owners. The Contractor shall further advise such holders of their continuing obligation to report Abandoned Property directly to the State.
- A.11. Enforcement Efforts. If a holder fails or refuses to report and deliver Abandoned Property, the Contractor, on behalf of the State, shall cause the holder's records of Abandoned Property to be reviewed and shall make demand for a report and delivery of such property and shall notify the State of such failure and demand. 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.

- A.12. 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.
- A.13. Delivery of Property. Once all abandoned property is identified and collected, the abandoned property shall be promptly delivered and forwarded to the Contractor for safekeeping as provided in Sections A.16 – A.23. All abandoned property so delivered shall be 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 name of a nominee established for the sole use of the State.
- A.14. 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 Contractor, 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 Contractor. 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. The Contractor shall provide to the State corporate action information relative to securities processed subsequent to the delivery of such property, as requested by the State. Such information shall include, on a per share basis, the accumulative dividends, splits and present market value as of the report date or as of such other dates as may be requested by the State.
- A.15. Unclaimed Property Reports. Upon transfer of property to the State pursuant to Section A.19.h below or upon receipt of securities or upon registering the same in the name of the State or in the State's nominee name pursuant to Section A.13, the Contractor shall render an Abandoned Property report to the State with respect to such property on a computer tape/diskette containing all the information specified in the State's unclaimed property forms. Said information shall be provided in the field format as shall be agreed to by the Contractor and the State.
- A.16. Custody of Abandoned Property. The State hereby appoints the Contractor as custodian for the safekeeping of securities and cash identified and collected on behalf of the State from holders of Abandoned Property, and the Contractor accepts such appointment and agrees to retain all such property received on behalf of the State at 260 Franklin Street, 11th Floor, Boston, Massachusetts 02110, except as otherwise provided below.
- A.17. Responsibility. The Contractor shall not to make any other use or disposition or take any action with respect to the Abandoned Property and the cash derived therefrom except in accordance with the terms of this Contract.
- A.18. Custodial Banks.
- a. Upon written direction of the State and in accordance with the terms of this Contract, the Contractor is authorized to hold securities collected on behalf of the State hereunder in a domestic or foreign depository or book-entry system, at a domestic or foreign subcustodian or in a domestic or foreign book-entry system for the central handling of securities, hereinafter collectively referred to as "Custodian Banks", or singularly referred to as "Custodian Bank".

- b. The Contractor shall identify on its books as belonging to the State any securities held by a Custodian Bank. In the event any of such securities is to be held by a Custodian Bank, such Custodian Bank shall be required by its agreement with the Contractor to identify on its books such securities as being held for the account of the Contractor for its customers. The Contractor shall only deposit securities in an account with a Custodian Bank, which includes exclusively the assets held by the Contractor for its customers, and the Contractor shall cause such account to be designated by such Custodian Bank as a special custody account for the exclusive benefit of customers of the Contractor.
- c. The Contractor will authorize the holding of securities by a Custodian Bank only (i) to the extent that securities are not subject to any right, charge, security interest, lien or claim of any kind in favor of such Custodian Bank and (ii) to the extent that beneficial ownership of such securities is freely transferable without the payment of money or value. Any costs, fees or expenses associated with the safekeeping and servicing of the securities by a Custodian Bank shall be the responsibility of the Contractor.

A.19. Custodial Duties.

- a. The Contractor shall register securities of the State held by it in the name of the State pursuant to Section A.13 hereof, or in the name of a nominee established for the sole use of the State. If securities are registered in a nominee name, the Contractor shall collect on behalf of the State dividends, interest or other distributions therefrom and credit the same to the State.
- b. The Contractor shall promptly execute all proxies in favor of management unless otherwise instructed by the State and mail said proxies to the address specified.
- c. The Contractor shall promptly transmit to the State written information on any non-mandatory corporate actions (including, without limitation, tendency of calls and maturities of securities and expirations of rights in connection therewith) received by the Contractor from a Custodian Bank or from issuers of the securities. With respect to tender or exchange offers, the Contractor shall transmit promptly to the State written information received by the Contractor from a Custodian Bank or from issuers of the securities whose tender or exchange is sought or from the party (or his agents) making the tender or exchange offer.
- d. Upon receipt of proper instructions from the State, the Contractor shall exchange securities held for the account of the State for other securities or for other securities and cash, and to expend cash, in connection with any merger, consolidation, reorganization, recapitalization, split-up of shares, changes of par value or conversion or in connection with the exercise of subscription or purchase rights, or otherwise.
- e. Upon receipt of proper instructions from the State, the Contractor shall make delivery of securities which are being liquidated by the State, or which have been called, redeemed, retired, or otherwise become payable, upon payment therefore. All such payments are to be made in cash, by certified check or treasurer's or cashier's check, by wire transfer or in the case of delivery through a securities depository, by credit by the securities depository, all in accordance with street custom or the rules and regulations of the securities depository.
- f. The Contractor shall promptly execute all mandatory corporate actions as required.
- g. The Contractor shall maintain for a period of not less than one (1) year records of all receipts, deliveries and locations of securities, funds, and other property, together with a current inventory thereof.
- h. Unless otherwise directed pursuant to Section A.21 of this Contract, the Contractor shall transfer to the State all property held for the State, other than securities, on Monday of each

week, or the next business day if Monday is a holiday, for property received the prior week. All transfers of cash to the State shall be made via wire transfer to the State Trust of Tennessee; Transit Routing Number 064000266; Attention: Unclaimed Property, Director; or to such other account or depository as the State may designate in writing. All other property to be transferred pursuant to this Paragraph shall be sent to the State at the address indicated in Section E.2 hereof.

