

**CONTRACT #5**  
**RFS # 309.01-25614**  
**Edison # 44561**

**Department of Treasury**

**VENDOR:**  
**Great-West Life & Annuity**  
**Insurance Company**

STATE OF TENNESSEE



DAVID H. LILLARD, JR.  
STATE TREASURER

TREASURY DEPARTMENT

615.741.2956  
David.Lillard@tn.gov

STATE CAPITOL  
NASHVILLE, TENNESSEE 37243-0225

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**MEMORANDUM**

**TO:** Fiscal Review Committee

**FROM:** Alison Cleaves, Assistant General Counsel

**DATE:** February 29, 2016

**SUBJECT:** **Great West Contract Amendment 1**

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This memorandum details the terms of the Department of Treasury's ("Department") contract amendment with Great-West Life & Annuity Insurance Company ("Great West") that is before the Fiscal Review Committee as well as the justification for the amendment.

The proposed amendment is needed in order to provide trade clearing services for Achieving a Better Life Experience ("ABLE") accounts which are investment accounts for disabled individuals. ABLE accounts are established through federal law pursuant to 26 U.S.C. §529A and state law pursuant to Chapter 470 of the 2015 Public Acts. Public Chapter 470 provides that the State Treasurer has the authority to establish a qualified ABLE Program for the State of Tennessee. Through this authority, the State Treasurer has begun the process of establishing an ABLE program in Tennessee which will require the establishment of certain third party administration services for the investments in the ABLE program. An ABLE account will allow a disabled individual, who qualifies for participation in the program, to invest in authorized investment options in an effort to save for current and future expenses related to the individual's disability. An ABLE account owner may choose from the investment options offered through the ABLE program, and determine the allocations in each investment option. The third party administrator sought by the Treasurer through this Amendment Request, will clear the trades made in these investment options, which means that the third party administrator will reconcile the buying and selling of securities as the account owner may change investment options or percentage allocations in any investment option.

Great-West Life and Annuity Insurance Company branded as Empower Retirement (“Empower”) is the current third party administrator performing trade clearing services for the State’s §529 college savings program. The ABLE program will function similarly to the college savings program in that participants in both programs will be able to choose from a menu of investment options and choose the percentage of money allocated to each option. Additionally, the menu of investment options offered in the college savings program is the same as the menu of investment options offered in the ABLE Program. Because both programs share investment similarities and because Empower is already familiar with providing this service for another State of Tennessee program that functions much like the ABLE Program, Empower would be able to effortlessly provide its trade clearing services for the ABLE plan as well. Empower will be able to provide this service to the ABLE program at a minimal cost to the State because it already handles the trade clearing services for the State’s college savings plan, and because it provides this service as a part of a larger administrative and marketing contract with the State for the State’s deferred compensation and defined benefit plans. Because trade clearing services, such as the ones that are sought through this amendment request, are typically provided as a part of a larger and more comprehensive record keeping, administrative and marketing contract, it is anticipated that it would be difficult to procure trade clearing services alone on a competitive basis. Even if the services sought could be competitively procured as the sole service in a contract, the services would likely be procured at a cost much higher than what is being offered by Empower. The State is seeking permission to pursue a noncompetitive amendment with Empower because it is the most cost-effective and efficient method for providing these services that cannot be obtained through any other reasonable and competitive alternative.

Amendment number 1 to the contract will not extend the term of the contract, but will increase the maximum liability by twenty-one thousand dollars.

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Alison Cleaves	*Contact Phone:	615-253-6150				
*Presenter's name(s):	Joy Harris, Assistant Treasurer for Financial Empowerment						
Edison Contract Number: <i>(if applicable)</i>		RFS Number: <i>(if applicable)</i>					
*Original or Proposed Contract Begin Date:	January 1, 2015	*Current or Proposed End Date:	December 31, 2022				
Current Request Amendment Number: <i>(if applicable)</i>	1						
Proposed Amendment Effective Date: <i>(if applicable)</i>	May 1, 2016						
*Department Submitting:	Department of Treasury						
*Division:	Financial Empowerment						
*Date Submitted:	February 29, 2016						
*Submitted Within Sixty (60) days:	Yes						
<i>If not, explain:</i>	N/A						
*Contract Vendor Name:	Great-West Life & Annuity Insurance Company						
*Current or Proposed Maximum Liability:	\$13,070,650						
*Estimated Total Spend for Commodities:	\$16,302.35						
<b>*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)</b>							
FY:2015	FY:2016	FY:2017	FY:2018	FY2019	FY2020	FY2021	FY2022
\$9,980	\$655,675	\$1,280,965	\$1,316,540	\$1,441,245	\$1,664,130	\$2,898,980	\$1,719, 2
<b>*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)</b>							
FY:2015	FY:2016	FY:	FY:	FY:	FY:		
\$1,237.42	\$15,064.93	\$	\$	\$	\$		
<b>IF</b> Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			Expenditures were not as high as anticipated and the surplus monies were not spent; however, the program staff for the State's Deferred Compensation Program and the Tennessee Consolidated Retirement System anticipates that the original maximum liability on the contract will be used by Great West and that twenty-one thousand dollars (\$21,000.00) needs to be added to the maximum liability to pay for				

Supplemental Documentation Required for  
Fiscal Review Committee

	the cost associated with providing trade clearing services for the Achieving a Better Life Experience Program.		
<b>IF</b> surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			
<b>IF</b> Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:	N/A		
<b>*Contract Funding Source/Amount:</b>			
State:	\$40,000.00	Federal:	
<i>Interdepartmental:</i>	\$13,030,650	<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:		Tennessee Consolidated Retirement System earnings.	
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>	Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
None.	N/A.		
Method of Original Award: <i>(if applicable)</i>		Noncompetitive	
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		The projected cost for the service for the entire term of the contract was \$13,070,650. That projected cost was determined based on the Contractor’s cost proposal submitted as a part of the alternative competitive procurement process used to obtain the Contractor’s services.	
*List number of other potential vendors who could provide this good or service;		The services provided by the Contractor were	

Supplemental Documentation Required for  
Fiscal Review Committee

efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.	procured competitively.	
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Type	BU	ID	Status	Reference	Release	Amount	Currency
PO Release	30901	5182	Complete	APS 30901-25614	1	1,237.42	USD
PO Release	30901	5467	Dispatched	APS 30901-25614	2	2,762.00	USD
PO Release	30901	5662	Complete	APS 30901-25614	3	2,762.00	USD
PO Release	30901	5670	Complete	APS 30901-25614	4	3,006.09	USD
PO Release	30901	6020	Complete	APS 30901-25614	5	2,872.01	USD
PO Release	30901	6295	Approved	APS 30901-25614	6	3,662.83	USD

16,302.35

<b>Released by Fiscal Year</b>	
FY15	\$ 1,237.42
FY16	<u>15,064.93</u>
Total	<u>\$ 16,302.35</u>

<b>Contract ID 44561</b>	
Maximum	\$ 13,070,650.00
Released	<u>16,302.35</u>
Remaining	<u>\$ 13,054,347.65</u>



## CONTRACT AMENDMENT COVER SHEET

<b>Agency Tracking #</b> 30901--25614	<b>Edison ID</b> 44561	<b>Contract #</b> 30901-25614	<b>Amendment #</b> 1		
<b>Contractor Legal Entity Name</b> Great-West Life & Annuity Insurance Company			<b>Edison Vendor ID</b> 135592		
<b>Amendment Purpose &amp; Effect(s)</b> Provide trade clearing services for the Achieving a Better Life Experience Act.					
<b>Amendment Changes Contract End Date:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		<b>End Date:</b> December 31, 2022			
<b>TOTAL Contract Amount INCREASE or DECREASE per this Amendment</b> (zero if N/A):			<b>\$ 21,000.00</b>		
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
2015	\$2,500		\$7,480		\$9,980
2016	\$5,000		\$650,675		\$655,675
2017	\$8,000		\$1,275,965		\$1,283,965
2018	\$8,000		\$1,311,540		\$1,319,540
2019	\$8,000		\$1,436,245		\$1,444,245
2020	\$8,000		\$1,659,130		\$1,667,130
2021	\$8,000		\$2,078,865		\$2,086,865
2022	\$8,000		\$2,893,980		\$2,901,980
2023	\$5,500		\$1,716,770		\$1,722,270
<b>TOTAL:</b>	<b>\$61,000</b>		<b>\$13,030,650</b>		<b>\$13,101,650</b>
<b>American Recovery and Reinvestment Act (ARRA) Funding:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.			<i>CPO USE</i>		
<b>Speed Chart</b> (optional)		<b>Account Code</b> (optional)			

**AMENDMENT 1  
OF CONTRACT 30901-25614**

This Amendment is made and entered by and between the State of Tennessee, Department of Treasury, hereinafter referred to as the "State" and Great-West Life & Annuity Insurance Company, hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

Section A.35.a. of the Contract is amended by deleting the first sentence in the Section and replacing it with the following, so that, as amended, it shall read as follows:

At the State's request, the Contractor shall open accounts with investment option providers for such investment products as shall be mutually agreeable to the parties for the benefit of the State's 529 college savings plan (the "TNStars™ 529 College Savings Plan") and the State's Achieving a Better Life Experience ("ABLE") Program.

Section A.35.a. of the Contract is amended by deleting the sixth sentence in the Section and replacing it with the following, so that, as amended, it shall read as follows:

The Contractor shall maintain proper books and records of all services performed hereunder and otherwise maintain omnibus accounts for the TNStars™ 529 College Savings Plan and the ABLE Program for the products that are chosen.

Section A.35.a. of the Contract is amended by adding the following sentence:

The Contractor shall ensure that the purchase and redemption activity maintained relative to ABLE accounts will be maintained separately from the purchase and redemption activity maintained relative to the TNStars™ College Savings Plan, meaning that all wire transfers, confirmation and monthly account statements will be maintained and transmitted separately for the two (2) programs.

Section A.35.c. of the Contract is amended by adding the language "and ABLE Program" after the language "529 Plan" and before the "." in the second sentence in the Section.

Section A.35.c. of the Contract is amended by adding the language "and ABLE Program" after the language "529 Plan" and before the "." in the fourth sentence in the Section.

Section C.1. of the Contract is amended by adding the following new sentence after the third sentence in the second paragraph:

Additionally, in no event shall the maximum liability of the State under this Contract for the services performed in Section C.3.b.(15) hereof exceed twenty-one thousand dollars (\$21,000.00).

Section C.1. of the Contract is amended by deleting the fourth sentence in the second paragraph in its entirety and replacing it with the following so that, as amended, it shall read as follows:

The payment rates in Sections C.3.b.(10)-(13), C.3.b.(9), C.3.b.(14) and C.3.b.(15) shall constitute the entire compensation due the Contractor for such services and Contractor obligations hereunder regardless of the difficulty, materials or equipment required.

Section C.3.b. of the Contract is amended by adding a new subdivision (15) in the Contract's compensation chart which shall read as follows:

(15) ABLE Program Plan Account Services Detailed in Section A.35.a-c	\$3,000 annually and .03% per annum (0.0025% per month) of the total value of the assets of the ABLE Program as of the end of the month.
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Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective May 1, 2016. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

**IN WITNESS WHEREOF,**

**GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY:**

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**SIGNATURE**

**DATE**

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**PRINTED NAME AND TITLE OF SIGNATORY (above)**

**DEPARTMENT OF TREASURY:**

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

**DATE**



# CONTRACT

(fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date January 1, 2015	End Date December 31, 2022	Agency Tracking # 30901-25614	Edison Record ID 44561
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Contractor Legal Entity Name Great-West Life & Annuity Insurance Company	Edison Vendor ID 135592
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Service Caption (one line only)  
Comprehensive administrative and marketing services for the State of Tennessee Deferred Compensation Program, and certain other services related to the Tennessee Consolidated Retirement System Defined Benefit Plan and TNStars 529 College Savings Plan.

Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA #
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Funding — FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2015	\$2,500		\$7,480		\$9,980
2016	\$5,000		\$650,675		\$655,675
2017	\$5,000		\$1,275,965		\$1,280,965
2018	\$5,000		\$1,311,540		\$1,316,540
2019	\$5,000		\$1,436,245		\$1,441,245
2020	\$5,000		\$1,659,130		\$1,664,130
2021	\$5,000		\$2,078,865		\$2,083,865
2022	\$5,000		\$2,893,980		\$2,898,980
2023	\$2,500		\$1,716,770		\$1,719,270
<b>TOTAL:</b>	<b>\$40,000</b>		<b>\$13,030,650</b>		<b>\$13,070,650</b>

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

Ownership/Control

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

Selection Method & Process Summary (mark the correct response to confirm the associated summary)	
<input type="checkbox"/> RFP	The procurement process was completed in accordance with the approved RFP document and associated regulations.
<input type="checkbox"/> Competitive Negotiation	The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.
<input checked="" type="checkbox"/> Alternative Competitive Method	The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.
<input type="checkbox"/> Non-Competitive Negotiation	The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.
<input type="checkbox"/> Other	The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."

**Budget Officer Confirmation:** There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

*Kerry Hartley*

OCR USE - FA

Speed Chart (optional)

Account Code (optional)

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF TREASURY  
AND  
GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY**

This Contract, by and between the State of Tennessee, Department of Treasury, hereinafter referred to as the "State" and Great-West Life & Annuity Insurance Company, hereinafter referred to as the "Contractor," is for the provision of comprehensive administrative and marketing services for the State of Tennessee Deferred Compensation Program, as further defined in the "SCOPE OF SERVICES" and for certain other services related to the State's Tennessee Consolidated Retirement System Defined Benefit Plan and TNStars™ 529 College Savings Plan.

The Contractor is a For-Profit Corporation.  
Contractor Place of Incorporation or Organization: State of Colorado  
Contractor Edison Registration ID # ~~29884~~ 135592

**DEFINITIONS:**

"Affiliate" means any person, firm or corporation that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Contractor, whether such control is through stock ownership, contract or otherwise.

"Assets" means all Compensation Deferred under the Plans, assets in the brokerage account window, plus earnings on both less deductions therefrom. Except as otherwise provided below, the value of the Assets shall equal the current accumulated value of the Investments of the Plans prior to deduction of any surrender or termination charges, market value adjustments or interest forfeitures. Assets shall not include outstanding loans, monies transferred to Providers for annuitized distributions, or monies invested under the Deferred Compensation Program with American General Life Insurance Company.

"Business Day" means any day on which, and only to the extent which, the New York Stock Exchange is, and remains open.

"Compensation Deferred" or "Deferred Amount" means the amount of compensation deferred under each of the Defined Contribution Plans.

"Deferred Account" means an account maintained by the Contractor under the Plans for a Participant.

"Deferred Compensation Program" means the program established under Tennessee Code Annotated, Title 8, Chapter 25, Part 1, authorizing the State of Tennessee or any Tennessee political subdivision or instrumentality of such subdivision to contract with any employee to defer any portion of that employee's income.

"Defined Contribution Plan(s)" means the State of Tennessee's profit-sharing and salary reduction plans operating in accordance with sections 401(k) and 457(b), respectively, of the Internal Revenue Code. Such Plans comprise the State of Tennessee's Deferred Compensation Program.

"Defined Contribution Plan Participant" means any Employee who has elected to participate in the *Defined Contribution Plan(s)*; any former Employee who has a Deferred Account balance; and any

member of the Tennessee Consolidated Retirement System who becomes a member on or after July 1, 2014, and thus mandatorily has a Defined Contribution account.

"Deferred Compensation Program Administrator" means the State Treasurer of Tennessee, who is the Chair of the Consolidated Retirement Board, or such other person or persons, designated in writing by the Treasurer from time to time to have overall responsibility to coordinate the activities of the Contractor and the State in the implementation and administration of the Deferred Compensation Program.

"Defined Benefit Plan" means the defined benefit plan administered by the State of Tennessee, Tennessee Consolidated Retirement System.

"Employer" means the State of Tennessee and other authorized Tennessee local governmental entities, including, except as otherwise addressed herein, local education associations ("LEAs").

"Employee" means a person eligible for participation according to the provisions of the Deferred Compensation Plans.

"Investment" means investment vehicles approved by the Plan Administrator from time to time for purposes of the Plans.

"Member of the Tennessee Consolidated Retirement System (TCRS)" means any employee of the State of Tennessee, authorized Tennessee local governmental entities, and local education associations (LEAs) who has a defined benefit account balance in TCRS. Such member may or may not have a deferred compensation account if he or she is not a state employee or teacher hired on or after July 1, 2014.

"Profit Sharing Plan" means the State of Tennessee Profit Sharing Plan operating under Section 401(k) of the Internal Revenue Code.

"Provider" means a company selected by the State to provide one or more Investments to Participants.

"Representative" means the person or persons designated in writing by the Contractor from time to time to have overall responsibility to coordinate the services to be performed by the Contractor hereunder.

"TNStars™ 529 College Savings Plan Participant" means any individual who has a TNStars™ 529 Plan account with the State of Tennessee.

**A. SCOPE OF SERVICES:**

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. Appointment. The State hereby appoints and authorizes the Contractor, and the Contractor hereby accepts such appointment and authorization, to assist the Deferred Compensation Program Administrator in the administration of the Defined Contribution Plans and enrollment of Defined Contribution Participants and to provide the services and reports described herein.
- A.3. Offices. The Contractor shall maintain an office within the city limits of Nashville, Tennessee that will enable the Contractor to fulfill its administrative, enrollment and service responsibilities under the Defined Contribution Plans and other State of Tennessee programs as agreed upon by the State and the Contractor. The Contractor shall also use its home, regional and local offices to service the Defined Contribution Plans and other State of Tennessee programs in the manner as

shall be mutually agreed to by the parties. The Contractor shall provide the State with proof that the Contractor is authorized to do business in Tennessee and notice of the name of its agent for service of process in Tennessee.

- A.4. Personnel. The Contractor shall maintain sufficient personnel in its offices to enroll eligible Employees under the Defined Contribution Plans and to process initial joinder agreements of participating Tennessee local government employers and all amendments thereto; to assist in the reconciliation of any discrepancies between the Contractor's records and those of the State and the Investment Providers; to assist with any administrative duties delegated by the plan sponsor as mutually agreed upon; to answer inquiries of Defined Contribution Participants and the Plan Administrator as to Deferred Account balances and other records maintained or generated by the Contractor; to provide educational services to Defined Contribution Participants and other program participants as agreed upon by the State and the Contractor; and to otherwise fulfill its duties and responsibilities under this Contract. The Contractor shall provide at least one dedicated and exclusive operations manager in home office. The Contractor shall also provide a local relationship director who shall live within 45 miles of Nashville and shall have no other large plans (plans with 5,000 or more employees) which they are responsible for. The Contractor shall dedicate and make exclusive a minimum of three (3) full-time, salaried, licensed, resident Tennessee representatives for enrolling Defined Contribution Participants and providing agreed upon educational services and shall be responsible for obtaining and maintaining all licenses required in order for the Contractor's personnel to fulfill the duties required by this Contract. The State reserves the right to disapprove the use of any representatives of the Contractor who are performing educational or enrollment services under the Defined Contribution Plans or other State of Tennessee programs; however, no such disapproval shall be based on the grounds specified in Section D.7 hereof.
- A.5. Education, Enrollment and Oversight Meetings. The Contractor shall conduct regular education and enrollment meetings for the Defined Contribution Plans for Employees around the State of Tennessee and shall, when requested, participate in meetings scheduled by departments and agencies of the State of Tennessee and by Tennessee local governments. The Contractor shall inform all Defined Contribution Participants and other individuals eligible for education meetings as agreed upon by the State and the Contractor of the meeting times, dates, locations, parking facilities, if any, topics and material to be covered. The Contractor shall conduct planning and review oversight meetings with the Deferred Compensation Program Administrator each quarter and shall meet with other officials of the State of Tennessee upon reasonable notice to the extent necessary to discharge its duties under this Contract. Contractor will prepare and present an annual strategic plan addressing such matters as agreed to by the Contractor and the State.
- A.6. Participant Education Services. In providing the services below, the Contractor shall employ the specifications provided in Attachments 3 and 7 when applicable.
- a. Bundled Defined Contribution Participant Services. The Contractor shall provide the following services to Defined Contribution participants at no cost other than the administrative fee described in C.3.b.
1. Access to representatives at the Telephone Call Center described in Section A.7.a.
  2. Online access to interactive projection and planning tools described in Section A.9.
  3. Availability of sample asset allocation charts and recommendations and model portfolio software.

4. Financial Workshops on topics to be mutually agreed upon by the State and the Contractor. The Contractor must also provide comparable webinars on the topics that Defined Contribution Participants may access online.
  5. Communications. The Contractor shall provide all communications materials described in Section A.8, and in addition shall provide such educational mailings and electronic mailings, notices, and reminders as shall be mutually agreed upon by the State and the Contractor.
  6. One-on-one employee sessions. The Contractor shall conduct one-on-one employee sessions in accordance with the Contractor's Alternate Procurement Solicitation response with plan participants using licensed field representatives throughout the State with availability in centralized locations of the grand divisions of the State.
  7. Participant Elected Optional Investment Advisory Services. At the election of the participant, the Contractor shall provide individual asset allocation for the participant, including a proposed asset allocation mix based on available data on file, as described in Attachment 8. Each participant affirmatively electing the service will be charged the fee prescribed in Section C.3.b.(2) of this Contract.
- b. Holistic Participant Financial Education Services for Defined Benefit Plan Participants. During the term of the Contract, the State may elect to request the following services with 180 calendar days notice to the Contractor. The State intends to work with the Contractor to establish such services no later than July 1, 2016.
1. Holistic financial education services for Defined Benefit Plan Participants shall be in addition to the Call Center services detailed in Section A.7.e. of the Contract.
  2. The Contractor shall provide web-based tools and applications for access by Defined Benefit participants in accordance with the Contractor's Alternate Procurement Solicitation response.
  3. The Contractor shall provide video technology for access by Defined Benefit participants in accordance with the Contractor's Alternate Procurement Solicitation response.
  4. The Contractor shall conduct group-level employee sessions throughout the State in accordance with the Contractor's Alternate Procurement Solicitation response.
  5. The Contractor shall conduct one-on-one employee sessions in accordance with the Contractor's Alternate Procurement Solicitation response with Defined Benefit plan participants using licensed field representatives throughout the State with availability in centralized locations of grand divisions of the State.
- c. Retirement readiness holistic benefit statements. The Contractor shall provide, to participants who are in both the Defined Contribution and Defined Benefit plans, period benefit statements incorporating applicable aspects of the participants'

defined contribution and defined benefit plans, as well as Social Security estimates.