A.20. Bank Account.

- a. The Contractor shall, pending delivery to the State, retain cash of the State in a separate account or accounts in the State's name with a Custodian Bank, subject only to draft or order by the Contractor acting pursuant to the terms of this Contract.
- b. The Contractor shall collect, receive and deposit in the bank account maintained pursuant to Subsection a. of this Section all cash and income and other payments with respect to the property held hereunder.
- c. The Contractor reserves the right to reverse erroneous entries to the State's account and to charge the account for the amount of property for which payment has not been made. The Contractor shall promptly notify the State in writing of such action.
- d. The Contractor shall render such reports relative to the account maintained pursuant to Subsection a. of this Section as agreed upon from time to time between all parties.

A.21. Collateral and Notice. The Contractor shall cause all funds held by a Custodian Bank in the name of the State to be collateralized in accordance with Tennessee Code Annotated, Title 9, Chapter 4, Parts 1 and 4 when the total amount of such funds exceeds the Custodian Bank's FDIC coverage for the State's account(s). The Contractor shall notify the State promptly if at any time such total amount exceeds seventy-five thousand dollars (\$75,000.00), and upon request of the State, transfer such funds and securities to the State.

A.22. Account Balances.

- a. The Contractor agrees the State shall receive an interest credit monthly on funds attributable to the State and held by a Custodian Bank pending delivery. The interest credit shall be equal to the target Federal funds rate for the respective month as published in the *Wall Street Journal*. Where the actual amount of funds attributable to the State cannot be readily ascertained, the State shall be credited with a prorated portion of said investment earnings on such unattributed funds based on the State's prorata share of the total value of all property deliveries made by the Contractor to all states during the preceding month. The interest credit shall be used to offset compensation payable to the Contractor pursuant to Section C of this Contract.
- b. Within six (6) business days at the close of each month, the Contractor shall provide to the State a statement of interest credit earned on the State's funds during the preceding month. Such statement shall itemize the amount of funds earning interest, the interest rate and the total interest credit.

A.23. Instructions.

- a. The Contractor shall be deemed to have received proper instructions from the State hereunder upon receipt of written instructions signed by one or more persons as the State shall from time to time authorize to give the particular instructions in question. Different persons may be authorized to give instructions for different purposes.
- b. A certified copy of a resolution or action of the State may be received and accepted by the Contractor as conclusive evidence of the authority of any such person or persons to act and may be considered as in full force and effect until receipt of written notice to the contrary.

- c. Instructions shall not be valid if cash is directed to any location other than as specified in Section A.19.h hereof.
- d. Instructions may be general or specific in terms, and unless specified to the contrary, the Contractor is authorized to act upon such instructions whether given orally, by telephone, telex or otherwise.
- e. In performing the services hereunder, the Contractor shall be entitled to rely upon the accuracy, timeliness, and authenticity of any and all records, information and input media provided to the Contractor by the State or by an authorized party designated in writing by the State, provided that such records, information and input media meet reasonable commercial standards of practice of the industry.

B. CONTRACT TERM:

- B.1. Term. This Contract shall be effective for the period commencing on March 15, 2009 and ending on September 14, 2009. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional nine (9) months and sixteen (16) days for a total contract term of no more than fifteen (15) months and sixteen (16) days, provided that such an extension of the contract term is effected prior to the current contract expiration date by means of an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract, and shall be based upon payment rates provided for in the original Contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed two hundred forty-nine thousand dollars (\$249,000). 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 sum equal to eleven and ten one-hundredths of one percent (11.1%) of the value of the "Net Abandoned Property" (a term hereinafter defined) actually paid or delivered to the Contractor on behalf of the State by an Abandoned Property holder (in its initial report), less the amount of interest credited to the State pursuant to Section A.22 above.
 - (2) Definition of Net Abandoned Property. Net Abandoned Property shall be determined as follows: The gross value of all Abandoned Property received by the Contractor on behalf of the State hereunder reduced by the total of the following:
 - i. The value of all Abandoned Property delivered by a holder which otherwise would have been delivered pursuant to the reporting practices of the holder as they existed prior to the execution of this Contract; and
 - ii. The value of any Abandoned Property delivered by a holder whose books had previously been reviewed by the Contractor and which review resulted in Abandoned Property actually being paid or delivered to, or on behalf of, the State by the holder, *unless* such holder has not filed an unclaimed property report with the State for two (2) years or more from the date of the Contractor's previous review of the holder's records, or such holder's books were subsequently reviewed by the Contractor at the State's written request; and
 - iii. The value of all Abandoned Property delivered by a holder pursuant to an Abandoned Property report, which does not contain the reporting of any past due Abandoned Property.
 - (3) Definition of 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 Contractor. 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 Contractor. For any other property, the value shall be determined according to generally accepted valuation procedures.
 - (4) Fee Waiver. The Contractor shall waive its fees otherwise owing hereunder for any single delivery batch having a total property value of less than five hundred dollars (\$500.00) and for any reports of Abandoned Property having a total property value of less than one hundred dollars (\$100.00).
 - (5) Contingency of Fees. All fees of the Contractor hereunder shall be contingent on the recovery and collection of Abandoned Property.
 - (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 this Section C.3 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) 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. The Contractor warrants that, as of the date of this Contract, the Contractor does not have a similar current arrangement with any other state that provides for fees to the Contractor that is less than the fees set forth above.