- A.7. Telephone Services. In providing the services, below, the Contractor shall employ the specifications described in Attachments 3, 4, and 7 when applicable.
- a. Telephone Call Center. The Contractor agrees to establish and maintain a toll-free telephone call center staffed with trained personnel for defined contribution Participants, which will provide defined contribution Participants with the services, information, transactions and advice as described in Attachment 3. The Contractor shall transfer said number to the State at no cost to the State such that the State or its designee can maintain this same number for continuous, uninterrupted use by members needing assistance with services after the termination of this Contract. Such call center shall be operable each day except Saturdays, Sundays, and legal holidays as defined in Tennessee Code Annotated, Section 15-1-101, as amended, during the hours of 8:00 a.m. to 7:00 p.m., Central Time.
  - b. Telephone Call Center Performance and Operations. The Contractor shall adhere to the relevant performance standards for telephone call center operations included in Section II.F.15 of the Contractor's Alternate Procurement Solicitation response.
  - c. Automated Phone Response Center. The Contractor further agrees to establish and maintain a toll-free interactive voice response telephone system for Defined Contribution Participants, which, upon proper identification, will provide Defined Contribution Participants with the services, information, transactions, balance inquiry, and reports as shall be mutually agreed upon by the State and the Contractor. Such information shall include the Defined Contribution Participant's account balance for each Investment used and for each Defined Contribution Plan used; the Defined Contribution Participant's current contribution allocation election in each Defined Contribution Plan used; the amounts available to the Defined Contribution Participant from the Profit Sharing (401(k)) Plan for a loan; the current unit or share value for each variable fund offered; and the current interest rates for each fixed account offered. Such telephone system shall further enable Defined Contribution Participants to authorize transfers of Assets between Investments. The interactive telephone system shall use a unique personal identification number to ensure access security of Accounts. Access to Defined Contribution Participants' Deferred Account information on this system shall be provided to the Deferred Compensation Program Administrator and to such other state personnel as designated by the Deferred Compensation Program Administrator. Such system shall be updated each Business Day and shall be available twenty-four (24) hours a day seven (7) days a week, except for routine maintenance of the system.
  - d. Telephone Services In General. The Contractor shall advise all Defined Contribution Participants and the Deferred Compensation Program Administrator of the availability of its toll-free numbers. The Contractor agrees that the telephone call center and the automated phone response center shall have an adequate number of telephone lines to respond to calls, and shall each have a toll-free TDD line for hearing impaired callers. The Contractor agrees that any transfer instructions given by Defined Contribution Participants by phone shall be recorded on tape and retained for at least eighteen (18) months.
  - e. Tennessee Consolidated Retirement System Customer Service Call Center. During the term of the Contract, the State may elect to request the following services with 180 calendar days notice to the Contractor. Upon request by the State, the Contractor shall

agree to also provide the services described in Attachment 4. for all Members of the Tennessee Consolidated Retirement System, both active and retired. The State intends to work with the Contractor to establish the first step of such services no later than eighteen months after the effective date of the Contract, with the second step to be established no later than three months following implementation of step one. The Contractor shall maintain the same toll free telephone number established under Section A.7.a for Members of TCRS to call as for Defined Contribution plan participants to call. Telephone calls received for TCRS shall be subject to the same performance standards as described in Section A.7.b.

- f. TNStars™ 529 College Savings Plan. During the term of the Contract, the State may elect to request the following service with 180 days notice to the Contractor. The parties hereby agree that all such scripts must be reviewed and approved by the Contractor's broker/dealer prior to use. Upon request by the State, the Contractor shall establish an informational hold time message and Customer Service Representative script to be communicated to State employees who contact the call center. The State intends to work with the Contractor to establish such service no later than eighteen months from the Contract effective date.

A.8. Communication Materials and Forms. All communication materials and forms respecting the Defined Contribution Plans and all programs and services that are outlined in this Contract, as shall be agreed upon by the Contractor and the State, shall be designed, produced and distributed at the Contractor's expense. Such materials shall be filed with, and approved in advance by, the Deferred Compensation Program Administrator. Such communication materials shall include but not be limited to: a brochure explaining the Defined Contribution Plans and Investment alternatives for new Employees; a detailed handbook explaining the Defined Contribution Plans and the Investment alternatives for Defined Contribution Participants; a flyer explaining the differences of 401(k) and 457 plans; a flyer showing investment options based on risk; an explanation of the distribution options permitted under the Defined Contribution Plans; a loan brochure; semi-annual payroll inserts or mailers to selected groups of Employees; Defined Contribution Plan documents; a quarterly Defined Contribution Participant newsletter; a monthly report detailing performance of Investments, including benchmark performance; a distribution insert explaining applicable tax treatments; notification of any fund changes; a local government employer guide; a flyer highlighting the reasons to join the State plan for local governments; a frequently asked questions from employers for local governments; and other materials necessary to apprise Employees and/or Defined Contribution Participants of the purpose and provisions of the Plans. Forms to be provided by the Contractor shall include enrollment applications, hardship applications, transfer authorization forms, catch up enrollment forms, loan applications, beneficiary designation forms, distribution forms, and other forms necessary to administer the provisions of the Defined Contribution Plans. Contractor agrees to and does hereby transfer, assign and convey to the State, without additional consideration therefor, all property rights, tangible and intangible, including State trademarks and copyrights, to all materials developed specifically for the State and not generally utilized by Contractor in its recordkeeping business.

A.9. Internet Site. The Contractor agrees to establish and maintain an Internet site for the Defined Contribution Plans that provides the following:

- a. At a minimum, the site will allow participants to submit an email, will have an interactive benefit projection calculator (that will include a retirement readiness output using Defined Contribution assets, Defined Benefit benefit information, and estimated Social Security

- information), forms, current investment option descriptions, and current investment performance data. Investment performance data on currently available options shall be updated within seven (7) working days following the end of each period, or sooner if required by the applicable federal regulatory agency. At its option, the State may elect to host one or more of these Contractor-provided features on the State's Internet site and server.
- b. In addition, the Contractor agrees to provide a secure Internet site which shall permit Defined Contribution Participants to access information regarding their Deferred Accounts. Such information shall include the Defined Contribution Participant's current deferral allocation percentages, daily account balance and investment option values, recent transaction history, loan amounts available, and such other information as shall be mutually agreed upon by the Deferred Compensation Program Administrator and the Contractor. Such Internet site shall also allow Defined Contribution Participants to submit enrollments, cancellations, deferral changes, initiate loan processing, transfers, allocation changes, electronic statement and newsletter delivery, and, beneficiary designation elections and changes. Information on this Internet site shall also include the Defined Contribution Participant's historical balances and contributions for the past eighteen (18) months by enabling participants to select a date in the past eighteen (18) months to view account balance data. The Contractor shall take all necessary steps to secure the Internet site in order to prevent unauthorized persons from accessing Defined Contribution Participant Deferred Account information and shall maintain records of transactions authorized through that site.
- c. The Contractor shall provide on-line access to Deferred Account records on all Defined Contribution Participants to the Deferred Compensation Program Administrator and to such other State personnel as designated by the Deferred Compensation Program Administrator. The Contractor shall provide individual Employers with on-line access to Account records for such Employer and ensure that each Employer will only have access to such Employer's own information. In addition, the Contractor shall allow each Employer to request Employer specific data directly from the Contractor.
- A.10. Policies and Procedures Manual. The Contractor shall prepare and maintain a current manual of policies and procedures governing all aspects of the Defined Contribution Plans and shall provide the Deferred Compensation Program Administrator with a copy of such manual. In addition, the Contractor shall assist the Deferred Compensation Program Administrator in the drafting and adoption of any rules, regulations or administrative actions necessary in the conduct of the Defined Contribution Plans.
- A.11. Enrollment. The Contractor shall enroll eligible Employees in the Defined Contribution Plan and process changes in participation using standardized forms approved by the Deferred Compensation Program Administrator. Enrollment responsibilities shall include educating Employees regarding all aspects of the Defined Contribution Plans and the effect of their participation on their current take-home pay and their future retirement income; providing each Defined Contribution Participant with a copy of the applicable prospectuses, Defined Contribution Participant handbook, and plan document(s); providing properly trained and licensed representatives; assist with ensuring that forms and authorizations submitted are complete and on file with the Contractor; monitoring Defined Contribution Participants' elections and contributions to comply with Internal Revenue Code contribution limitations; and providing notice to Defined Contribution Participants authorized to exceed Defined Contribution Plan contribution limits due to catch up participation. The Contractor shall provide its personnel with all equipment necessary to properly enroll and educate Employees, and to resume service in the event of an emergency, including laptop computers, projectors, cell phones, and mobile e-mail devices. The Contractor shall transmit election data to the State semi-monthly and shall interface

with the payroll systems of the University of Tennessee, the Tennessee Board of Regents, and any other Employers as directed by the Deferred Compensation Program Administrator.

- A.12. Contributions. The Contractor shall process Employer and Employee contributions in detail consistent with the terms of the Defined Contribution Plans and each Employer's payroll system, reconcile contribution amounts with the Deferred Compensation Program Administrator, and direct immediate investment of Employee contributions in accordance with Defined Contribution Participant instructions, as amended from time to time. All employee contributions shall be treated as vested immediately upon receipt. Contributions by the State of Tennessee designated as a match will be immediately vested. Other employer contributions will be treated as designated in their respective Participating Employer Agreements.
- A.13. Administration. The Contractor shall offer, at the State's direction, investment products designated in writing by the State to the Contractor as approved products under the Defined Contribution Plans, including the investment products offered to or held by Defined Contribution Participants immediately prior to the effective date of this Contract and continue to make such products available to Defined Contribution Participants until instructed otherwise by the Deferred Compensation Program Administrator. Such current investment products offered to participants are listed in Attachment 1. Further, the Treasury Managed Fund shall be an approved product hereunder. With respect to the Treasury Managed Fund, Contractor shall, along with the State and the State's custodian or such other vendor the State may employ for unitization services, develop applicable procedures, including the use of a daily NAV so that participants may purchase and redeem shares of the unitized fund on a daily basis and ensuring that accurate participant account records are maintained. The addition of the Treasury Managed Fund as a DC investment option is expected to be effective July 1, 2015 or on a date that is mutually agreed upon by the State and the Contractor. Upon receipt of a written instruction to do so by the Deferred Compensation Program Administrator, the Contractor shall add, freeze or delete an investment product in accordance with the process and timing required by the State. The Contractor shall perform all administrative and recordkeeping functions necessary to ensure accurate accounting of the Assets in the Defined Contribution Participant's Deferred Accounts and to provide for the efficient and prudent management of the Plans. Such functions shall include, but shall not be limited to, maintaining up to thirty (30) Investment Provider accounts per Defined Contribution Plan (not including the Treasury Managed Fund), reconciling Defined Contribution Participant and Defined Contribution Plan accounts to Investment Provider accounts each month, converting records maintained under previous contracts covering the Defined Contribution Plans to records maintained by the Contractor, and reporting Investments of the Defined Contribution Plans that are not included in Assets administered by the Contractor based on values reported to the Contractor by Providers on a consolidated basis. The Contractor shall accommodate identification of transactions with Investment Providers to facilitate the separate account statements that the Defined Contribution Plans receive from each Investment Provider for each separate fund. The Contractor shall further provide transaction information to the Investment Providers to facilitate direct balance and transaction reporting to the Deferred Compensation Program Administrator for each fund. The Contractor acknowledges that statements received by the Deferred Compensation Program Administrator from a single fund family are aggregated.
- A.14. Records. The Contractor shall establish and maintain records for each Defined Contribution Plan showing deferrals, loans, payouts, transfers, accruals, administrative costs, and withdrawals during the term of the Defined Contribution Plan. The Contractor shall also establish and

maintain records of each Defined Contribution Participant's Deferred Accounts under the Defined Contribution Plans. The Contractor shall update Defined Contribution Participants' Deferred Accounts daily using the most currently available share price or interest rate. The Contractor shall be required to use share accounting for all mutual funds other than money market funds. Defined Contribution participant records shall include the contributions, incoming rollovers, earnings, administrative costs if any, withdrawals, loans, loan repayments, authorizations, addresses, date of birth, social security number, primary and contingent beneficiaries, and other related information. The Contractor shall take the necessary steps to maintain current addresses for all Defined Contribution Participants and shall notify the Deferred Compensation Program Administrator of the steps taken. The Contractor's Defined Contribution Plan records and Defined Contribution Participant records shall be maintained in accordance with generally accepted accounting principles, the most recent Governmental Accounting Standards Board Statements, the Defined Contribution plan documents, and the Internal Revenue Code (the "Code") and the Regulations promulgated thereunder. Such records shall be maintained in a format mutually agreed upon by the Deferred Compensation Program Administrator and the Contractor. The Contractor agrees that all records regarding the Defined Contribution Plans shall be the property of the State except to the extent that any plan records contain proprietary templates of the Contractor. However, the Contractor agrees that any forms and/or records created for the State, even if such records are based upon templates of the Contractor, shall be property of the State.

A.15. Hardship and Unforeseeable Emergency Requests.

- a. Hardship Requests. The Contractor shall apprise any Defined Contribution Participant who requests a hardship distribution of the applicable rules and regulations and shall furnish the Defined Contribution Participant with the appropriate application form and instructions. The Contractor shall be responsible for maintaining records reflecting the amount available for hardship distribution from the Profit Sharing (401(k)) Plan. The Contractor shall require appropriate documentation and determine whether the Defined Contribution Participant has any funds available for loan from the Profit Sharing (401(k)) Plan.

The Contractor shall process, without employer signature, all safe harbor hardship requests ("Hardship Requests") received in good order, and in a manner satisfactory to the Contractor, pursuant to the safe harbor distribution events as currently defined in Treasury Regulation Section 1.401(k)-1(d)(3)(iii)(B), as amended from time to time. The State further instructs the Contractor to rely on any and all representations made by a Defined Contribution Participant in a Hardship Request.

For each Defined Contribution Participant receiving a hardship distribution, the State instructs the Contractor to notify the Defined Contribution Participant's Employer to suspend elective deferrals for a 6-month period, or for such other period as may be required by the Code, as amended from time to time. For each Hardship Request that cannot be processed due to its failure to satisfy a safe harbor event, State instructs Contractor to notify the Defined Contribution Participant to contact State if he or she wishes to appeal the determination.

- b. Unforeseeable Emergency Requests. The Contractor shall apprise any Defined Contribution Participant who requests an unforeseeable emergency distribution of the applicable rules and regulations and shall furnish the Defined Contribution Participant with the appropriate application form and instructions. The Contractor shall be responsible for maintaining records reflecting the amount available for an unforeseeable emergency distribution from the Defined Contribution Plan. The Contractor shall require appropriate documentation from the Defined Contribution Participant.

The Contractor shall process, without employer signature, all unforeseeable emergency requests ("Emergency Requests") received in good order, and in a manner satisfactory to the Contractor, pursuant to the unforeseeable emergency distribution events as currently defined in Treasury Regulation Section 1.457-6(c), as amended from time to time. The State further instructs the Contractor to rely on any and all representations made by a Defined Contribution Participant in an Emergency Request.

For each Defined Contribution Participant receiving an unforeseeable emergency distribution, the State instructs the Contractor to notify the Defined Contribution Participant's Employer to suspend elective deferrals for the period required by the Defined Contribution Plan, if any. For each Emergency Request that cannot be processed due to its failure to satisfy an unforeseeable emergency event, State instructs Contractor to notify the Defined Contribution Participant to contact the State if he or she wishes to appeal the determination.

- A.16. Plan Benefit Payments. The Contractor shall disburse benefits from Assets under the Defined Contribution Plans to Defined Contribution Participants in accordance with instructions given by the Deferred Compensation Program Administrator and in compliance with the Defined Contribution Plans and applicable requirements of the Internal Revenue Code. Categories of distributions to be administered and processed by the Contractor shall include, but not be limited to, lump-sum payments; equal monthly, quarterly, semi-annual or annual payments of a specified amount; equal or approximately equal monthly, quarterly, semi-annual or annual payments, calculated to continue for a period certain; and monthly, quarterly, semi-annual or annual payments equal to the minimum distributions required under Section 401(a)(9) of the Internal Revenue Code over the life expectancy of the Defined Contribution Participant or over the life expectancy of the Defined Contribution Participant and a beneficiary. Periodic monthly payments shall be issued on a consistent pre-specified date each month as mutually established by the Contractor and the Defined Contribution Participant. Lump-sum payments, loans, and hardship distributions shall be effected on a daily basis. The Contractor shall offer direct deposit services for no additional fee to Defined Contribution Participants or beneficiaries electing periodic payments; for Participants or beneficiaries electing full lump sum distributions, direct deposit services will be offered to Participants at the Contractor's standard fee until such time as the Contractor is able to offer such services at no additional fee to Participants, but no later than December 31, 2016, after which time such fee will be charged to the respective Defined Contribution Plan. For distributions out of the Defined Contribution Plans, the Contractor shall provide, in addition to checks, ACH capability for lump sum, period and hardship withdrawals, and for rollovers in and out of the Defined Contribution Plans.
- A.17. Tax Reporting. In compliance with federal and state laws, the Contractor shall take all actions necessary to withhold, remit, and report income taxes deducted from payouts and to produce and distribute all income tax reports and statements. Any penalties for income tax deposit delinquency or underpayment of tax, to the extent that they are related to the Contractor's performance of Services, shall be solely the responsibility of the Contractor.
- A.18. Deferral and Transfer Instructions.
- a. The Contractor shall collect all deferral changes. Changes will be allowed to be made electronically using the Contractor's online system, by a paper form submitted to the Contractor, and by telephone using either a voice response or customer care representative. The deferral changes for the next payroll date will be sent to the State by the 15<sup>th</sup> and last working day of the month taking into account the 30 calendar day waiting period for deferral changes to become effective. The State agrees to submit a full eligibility and termination file

weekly and payroll files twice per month in the attached file layout Attachment 2 and a standard naming convention determined by the State. Contributions received by the Contractor by 3:00 p.m. Central Time on any given Business Day shall be processed that same day, provided allocation instructions are received by 1:00 p.m. Central Time the previous Business Day. The State agrees to require local governments and local education agencies to submit payroll allocations electronically.

- b. Defined Contribution Participant transfer requests among investment options meeting the Contractor's "same day" processing requirements, which are received by the Contractor before 3 p.m. Central Time or market close, shall be applied the same Business Day. Transfer requests received by the Contractor after 3 p.m. Central Time or market close on a Business Day involving transfers between the Investment options meeting the Contractor's "same day" processing requirements shall be applied on the next Business Day after receipt of the request. Financial transactions in respect of any Investment options whose Providers do not meet the Contractor's "same day" processing requirements shall not be processed according to the same processing schedules listed above, but rather according to the specific processing schedule of the Investment Provider involved. The Contractor shall inform the State of any Investment options which do not meet the Contractor's "same day" processing requirements. The Contractor shall take all reasonable steps to work with any Investment option provider in satisfying the Contractor's "same day" processing requirements.
  - c. The Contractor shall be responsible for initiating all transfers, verifying trades daily, and reconciling transfers with the Providers on a monthly basis.
- A.19. Elections, Transfers and other Participant Changes. Subject to the requirements of the respective Providers, the Contractor shall permit daily investment election; daily investment transfers; daily enrollments; unlimited number of investment changes (with the exception of apparent market timers as outlined in the Market Timing and Excessive Trading Policy); and transfers or elections with no maximum number of transactions.
- A.20. Transfer of Assets. Funds may be transferred from a Provider for the following reasons exclusively: to compensate the Contractor in accordance with Section C hereof, to reimburse the State for Defined Contribution Plan administrative and/or expense purposes as described in Section A.33 below, to move Defined Contribution Participants' monies to another Provider pursuant to State approval, to correct errors, to make Defined Contribution Participant loans, to distribute funds to Defined Contribution Participants or their beneficiaries, or to rollover funds. Funds may be transferred by a Provider for these reasons upon written instructions from either the State or the Contractor.
- A.21. Loans. The Contractor shall administer loans in accordance with the provisions of the Profit Sharing (401(k)) Plan and directions from the Deferred Compensation Program Administrator. Such administration shall include loan origination, receipt and recording of loan repayments and maintenance of loan accounting. Should any loan be placed in default status, the Contractor shall promptly notify the Deferred Compensation Program Administrator of the facts and circumstances. The Defined Contribution Participants shall be permitted to pre-pay loans without penalty. The Contractor acknowledges and agrees that it can and will provide to the State the information contained in pages \_\_\_\_ of its proposal in order to enable the State to deduct 401(k) loan repayments from Defined Contribution Participants' compensation.
- A.22. Employer Reports. The Contractor shall provide the following reports to the Deferred Compensation Program Administrator and such additional reports as are agreed to by the Contractor and the Deferred Compensation Program Administrator from time to time. All reports shall be submitted in a format approved by the Deferred Compensation Program Administrator.

The Contractor agrees that all reports shall be subject to the relevant performance standards for such reports included in Section II.F.15 of the Contractor's Alternate Procurement Solicitation response.

- a. Financial information required for reporting of defined contribution plans as outlined in the most recent applicable Governmental Accounting Standards Board Statement.
- b. Quarterly and fiscal year to date financial statements, by Defined Contribution Plan and by Investment, detailing beginning balance; receipts (specifying new deferrals, incoming rollovers, transfers, and investment earnings); and disbursements (specifying benefit withdrawals, death benefit withdrawals, hardship withdrawals, transfers, annuity purchase transfers, investment losses, and administrative fees); and the Defined Contribution Plan's rate of return for the period. Profit Sharing (401(k)) Plan reports shall also show rollover receipts, loan repayment receipts, original loan disbursements, loan default distributions, and loan origination and repayment fees. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- c. Report detailing all revenue received by the Contractor resulting from the State's 401(k) and 457 plans. Revenue should be broken down by source, including but not limited to loan origination fees, loan maintenance fees, advisory service fees, and minimum account balance fees if applicable.
- d. Quarterly plan summary financial reports summarizing quarterly activity, year to date activity, and inception to date activity for each Investment maintained by the Contractor.
- e. Quarterly participation status reports for each Defined Contribution Plan and for the total program showing:
  - (1) number of Defined Contribution Participants actively deferring, number of Defined Contribution Participants receiving periodic distributions through the Contractor, number of inactive Defined Contribution Participants, and total Defined Contribution Participant Deferred Accounts maintained by the Contractor; and
  - (2) number of transfers processed.
- f. Quarterly loan program status reports for the Profit Sharing (401(k)) Plan showing total number of loans issued, total number of loans paid off, number of Defined Contribution Participants with one outstanding loan, number of Defined Contribution Participants with two outstanding loans, number of loans being repaid through salary deduction, number of delinquent loans, total outstanding loan balances due from Defined Contribution Participants, and interest rates for the upcoming quarter.
- g. Quarterly distribution status reports by Defined Contribution Plan and by Employer showing:
  - (1) number of Defined Contribution Participants and beneficiaries purchasing an annuity distribution, number of Defined Contribution Participants and beneficiaries receiving periodic distributions through the Contractor, and total number of Defined Contribution Participants and beneficiaries receiving one or more forms of regular distribution,
  - (2) number of Defined Contribution Participants and beneficiaries initiating distributions during the quarter and during the year to date: by type (lump sum payable to Defined Contribution Participant or beneficiary, lump sum rollovers, periodic, annuity,

combination) and by reason (termination, retirement, transfer to the Tennessee Consolidated Retirement System, hardship, death, age 59 1/2); and

- (3) companies receiving rollovers detailed by both participant count and assets rolling out of the plans.
- h. Copies of Defined Contribution Participants' quarterly statements in alphabetical order by Defined Contribution Plan on CD or other format mutually agreed upon by the Defined Contribution Plan Administrator and the Contractor.
  - i. Monthly reconciliation reports of the Contractor's Defined Contribution Plan records to the Investment Providers' records. Insofar as possible, the Contractor shall work with Providers to correct differences between the Contractor's Defined Contribution Plan records and the Investment Providers' records. Any deviations between the Contractor's Defined Contribution Plan records and the Investment Providers' records are to be fully identified and explained.
  - j. Monthly reports of performance of Investments.
  - k. Annual reports of IRS compliance activity including:
    - (1) number of Defined Contribution Participants and beneficiaries receiving distributions through the Contractor during the calendar year; number of 1099 forms issued; total taxes withheld and remitted to the IRS; and, if requested by Deferred Compensation Program Administrator, copies of reporting forms;
    - (2) reports to the State and Providers detailing Defined Contribution Participants potentially exceeding annual contribution limits and corrective action required prior to calendar year end;
    - (3) reports detailing name, last known address, last department, social security number, and Deferred Account balance of inactive Defined Contribution Participants over age seventy (70) who are not currently receiving distributions complying with Internal Revenue Code Section 401(a)(9); and
    - (4) other reports as may be necessary to show compliance activity in regard to IRS requirements enacted after the effective date of this Contract.
  - l. Annual certification of compliance with additional Federal and State laws, rules, and regulations as shall be agreed upon by the Contractor and the State.
  - m. Copy of annual report of unclaimed property pertaining to uncashed distribution checks from the Plans.
  - n. Annual marketing and communication plan, including annual objectives for local governmental employer outreach.
  - o. Other reports specific to individual Employers, including a quarterly statement of vested and non-vested Employer contributions for those Employers who make contributions. Employers shall have access to reporting capabilities for their own entity online.
  - p. Such other reports as may be necessary to accomplish the Contractor's duties hereunder.