- (8) Provision of Expenses. 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. Notwithstanding anything in Section D.5 hereof to the contrary, it is acknowledged and agreed that the Contractor on its behalf will enter into agreements with other persons, firms and entities to assist in the performance of this Contract, including retaining local counsel; provided, however, that in no event shall this Contract serve as authorization for the Contractor to file suit in the name of the State. The payment for all such services shall be the sole responsibility of the Contractor and nothing contained herein shall obligate or otherwise make the State responsible for the payment of any such expenses.

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:

Affiliated Computer Services, Inc.
Joseph Marcelonis, Senior Account Manager
260 Franklin Street, 11th Floor
Boston, Massachusetts 02110
Joseph.marcelonis@acs-inc.com
Telephone # (617) 722-9627
FAX # (617) 371-9919

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. 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.

- E.8. 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.9. Security. The Contractor shall not pledge, assign, hypothecate or otherwise encumber property of the State.

- E.10. Termination for Convenience. In the event the State terminates this Contract for convenience pursuant to Section D.3 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 pursuant to reports prepared by the Contractor or subsequently filed by a holder with the State as a result of the Contractor's performance of its obligations hereunder.

- E.11. Property Dispute. Notwithstanding any provision of this Contract to the contrary, should the Contractor receive notice of any dispute with respect to the delivery, ownership, right of possession, and/or disposition of any property before it is delivered to the State under this Contract, the Contractor, upon receipt of written notice of such dispute or claim, and to the extent that the State has a claim for custody of such property, is authorized and directed to

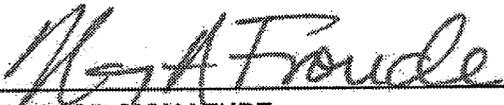
instruct the Custodian Bank to retain in its possession any of said property in dispute until such dispute shall have been settled either by the mutual agreement of the parties involved or by a final order, decree or judgment of a court in the United States of America, the time for perfection of an appeal of such order, decree or judgment having expired. The Contractor shall notify the State within ten (10) calendar days of receipt of such written notice, and such notification shall include a verified written explanation of the proof of claim of an owner establishing a right to receive the property and any error in the presumption of abandonment, or a copy of pleadings or other documents filed with a court regarding such dispute. The Contractor agrees to cooperate fully with the State in order to enable the State to protect its rights to custody of the property.

E.12. Indemnity. The State shall reimburse the Contractor for any claims that may arise against the Contractor in connection with property delivered to the State pursuant to this Contract, subject to the provisions of Tennessee Code Annotated, Section 66-29-116. The Contractor shall give the State prompt notice of any such claim against it.

E.13. Transition of Services Upon Termination. Upon the natural expiration of this Contract or in the event of its termination for any reason, the Contractor shall transfer in accordance with the State's instructions all Abandoned Property, records and other property of the State to whomever the State may designate in writing to the Contractor. The Contractor agrees to cooperate with the State, and any subsequent Contractor selected by the State to perform the services hereunder, in the transition and conversion of such services. The Contractor shall remain liable to the State under this Contract for any acts or omissions occurring on or prior to the date on which all property of the State and all services hereunder have been successfully transferred or converted in accordance with this Paragraph.

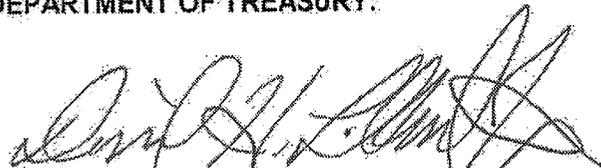
IN WITNESS WHEREOF,

AFFILIATED COMPUTER SERVICES, INC.:

 3/3/09
CONTRACTOR SIGNATURE DATE

NANCY A FROUDE
PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF TREASURY:

 03/12/2009
DAVID H. LILLARD, JR., STATE TREASURER DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Affiliated Computer Services, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	51-0310342

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

3/3/09