- q. Progress reports each quarter summarizing activity and current status of all duties and responsibilities assigned under this Section A.
- r. Annual establishment with the State of goals for the Defined Contribution Plan to help participants achieve retirement security and annual review and evaluation of progress toward such goals. Such review and evaluation may include but not be limited to assessment of the use of educational tools and adequacy of contribution levels of Defined Contribution Participants.
- s. Auto-enrollment reporting by entity capturing the stick rates by employer also including contribution rate trends for those employees.

A.23. Defined Contribution Participant Reports.

- a. The Contractor shall provide to Defined Contribution Participants quarterly statements of their respective Deferred Accounts in a format mutually agreed to by the Contractor and the Deferred Compensation Program Administrator. The statements shall be combined for those participants with balances in the 401(k) and 457 and shall show, at a minimum, the Defined Contribution Participant's name, address, employer, and primary beneficiaries. Statements shall also show the period covered by the statement, the Employer's and the Defined Contribution Participant's inception to date contributions, personal rate of return, vested and non-vested amounts where applicable, as well as detailed reporting, by Investment, of beginning balance, transactions during the period, and ending balance. Where applicable to the Investment, reporting shall include the number of units or shares applicable to each transaction and to the beginning and ending balance, and the unit or share value. Statements shall also show retirement readiness in terms of a projected replacement income using Defined Contribution, Defined Benefit, and Social Security estimates. Such statements shall be consolidated by Defined Contribution Plan for Defined Contribution Participants with Deferred Accounts in various Investments and copies shall be provided to the Deferred Compensation Program Administrator on compact disk ("CD"), or in such other format mutually agreed upon by the Deferred Compensation Program Administrator and the Contractor. Statements shall be sent to the Defined Contribution Participants within twenty (20) calendar days of the end of the calendar quarter or within ten (10) Business Days following the Contractor's receipt of accurate share prices from all investment providers, whichever is later. The Defined Contribution Participants shall be permitted to elect mail delivery or on-line delivery of quarterly statements. At such time as Contractor is able, but no later than December 31, 2015, the State shall have the ability to instruct the Contractor to default any Defined Contribution Participants where an email address is on file in the recordkeeping system; to on-line delivery of statements, with an opt-out provision whereby Defined Contribution Participants may opt out of receiving statements on-line.
- b. At such time and in such manner as shall be mutually agreed to by the parties, the Contractor shall disclose and allocate on Defined Contribution Participant Account statements all costs assessed and fees received by the Contractor, any third party, or by the State in connection with the performance of the services under this Contract.
- c. The Contractor shall provide Defined Contribution Participants with prompt written confirmation of transfers, and advance notice of potential noncompliance with the Federal Internal Revenue Code's Required Beginning Date provisions.

- d. The Contractor shall maintain Participant statements for seven (7) years following termination of this Contract.

- A.24. Compliance with Internal Revenue Code and Applicable Federal Laws and Regulations. The Contractor recognizes that the Defined Contribution Plans are intended to qualify under Sections 457(b) and 401(k), respectively, of the Internal Revenue Code and agrees to maintain knowledge of the federal rules applicable to the Defined Contribution Plans and to administer the Defined Contribution Plans in a manner consistent with the applicable requirements of the Internal Revenue Code, additional applicable federal laws and regulations, and the State Defined Contribution plan documents. The Contractor is required to inform the State in writing if an amendment is necessary for the State's Plan Document or operating procedures to be in compliance with Federal Laws and Regulations. Should the State of Tennessee be required to comply with federal nondiscrimination rules, the Contractor shall perform all 401(k) discrimination testing on a frequency sufficient to maintain compliance.
- A.25. Consultation and Advice for the Defined Contribution Plans. The Contractor shall perform investment consulting services requested by the State in connection with the Defined Contribution Plans and shall be, in general, an advisor to the State in the analysis and selection of investments for the Defined Contribution Plans.
- a. General Services. Such services shall include the following:
- (1) Review Investment Policy and Guidelines. The Contractor shall conduct an annual review of the investment policy and guidelines within the context of the then current market conditions and the Defined Contribution Plans' investment performance. The Contractor shall advise the State of any recommended changes to the investment policy or guidelines as a result of such review, and shall, at the State's request, reduce any such recommendations to a written report for the State's consideration. Any such recommended changes must meet any applicable terms, conditions and limitations contained in Tennessee Code Annotated, Sections 8-25-301, *et seq.*, Section 401(k) of the Internal Revenue Code, and any other applicable federal and state laws and regulations.
  - (2) Investment Vehicles' Performance Review. On a quarterly basis, the Contractor shall provide written evaluation reports on the investment performance of each Investment vehicle provided to Defined Contribution Participants under the Defined Contribution Plans. Performance data shall cover a ten year period if available. Said reports shall identify whether the Investments are within any applicable asset ranges, that performance is consistent with the investment objectives and policies developed pursuant to Paragraph (1) of this Subsection A.25.a, and that the Investment vehicles are performing consistently within applicable industry standards. The performance evaluation reports shall cover the following areas: (i) economic overview; (ii) top-down look at the Defined Contribution Plans' investment line-up; (iii) individual fund investment style; (iv) fund performance based on the criteria in the investment policy statement; (v) individual fund performance versus the appropriate peer group; and (vi) investment option risk analysis. The quarterly reports shall further contain suggestions on replacements of underperforming Investment vehicles, and recommendations on asset classes where deficiencies exist with the then current Investment line-up.
  - (3) Selection of Additional Investment Vehicles. At the State's request, the Contractor shall provide a written analysis of any additional Investment vehicles that the State is

considering for the Defined Contribution Plans. Such analysis shall entail the objective evaluation of the Investment vehicles using risk-adjusted returns, total returns, expenses, style consistency, and manager tenure. The analysis shall further provide a top down analysis to ensure the Defined Contribution Plans will have adequate asset class coverage from its then current Investment vehicles and from those vehicles the State is considering to add.

- (4) The Contractor shall offer to the State a sample Code Section 457 Plan document, an adoption agreement, and any Defined Contribution Plan document amendments that may be required due to changes in applicable laws and regulations, prior to the date required by federal law and regulations. The Contractor shall also offer to the State, through a document vendor, a prototype and/or volume submitter Code Section 401(k) Defined Contribution Plan document and any Defined Contribution Plan document amendments that may be required due to changes in applicable laws and regulations, prior to the date required by federal law and regulations.
- (5) Meetings. The Contractor shall be available on a quarterly basis to meet with appropriate State personnel, committees, boards and commissions at the State's facilities in Nashville to explain the reports described in this Section, or to discuss any other matter in connection with the services being performed by the Contractor hereunder. The Contractor shall further be available to meet with the State as needed by teleconference, or through the use of other media as mutually agreed to discuss the operation of the Defined Contribution Plans, any recommendations, and any miscellaneous questions or problems in relation thereto.

- A.26. Audit Records. The Contractor must present to the State annually the audit opinion letter or other report of the results of an audit of the Contractor which have been conducted by an independent public accountant. The Contractor must present to the State annually the results of any SSAE16 agreed upon procedures to evaluate the internal controls of the Contractor's procedures and functions integral to this Deferred Compensation Program. The Contractor shall further provide the State with a Type II Independent Service Auditor's report prepared for its service organization in accordance with Statement on Standards for Attestation Engagements (SSAE) Number 16 on at least an annual basis.
- A.27. Back-Up Procedures and Disaster Recovery. The Contractor shall maintain a backup plan that ensures that the Contractor can restore all Deferred Compensation Participant account data, transaction history and other Defined Contribution Plan data in the event of a system malfunction or failure. Said plan shall be in substantially the same form as the plan outlined in pages \_\_\_ of Contractor's proposal. In the event that any material change to the form of the plan is proposed by the Contractor, the Contractor shall so advise the State in writing. For the purposes of this Paragraph, "material change" shall include, but shall not be limited to, the time required for restoration of services or in the location of the hot site. In the event of a disaster impacting the Defined Contribution Plan Participants residing in Tennessee or the Contractor's Nashville office, the Contractor shall resume in-state operations within three (3) Business Days and provide emergency assistance to affected Defined Contribution Participants requesting emergency distributions or loans. The Contractor shall provide notification of an incident described in this Paragraph to the Deferred Compensation Program Administrator.
- A.28. Site Visit. In the event the State elects to perform a due diligence review of the services performed hereunder, the Contractor shall provide airfare and accommodations for one visit per

year for two representatives of the State to the Contractor's home office by the Deferred Compensation Program Administrator or other representatives of the State for the purpose of conducting the review.

- A.29. Brokerage Account Window. The Contractor shall provide all Defined Contribution Participants access to the self-directed brokerage account window(s) as described in pages \_\_\_ of the Contractor's proposal and shall monitor such service as stated in said pages. The State reserves the right, at its sole discretion, to discontinue this service or to request a replacement vendor for this service. The State shall give the Contractor at least ninety (90) calendar days prior written notice of the discontinuance of the service or request for a replacement. In addition, the Contractor shall notify the State and offer a replacement vendor if available in the event the service is no longer available as a self-directed brokerage option. Any replacement vendor must be approved by the State prior to implementation.
- A.30. Enhanced Account Management Available at Cost to Participant. The Contractor shall offer to all Defined Contribution Participants the option of enrolling in a service whereby a qualified financial advisor, registered as an Investment Advisor under the Investment Advisors Act of 1940 approved by the Contractor selects among the Defined Contribution Plan's available core investment options and manages the participants' respective accounts for them by terms that are mutually agreed upon by the Contractor and the State, as described in Attachment 8. The Contractor shall be responsible for having a diversified allocation of investment options selected for the Defined Contribution Participant which would fit the Defined Contribution Participant's unique situation and retirement goals. A Defined Contribution Participant electing this service would supply the Advisor with information about the Defined Contribution Participant's goals and finances. The service would not manage a Defined Contribution Participant's non-DC Plan assets. The Advisor shall automatically rebalance assets managed by the Advisor at least annually. The Advisor shall provide representative support online and by phone for Defined Contribution Participants enrolling in this service.
- A.31. Participant Affirmative Election of Optional Services. The Contractor acknowledges and agrees that the services described in Section A.30 above shall not require Defined Contribution Participants to "opt out" or otherwise reject the services to avoid fees. A Defined Contribution Participant must clearly exercise an "opt in" decision to receive the services and must acknowledge the cost of the services.
- A.32. Local Government Employers. The Contractor shall provide support to Tennessee local governmental entities in (i) enrolling in the Defined Contribution Plan(s), (ii) setting up payroll files and remittance methods, and (iii) such other functions needed for a Tennessee local government to participate in the Defined Contribution Plan(s). The Contractor shall also recordkeep options set forth in the participating employer agreement including auto-enrollment, auto-escalation, and multiple vesting schedules (immediate, 3-year cliff, 5-year graded options, and others as needed).
- A.33. Defined Contribution Participant Account Collection for DC Administrative and/or Expenses Purposes. The Contractor shall (i) collect on behalf of the State an annual administrative fee of .03 % (or such other amount as the State may direct) from all Defined Contribution Participant Accounts either through (A) revenue-sharing paid by a Provider to the Contractor in respect of a Defined Contribution Participant's investment in such Provider's fund, (B) an explicit fee to each Defined Contribution Participant, or (C) a combination of both (A) and

(B), and (ii) shall calculate such amount monthly at .0025 of month-end Assets and deposit the same to an unallocated trust account held by the Contractor for the exclusive benefit of the Deferred Compensation Program Administrator within thirty (30) calendar days following month-end, to be used solely at the direction of the Deferred Compensation Program Administrator for administrative purposes in accordance with plan fiduciary obligations.

A.34. Exclusivity. The Contractor agrees that it shall not offer any of its services directly to any local governmental entity within the State of Tennessee that is eligible to participate in the State's Deferred Compensation Program. With limited exceptions, the Contractor may not currently maintain plans for other entities eligible for membership in State Defined Contribution Plans. Any such exceptions must be stated in writing by the State.

Notwithstanding the above, other third-party entities that use the Contractor, its recordkeeping unit, or one of its affiliates for administrative, investment or other services may potentially offer programs that compete with the State's Program as part of their third-party arrangement in the corporate or government market. However, in that case, the Contractor's team assigned to the State's Deferred Compensation Program shall aggressively market the State's Program against the other third-party arrangement as would be the case with any other competing vendor. No assigned team members shall be in any way associated with or supportive of any third-party arrangements. Any additional such exceptions must be stated in writing by the State.

A.35. 529 Plan Account Services.

a. Opening and Funding Investment Accounts. At the State's request, the Contractor shall open accounts with investment option providers for such investment products as shall be mutually agreeable to the parties for the benefit of the State's 529 college savings plan (the "TNStars™ 529 College Savings Plan"). Upon the Contractor's receipt in good order of transaction activity, which shall be on a net redemption and/or net purchase basis, as applicable, for each investment option, received by the Contractor on a Business Day prior to the close of the New York Stock Exchange ("NYSE") as designated by the NYSE, the Contractor shall timely remit instructions to purchase or redeem shares as instructed by the State and pursuant to the terms of the prospectuses for the applicable investment options. "Good order" shall mean that the Contractor has received clear transaction instructions from the State and funds corresponding to such transaction instructions prior to 4:00 p.m. Eastern Time on a Business Day (or such earlier closing time as designated by the NYSE). Receipt in good order after such time shall be processed the next Business Day. The Contractor shall send to the State confirmations of all purchase and redemption activity as well as monthly accounts statements of all account activity. The Contractor shall maintain proper books and records of all services performed hereunder and otherwise maintain omnibus accounts for the 529 Plan for the products that are chosen. Upon receipt of a written instruction to do so by the State, the Contractor shall add, freeze or delete an investment product in accordance with the process and timing as shall be mutually agreed to by the parties. In addition, the Contractor shall designate with each investment option the State's direction regarding dividend reinvestments in the applicable designated investment options. Payment for the services described in the sections A.35.a-c will be done at the rate specified by the State in C.3.b.13.

b. Operating Procedures. The Contractor shall assist the State in developing Operating Procedures for the performance of the services set forth in this Section A.35. Once developed, said Procedures shall be considered a part of this Contract as though fully set forth herein and the Contractor shall perform such services in accordance with the Operating Procedures and this Section. Said Procedures may be amended in writing from time to time by mutual agreement of

the parties. The parties agree to amend the Operating Procedures should any changes be necessary in order to comply with any applicable State or Federal laws or regulations specifically relating to the services hereunder.

c. State Acknowledgements. The State acknowledges that the Contractor will provide investment advice to the State pursuant to subsection d of this Section, but that the State is solely responsible for the selection of the investment options, if any, as described in subsection a of this Section above. The State acknowledges that the services to be provided under this Section A.35 do not include the Contractor providing investment advice to the participants or beneficiaries of the 529 Plan. If any investment option selected by the State becomes unavailable for reasons beyond the Contractor's control, the Contractor shall provide sixty (60) calendar days prior written notice to the State unless it is unable to do so under the circumstances, in which case the Contractor shall provide to the State with as much notice as is possible. The State acknowledges that it has the primary responsibility for any education and marketing initiatives for the 529 Plan. The State further acknowledges that the Securities and Exchange Commission requires mutual fund companies to establish procedures to prevent market timing and excessive trading. The State agrees to adhere to the terms and conditions of the Procedures for Complying with Fund Company Market Timing and Excessive Trading Policies, which is attached hereto as Attachment 6.

d. Consultation and Advice for the TNStars™ 529 College Savings Plan. The Contractor shall perform investment consulting services requested by the State in connection with the TNStars™ 529 College Savings Plan, and shall be, in general, an advisor to the State in the analysis and selection of investments for the 529 Plan.

(i) General Services. Such services shall include the following:

- a. Review Investment Policy and Guidelines. The Contractor shall conduct an annual review of the investment policy and guidelines within the context of the then current market conditions and the 529 Plan's investment performance. The Contractor shall advise the State of any recommended changes to the investment policy or guidelines as a result of such review, and shall, at the State's request, reduce any such recommendations to a written report for the State's consideration. Any such recommended changes must meet any applicable terms, conditions and limitations contained in Tennessee Code Annotated, Sections 49-7-801, et seq., Section 529 of the Internal Revenue Code, and any other applicable federal and state laws and regulations.
- b. Investment Vehicles' Performance Review. On a quarterly basis, the Contractor shall provide written evaluation reports on the investment performance of each Investment vehicle provided to 529 Plan Participants under the 529 Plan. Performance data shall cover a ten year period if available. Said reports shall identify whether the Investments are within any applicable asset ranges, that performance is consistent with the investment objectives and policies developed pursuant to A.35.d(i)a, and that the Investment vehicles are performing consistently within applicable industry standards. The performance evaluation reports shall cover the following areas: (i) economic overview; (ii) top-down look at the 529 Plan's investment line-up; (iii) individual fund investment style; (iv) fund performance based on the criteria in the investment policy statement; (v) individual fund performance versus the appropriate peer group; and (vi) investment option risk analysis. The quarterly reports shall further contain suggestions on replacements of underperforming Investment vehicles, and recommendations on asset classes where deficiencies exist with the then current Investment line-up.

- c. Selection of Additional Investment Vehicles. At the State's request, the Contractor shall provide a written analysis of any additional Investment vehicles that the State is considering for the 529 Plan. Such analysis shall entail the objective evaluation of the Investment vehicles using risk-adjusted returns, total returns, expenses, style consistency, and manager tenure. The analysis shall further provide a top-down analysis to ensure the 529 Plan will have adequate asset class coverage from its then current Investment vehicles and from those vehicles the State is considering to add.
- d. Meetings. The Contractor shall be available on a quarterly basis to meet with appropriate State personnel, committees, boards and commissions at the State's facilities in Nashville to explain the reports described in this Section, or to discuss any other matter in connection with the services being performed by the Contractor hereunder. The Contractor shall further be available to meet with the State as needed by teleconference, or through the use of other media as mutually agreed to discuss the operation of the 529 Plan, any recommendations, and any miscellaneous questions or problems in relation thereto.

A.36. Change Orders. The State may, at its sole discretion and with written notice to the Contractor, request changes in the scope of services that are necessary but were inadvertently unspecified in the scope of services of this Contract. Changes requested will be for further specifications of services within, or closely related to, this Scope of Services.

- a. Memorandum of Understanding – After receipt of a written request for additional services from the State, the Contractor shall respond to the State, within a maximum of ten (10) business days, with a written proposal for completing the service. Said proposal must specify:

- (1) The effect, if any, of implementing the requested change(s) on all other services required under this Contract;
- (2) The specific effort involved in completing the change(s);
- (3) The expected schedule for completing the change(s);
- (4) The payment rate(s) in Section C.3.b applicable to the change requested; and
- (5) The maximum cost for the change(s) – this maximum cost shall provide in detail the applicable payment rate(s) and maximum number of units or increments to which the rate is applied. In no instance shall the maximum cost exceed the product of the units or increments required multiplied by the appropriate payment rate for such work.

The Contractor shall not perform any additional service until the State has approved the proposal. If approved, the State will sign the proposal, and it shall constitute a Memorandum of Understanding (MOU) between the Contract Parties pertaining to the specified change(s) and shall be incorporated, hereby, as a part of this Contract.

- b. MOU Performance – Subsequent to State approval of an MOU, the Contractor shall complete the required services. The State will be the sole judge of the acceptable completion of work and, upon such determination, shall provide the Contractor written approval.
- c. MOU Remuneration – The State will remunerate the Contractor only for acceptable work. All acceptable work performed pursuant to an approved MOU, without a formal amendment of this contract, shall be remunerated in accordance with and further limited by contract section C.3.c., PROVIDED THAT, the State shall be liable to the Contractor only for the cost of the actual units or increments needed to complete the necessary work, not to exceed the maximum cost for the change detailed in the MOU. In no instance shall the State be liable to the Contractor for the cost of any units or increments in excess of the maximum indicated in or of any amount exceeding the

maximum cost specified by the approved MOU authorizing the service. Upon State approval of the work, the Contractor shall invoice the State in accordance with the relevant provisions of this Contract.

**B. CONTRACT PERIOD:**

This Contract shall be effective for the period beginning January 1, 2015, and ending on December 31, 2022. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. The Contractor specifically acknowledges and agrees that it shall not be entitled to receive any compensation or remuneration whatsoever from the State in connection with the Contractor's services under Sections A.2-A.5; A.6.a; A.7.a-d; A.8-A.20; A.22-A.24; A.26-A.27; and A.32-A.34 hereof. Instead, the Contractor shall be entitled to the Service Rates in Sections C.3.b.1 below, which shall constitute the entire compensation due the Contractor for such services and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, profits, and all other direct and indirect costs incurred or to be incurred by the Contractor.

In no event shall the maximum liability of the State under this Contract for the services performed in Sections C.3.b(10)-(13) hereof exceed eight million nine hundred four thousand four hundred forty dollars (\$8,904,440.00). Additionally, in no event shall the maximum liability of the State under this Contract for the services performed in Section C.3.b(9) hereof exceed forty thousand dollars (\$40,000.00). Additionally, in no event shall the maximum liability of the State under this Contract for the services performed in Section C.3.b(14) hereof exceed four million one hundred twenty-six thousand and two hundred ten dollars (\$4,126,210.00). The payment rates in Sections C.3.b.(10)-(13), C.3.b.(9), and C.3.b(14) shall constitute the entire compensation due the Contractor for such services and Contractor 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 Sections C.3.b.(10)-(13), C.3.b(9), and C.3.b.(14). 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 State has a fiduciary duty to the participants of the Defined Benefit, Defined Contribution, and College Savings Plans, and all costs for services to each plan must be fairly apportioned to the Plan receiving services and not inappropriately assigned.

- 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.
- 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:

Service Description	Amount (per compensable increment)	
(1) Defined Contribution third party administrative/recordkeeping services detailed in Sections A.2 – A.5, Section A.6.a, Section A.7.a-d, Sections A.8 – A.20, Sections A.22- A.24, Sections A.26 – A.27, and in Sections A.32 – A.34		
	2015	.0175 % per month of the total value of the Assets of the 401(k) and 457 Plans as of the end of the month.
	2016	.0175 % per month of the total value of the Assets of the 401(k) and 457 Plans as of the end of the month.
	2017	.01667 % per month of the total value of the Assets of the 401(k) and 457 Plans as of the end of the month.
	2018	.01667 % per month of the total value of the Assets of the 401(k) and 457 Plans as of the end of the month.
	2019	.01667 % per month of the total value of the Assets of the 401(k) and 457 Plans as of the end of the month.

	2020	.01583 % per month of the total value of the Assets of the 401(k) and 457 Plans as of the end of the month.
	2021	.01583 % per month of the total value of the Assets of the 401(k) and 457 Plans as of the end of the month.
	2022	.01583 % per month of the total value of the Assets of the 401(k) and 457 Plans as of the end of the month.
(2) DC Participant Investment Advisory/Guidance Services Detailed in Section A.6.a.7.		\$0.00
(3) Self-Directed Brokerage Services-Plan/Participant Detailed in Section A.29		\$50.00
(4) Loan Withdrawal Initiation Processing Detailed in Section A.21		\$50.00
(5) Loan Maintenance Detailed in Section A.21		\$25.00
(6) QDRO Qualification/Administration		\$250.00
(7) Participant Managed Account services Detailed in Section A.30		The fee shall be a tiered asset system as follows: 0.45% per year on the first \$100,000 contained in the Participant's Account; then 0.35% per year on the next \$150,000 in the Participant's Account; then 0.25% per year on the next \$150,000 in the Participant's Account; and then .15% per year for any amounts over \$400,000 in the Participant's Account.
(8) Plan Level Investment Consulting Services for the Defined Contribution Plans detailed in Section A.25		
	2015	\$30,000.00
	2016	\$30,750.00
	2017	\$31,519.00
	2018	\$32,307.00

	2019	\$33,114.00
	2020	\$33,942.00
	2021	\$34,791.00
	2022	\$35,661.00
(9) TNStars™ 529 Plan Level Investment Consulting Services Detailed in Section A.35.d		\$5,000.00 annually
(10) Defined Benefit Call Center Support Services Detailed in Section A.7.e		
	First 12 months of operation	\$100,000.00
	Second 12 months of operation	\$20,000.00
	Third 12 months of operation	\$20,000.00
	Fourth 12 months of operation	\$20,000.00
	Fifth 12 months of operation	\$20,000.00
	Sixth 12 months of operation	\$20,000.00
	Seventh 12 months of operation	\$20,000.00
(11) Defined Benefit Call Center Representatives (Number to be agreed upon between the State and the Contractor) for Call Center Detailed in Section A.7.e		
<u>Time Period</u>	<u>Number of Representatives</u>	<u>Cost per Representative</u>
First 12 months of operation	8	\$76,875.00
Second 12 months of operation	8	\$78,797.00
Third 12 months of operation	8	\$80,767.00
Fourth 12 months of operation	8	\$82,786.00
Fifth 12 months of operation	8	\$84,856.00
Sixth 12 months of operation	8	\$86,977.00
Seventh 12 months of operation	8	\$89,151.00
(12) Defined Benefit Employee Communications (excluding field representative support) Detailed in Sections A.6.b.2-3 and A.6.c.		\$60,000.00
(13) Defined Benefit Participant Employee Education (Number to be agreed upon between the State and the Contractor) for Services Detailed in Sections A.6.b.4-5		Annual cost per representative in \$

<u>Time Period</u>	<u>Number of Representatives</u>	<u>Cost per Representative</u>
First 12 months of operation	4	\$120,000.00
Second 12 months of operation	4	\$123,000.00
Third 12 months of operation	4	\$126,075.00
Fourth 12 months of operation	4	\$129,227.00
Fifth 12 months of operation	4	\$132,458.00
Sixth 12 months of operation	4	\$135,769.00
Seventh 12 months of operation	4	\$139,163.00
(14) 529 Plan Account Services Detailed in Section A.35.a-c		.03% per annum (0.0025% per month) of the total value of the assets of the 529 Plan as of the end of the month

- c. Payment rates for changes requested and performed pursuant to Contract Section A.36 will be in accordance with the rates in C.3.b above corresponding with the specific changes requested. The Contractor's MOU will specify the applicable rates above for State approval. The Contractor shall be compensated for changes requested and performed pursuant to Contract Section A.36, without a formal amendment of this contract.

Compensation to the Contractor for such "change order" work shall not exceed three and one half percent (3.5%) of the sum of milestone payment rates detailed in Section C.3.b. above (which is the total cost for the milestones and associated deliverables set forth in Contract Sections C.3.b.1-15). If, at any point during the Contract period, the State determines that the cost of necessary "change order" work would exceed said maximum amount, the State may amend this Contract to address the need.

C.4. Payment Requirements. The Contractor shall be compensated in the following manner:

- a. The fees in Item (1) of Section C.3.b. above shall be debited by the Contractor monthly from the respective Participant's Accounts. Said fees shall be subject to reduction by mutual agreement of the parties through a subsequent amendment to this Contract should there be a significant increase in Assets.
- b. The fees in Items (2), (3), (4), (5), (6), and (7) of Section C.3.b above shall be debited by the Contractor from the Participants' accounts who use such service.
- c. The Contractor shall invoice the State for the fees in Items (9), (10), (11), (12), and (13) of Section C.3.b above on a quarterly basis at the rate agreed upon under this Contract. Such

invoices and documentation shall be submitted in accordance with the procedures outlined in Section C.4.f.

- d. The fee in Item (8) of Section C.3.b. above shall be transferred by the State to the Contractor from the trust account described in Section A.34 above no later than forty-five (45) calendar days after the end of each quarter.
- e. The Contractor shall invoice the State for the fees in Item (14) of Section C.3.b above on a quarterly basis at the rate agreed upon under this Contract. Such invoices and documentation shall be submitted in accordance with the procedures outlined in Section C.4.f.
- f. The Contractor shall invoice the State for the fees in Items (9), (10), (11), (12), (13), and (14) of Section C.3.b only for completed increments of service and for the amounts stipulated in above, and present said invoices at the end of each calendar quarter, with all necessary supporting documentation, to:

Budget Officer  
Division of Administrative Services  
Tennessee Treasury Department  
14th Floor, Andrew Jackson State Office Building  
502 Deaderick Street  
Nashville, Tennessee 37243-0206

- (1) Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
  - i. Invoice Number (assigned by the Contractor)
  - ii. Invoice Date
  - iii. Contract Number (assigned by the State)
  - iv. Customer Account Name: Tennessee Treasury Department (Please specify the services and amounts for each plan)
  - v. Customer Account Number (assigned by the Contractor to the above-referenced Customer)
  - vi. Contractor Name
  - vii. Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
  - viii. Contractor Contact for Invoice Questions (name, phone, and/or fax)
  - ix. Contractor Remittance Address
  - x. Description of Delivered Service
  - xi. Complete Itemization of Charges, which shall detail the following:
    - (A) Service or Milestone Description (including name & title as applicable) of each service invoiced
    - (B) Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
    - (C) Applicable Payment Rate (as stipulated in Section C.3.b of each service invoiced)
    - (D) Amount Due by Service
    - (E) Total Amount Due for the invoice period

(2) The Contractor understands and agrees that an invoice under this subsection C.4.f shall:

- i. include only charges for services described in Contract Section C.3.b and in accordance with payment terms and conditions set forth in Contract Section C;
- ii. only be submitted for completed service and shall not include any charge for future work;
- iii. not include sales tax or shipping charges; and
- iv. initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this Section C.4.f.

(3) A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.

(4) The Contractor shall not invoice the State under this subsection C.4.f until the State has received the following documentation properly completed.

- i. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, 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).
- ii. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

C.5. Minimum Fees - Employer Contributions. In recognition of the fact that the State of Tennessee has elected to make Employer contributions to the Profit Sharing Plan on behalf of Employees, thereby resulting in a reduction in the average account balance in that Defined Contribution Plan, each Employee with an account in that Defined Contribution Plans shall be subject to a minimum annual fee of twelve dollars (\$12.00). The Contractor shall grant each such Defined Contribution Participant credit toward this minimum fee for fees generated by the Defined Contribution Participant's Deferred Account in accordance with Section C.3.b. hereof. The frequency with which the above minimum fees will be applied, the dates of minimum fee assessment, and the method of calculating the credit granted to Defined Contribution Participants toward the minimum fees shall be mutually determined in writing by the Contractor and the State.

C.6. Offsets. Any and all other fees, rebates, or other sources of revenue received by the Contractor or by the 401(k) or 457 Plans from Providers shall be disclosed to the State and shall be used to offset the Contractor's compensation set forth in Section C.3.b.(1)-(7) above. Any excess of fees, rebates, and revenues over the administrative charges set forth in Section C.3.b(1) above shall be remitted to or retained by the 401(k) or 457 Plan, as applicable. Neither the Contractor nor any officer, director, or employee of the Contractor, or any Affiliate of the Contractor, shall receive any direct or indirect compensation from a Provider or any Affiliate of a Provider as a result of

the selection of any Investment for the 401(k) and 457 Plans or as a result of the enrollment of an Employee in any Investment of the 401(k) and 457 Plans beyond that which is specifically provided in this Contract.

In addition to the above, the Contractor shall pay an annual revenue share amount of \$38,000 to the 401(k) Plan and \$2,000 to the 457 Plan, to be used for Plan purposes as set forth in the respective Plan documents and as instructed by the State. These assets will be invested in a single investment option as specified by the State.

- C.7. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.8. Payment Reductions. Future payments to the Contractor shall be subject to reduction for amounts paid 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.9. 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.

**D. STANDARD TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Chief Procurement Officer, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Chief Procurement Officer, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- 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 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.

- a. The State will provide notification of termination for cause in writing. This notice will: (1) specify in reasonable detail the nature of the breach; (2) provide the Contractor with an opportunity to cure, which must be requested in writing no less than 10 days from the date of the Termination notice; and (3) shall specify the effective date of termination in the event the Contractor fails to correct the breach. The Contractor must present the State with a written request detailing the efforts it will take to resolve the problem and the time period for such resolution. This opportunity to "cure" shall not apply to circumstances in which the Contractor intentionally withholds its services or otherwise refuses to perform. The State will not consider a request to cure contract performance where there have been repeated problems with respect to identical or similar issues, or if a cure period would cause a delay that would impair the effectiveness of State operations. In circumstances where an opportunity to cure is not available, termination will be effective immediately.
- b. Notwithstanding the foregoing, 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, each 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 or third-party suppliers, the Contractor shall be the prime contractor and shall be responsible for all work performed.

The parties agree that all references in this Contract to subcontracts, subcontractors and related provisions shall be deemed to mean subcontractors engaged by the Contractor specifically for the provision of services to the State hereunder and not affiliates and third party suppliers used generally by the Contractor in its recordkeeping business to perform certain components of the services ("third-party suppliers"). The parties agree that the Contractor shall have the right to subcontract the investment consulting services described herein to Advised Assets Group, LLC, a registered investment adviser and subsidiary of Contractor, and that such subcontracted services will be subject to the sections below entitled "Conflicts of Interest," "Nondiscrimination," and "Records" as required by this section. Such third-party suppliers shall not be subject to the obligations in this Contract pertaining to subcontractors and subcontracts (such as approval rights and the flow-through of certain contract provisions); however, the Contractor will provide reasonable information about third-party suppliers to the State upon request and discuss in good faith any concerns the State may have about any third-party supplier.

D.6. Conflicts of Interest. The Contractor warrants that no part of this 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.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

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 handicap or 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. Pursuant to the requirements of *Tennessee Code Annotated*, Section 12-3-309, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, 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 affirms this attestation with its submission of Attachment 5.
- 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. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401, *et seq.*.
- D.11. 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.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. 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.14. 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.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. 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.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. 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.19. 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.20. 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.21. 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:

Kaci Lantz, Deferred Compensation Manager  
State of Tennessee, Department of Treasury

13<sup>th</sup> Floor, Andrew Jackson State Office Building  
502 Deaderick Street  
Nashville, TN 37243-0248  
Kaci.lantz@tn.gov  
Telephone # (615) 532-2347  
FAX # (615) 401-6819

The Contractor:

Brent Neese, Vice President, Government Markets  
Great-West Life & Annuity Insurance Company  
8525 East Orchard Road, 10T3  
Greenwood Village, CO 80111  
Brent.neese@greatwest.com  
303-737-3297  
303-801-5392

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. The State agrees to provide as much notice as it reasonably is able. 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, if a retired member of TCRS, 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. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.
- a. The Contractor shall maintain, at minimum, the following insurance coverage:

- (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
- (2) Commercial General Liability (including personal injury & property damage, premises/operations, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
- (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.
- (4) Errors and Omissions Coverage with a limit of not less than one million dollars (\$1,000,000) per occurrence and five million dollars (\$5,000,000) aggregate.
- (5) Fidelity bond coverage with a limit of not less than ten million dollars (\$10,000,000) per occurrence and ten million dollars (\$10,000,000) aggregate.
- (6) Cyberliability Coverage (including privacy breach response and network asset protection) with a limit of not less than five million dollars (\$5,000,000) aggregate. The State is to be notified immediately if 50% of the required insurance aggregate limit is encumbered. The Contractor's obligation to obtain the insurance does not waive or release the Contractor's liabilities or duties to indemnify under this Agreement.

- b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

E.6. Waiver of Subrogation. The Contractor waives all rights against the State for damages caused by any incident to the extent covered by insurance required under Section E.5.a(6) of this Contract. The Contractor shall require similar waivers by any and all Subcontractors. All insurance policies required under Section E.5.a(6) shall permit and recognize such waivers of subrogation.

E.7. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal 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 applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information 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 applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. The Contractor acknowledges that in performing the services under this Contract, such acquired information considered confidential will include, but not be limited to, social security numbers, financial account information, and information that would be defined as "protected health

information” under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The State and Contractor acknowledge that HIPAA does not apply to this agreement; however, the Contractor agrees to maintain strict standards of confidentiality for “protected health information” it may acquire in the performance of services under this agreement.

The Contractor agrees to provide a copy of its policies and procedures for maintaining secure information upon request by the State.

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. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

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

- E.8. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of *Tennessee Code Annotated*, Section 12-7-101, *et. seq.*, shall be printed pursuant to this contract unless a printing authorization number has been obtained and affixed as required by *Tennessee Code Annotated*, Section 12-7-103 (d).
- E.9. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor’s performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor’s own defense thereof.
- E.10. Unauthorized Disclosure of Confidential Information. The Contractor shall report to the State any instances of unauthorized disclosure of confidential information of DC Participants or their beneficiaries [or other individuals for whom the Contractor provides services as agreed upon by the Contractor and the State] that come to the attention of the Contractor. Such information means any of the following: (i) social security number; (ii) account number; (iii) credit card or debit card number; (iv) account password; or (v) any other piece of information that can be used to access an individual’s financial accounts or obtain identification, act as identification, or obtain goods or services. Such information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

Any such report shall be made by the Contractor in the most expedient time possible and without unreasonable delay after the instance has come to the attention of the Contractor, provided that such report must be made within seventy-two (72) hours after the instance has come to the

attention of the Contractor. The State at its discretion, may request for Contractor to provide no cost credit monitoring services for Participants and beneficiaries [and other individuals as necessary] that are deemed to be part of the disclosure if the disclosure was caused by the Contractor, any of its employees, officers, agents, subcontractors and the like, and such request shall not be unreasonably denied. The Contractor shall bear the cost of notification to the Participants and beneficiaries [and other individuals as necessary] that are involved in the disclosure event, including individual letters and/or public notice, if the disclosure was caused by the Contractor, any of its employees, officers, agents, subcontractors and the like. The notification must include (i) a description of the information disclosed; (ii) contract information for the Contractor, including a toll-free number if the Contractor has one; (iii) toll-free numbers and addresses for each of the following credit reporting agencies: Equifax, Experian and TransUnion; and (v) a statement that the individual can obtain information from these sources about steps to avoid identity theft. The State reserves the right to review and approve all notifications made to Participants and beneficiaries [and other individuals as necessary] under this Section.

E.11. Representations. The Contractor represents and warrants to the State the following:

- a. Neither the Contractor nor any officer, stockholder, director, or employee of the Contractor, or any Affiliate of the Contractor, is subject to any present or past litigation or administrative proceeding of or before any court or administrative body which would have a material adverse effect on the Contractor, or its ability to discharge its responsibilities under this Contract, or which would impair their ability to act as a fiduciary under a qualified plan, nor, to its knowledge, is any such litigation or proceeding presently threatened against any of them or their property.
- b. The Contractor and its Affiliates, to the best of its knowledge, are presently in compliance with all existing laws and regulations, a violation of which would or could materially adversely affect the Contractor's operations or would or could materially adversely affect its ability to fulfill its obligations and undertakings set forth in this Contract.
- c. The Contractor is in good standing with the State of Tennessee and all its departments and agencies.
- d. The Contractor has and shall maintain the capability to adequately carry out the recordkeeping and reporting requirements of the Defined Contribution Plans including access to the necessary computer and data retention equipment needed to provide such recordkeeping and reporting.
- e. The Contractor shall promptly notify the State in the event that any of the foregoing representations and warranties are no longer true and correct.

E.12. Administrative Representatives. Simultaneously with the execution of this Contract by the Contractor, the Contractor shall notify the Deferred Compensation Program Administrator in writing of the name of its representative or representatives, and the State shall notify the Contractor in writing of the name of the Deferred Compensation Program Administrator, if other than the Chair of the Consolidated Retirement Board. The Contractor and the Deferred Compensation Program Administrator may, without liability, deal with their respective designees until notified in writing of any successor.

E.13. Independence of Services. Unless the State deems it appropriate, neither the Contractor nor any of its Affiliates shall be permitted to act as an Investment Provider under the Defined Contribution Plans during the term of this Contract. Unless approved by the State, investment products obtained or obtainable from the Contractor shall not be communicated to DC Participants in conjunction with the Contractor's communication responsibilities hereunder. If any licensed agent of the Contractor who performs enrollment services for the DC Plans sells an investment

product to any DC Participant outside the DC Plans, the Contractor shall first obtain a signed statement from the DC Participant acknowledging the DC Participant's understanding that such product is not affiliated with the DC Plans and has not been reviewed or recommended by the State. The language in such statement shall be approved by the DC Plan Administrator and such statement shall be retained in the DC Participant's Plan file and a copy furnished to the DC Plan Administrator.

- E.14. Future Enhancements. The Contractor agrees to make available to the State for the benefit of its Employees under the Defined Contribution Plans, future enhancements and improvements of its administrative services provided to other similarly situated governmental deferred compensation programs with the same or similar characteristics for such compensation as may be mutually agreed upon by the parties through an amendment to this Contract.
- E.15. Errors. Overpayments caused by the Contractor's errors shall be the responsibility of the Contractor, not to be charged to the State, regardless of whether or not such overpayments can be recovered by the Contractor; provided, however, the State will not withhold its reasonable cooperation in the Contractor's recovery efforts, but the decision to institute or join in litigation will remain in the sole discretion of the State. Repayment must be made within thirty (30) calendar days of the discovery of the error. Overpayments due to fraud, other than fraud by employees of the Contractor, will not be considered overpayments due to errors. The Contractor shall assist in identifying fraud and make reasonable efforts to recover overpayments due to fraud. The State will not hold the Contractor responsible for overpayments caused by the State's errors; however, the Contractor shall assist in recovery of such overpayments. The Contractor will be given full credit for all refunds that result from recovery of overpayments to the extent that the Contractor is held financially responsible for such overpayment pursuant to this Contract. It is further understood that the Contractor shall be liable, and solely responsible, for any processing errors of the Contractor or its agents. In the event of a Defined Contribution Participant's loss of interest or dividend and/or principal due to an error by the Contractor or its agents in processing transactions on behalf of a Defined Contribution Participant or the State, the Contractor shall put the Defined Contribution Participant in the same position as if the processing error had not occurred.
- E.16. Notice of Lobbyist. Should the Contractor retain the services of lobbyist, as that term is defined in Tennessee Code Annotated, Section 3-6-102, the Contractor shall immediately notify the Deferred Compensation Program Administrator in writing.
- E.17. 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 Deferred Compensation Program Administrator's instructions all records and monies held by the Contractor hereunder to whomever the Deferred Compensation Program Administrator may designate in writing to the Contractor. Such records and monies shall be furnished to the State or to the Deferred Compensation Program Administrator's written designee within fifteen (15) calendar days after the Deferred Compensation Program Administrator's written request therefor. The records and monies shall be transmitted to the State or to the Deferred Compensation Program Administrator's written designee pursuant to reasonable written instructions given by the Deferred Compensation Program Administrator. The Contractor shall also provide the State with a full written accounting of the status of Defined Contribution Participants' Deferred Accounts under the Defined Contribution Plans. 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.

E.18. Tennessee Department of Revenue Registration. The Contractor shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

E.19. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

- Failure to perform in accordance with any term or provision of the Contract;
- Partial performance of any term or provision of the Contract;
- Any act prohibited or restricted by the Contract, or
- Violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

a. Contractor Breach – The State shall notify Contractor in writing of a Breach.

- (1) In even of a Breach by Contractor, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity.
- (2) Partial Default – In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (a) the date which Contractor shall terminate providing the service associated with the Breach; and (b) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (a) amounts which would be paid the Contractor to provide the defaulted service; or (b) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount. Upon Partial Default, 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. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

- (3) Contract Termination – In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor

agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

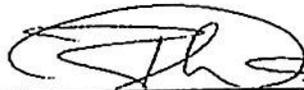
- b. **State Breach** – In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State’s Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as waiver of the State’s Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

E.21. **Incorporation of Additional Documents.** Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor’ duties, responsibilities, and performance under this Contract, these terms shall govern in order of precedence below.

- a. this Contract document with any attachments or exhibits (excluding the items listed at subsections b. through e. below);
- b. any clarifications or addenda to the Contractor’s Technical Proposal seeking this Contract;
- c. the State solicitation, as may be amended, requesting proposals in competition for this Contract; provided, that any statistical figures included in the State’s solicitation represent the State’s best estimate and are not guarantees of revenues or volumes;
- d. any technical specifications provided to proposers during the procurement process to award this Contract;
- e. the Contractor’s Technical Proposal seeking this Contract.

**IN WITNESS WHEREOF,**

**GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY:**



12.19.2014

CONTRACTOR SIGNATURE

Brent Neesa, Vice President  
Government Markets

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

STATE OF TENNESSEE, DEPARTMENT OF TREASURY:



DAVID H. LILLARD, JR., STATE TREASURER

October 19, 2014

DATE

Approved for signature by CA 12/19/14

