

STATE OF TENNESSEE



DAVID H. LILLARD, JR.
STATE TREASURER

TREASURY DEPARTMENT

615.741.2956
David.Lillard@tn.gov

STATE CAPITOL
NASHVILLE, TENNESSEE 37243-0225

Sender's telephone: 615.770.1754
Sender's email: heather.iverson@tn.gov

MEMORANDUM

TO: Fiscal Review Committee

FROM: Heather Iverson, *HIV*
Assistant General Counsel

DATE: January 29, 2018

SUBJECT: Amendment Request for Bill Hudson Agency Contract

Attached please find for your consideration an amendment request relative to the Tennessee Department of Treasury's contract with Bill Hudson Agency (the "Contractor") for the provision of marketing and advertising services for the State's TNStars College Savings Plan. The Contractor has merged with another firm and is expected to change its name to "Dalton Agency" later this year. The purpose of this amendment is to effect this name change.

Please note that the accounting information regarding expenditures under the contract comes from the Department's internal accounting system, and the program has confirmed this spreadsheet indicates the total amount spent to-date under the contract. Edison does not reflect all of the expenditures, though the Department is working to update Edison to reflect all expenditures under the contract.

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Heather Iverson	*Contact Phone:	615-770-1754		
*Presenter's name(s):	Ashley Nabors				
Edison Contract Number: <i>(if applicable)</i>	51274	RFS Number: <i>(if applicable)</i>			
*Original or Proposed Contract Begin Date:	August 1, 2016	*Current or Proposed End Date:	July 31, 2019		
Current Request Amendment Number: <i>(if applicable)</i>	One				
Proposed Amendment Effective Date: <i>(if applicable)</i>	May 1, 2018				
*Department Submitting:	Department of Treasury				
*Division:	Financial Empowerment				
*Date Submitted:	January 29, 2018				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	Bill Hudson Agency				
*Current or Proposed Maximum Liability:	\$1,500,000				
*Estimated Total Spend for Commodities:					
*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY: 2017	FY: 2018	FY: 2019	FY:	FY	FY
\$500,000	\$500,000	\$500,000	\$	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)					
FY: 2017	FY: 2018	FY: 2019	FY:	FY	FY
\$334,565.48	\$139,239.64	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			Once the program began working with the contractor, there was a ramp-up period during which the program learned more about the services that the contractor could provide, so the program spent less than the estimate. The surplus funds remained with the program.		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			§ 49-7-812 provides that revenues collected by the program stay with the program to fund its purposes or the Tennessee Financial Literacy Commission.		
IF Contract Expenditures exceeded Contract Allocation, please give the			N/A		

Supplemental Documentation Required for
Fiscal Review Committee

reasons and explain how funding was acquired to pay the overage:			
*Contract Funding Source/Amount:			
State:	100%	Federal:	
<i>Interdepartmental:</i>		<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>		Alternative Competitive Procurement authorized under Tenn. Code Ann. Section 49-7-805(5)	
*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 program determined projected \$1,500,000 in costs based on the amount of state appropriations and program-generated estimates for services that could be obtained through the contract.	
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.			

Total 13

Unit	Voucher	Invoice	Date	Remit Supp
3090100065082	010915-0000		11/16/2016	0000094750
3090100066234	011333-0000		1/23/2017	0000094750
3090100066244	011596-0000		2/28/2017	0000094750
3090100066908	011874-0000		3/30/2017	0000094750
3090100067274	012025		4/26/2017	0000094750
3090100069710	012281		5/31/2017	0000094750
3090100069819	013652		6/30/2017	0000094750
3090100070149	012758		7/31/2017	0000094750
3090100070831	013188		9/26/2017	0000094750
3090100071100	013158		10/12/2017	0000094750
3090100071103	013424		10/30/2017	0000094750
3090100071807	013583		11/20/2017	0000094750
3090100073540	013740		12/14/2017	0000094750

Name	Gross Amt	Reference
Bill Hudson Agency	112,090.13	0002442716
Bill Hudson Agency	6,560.05	0002555707
Bill Hudson Agency	27,265.89	0002549138
Bill Hudson Agency	33,434.28	0002606020
Bill Hudson Agency	39,273.74	0002646286
Bill Hudson Agency	48,928.84	0002771392
Bill Hudson & Associates Inc	67,012.55	0002772954
Bill Hudson Agency	15,990.19	0002793810
Bill Hudson Agency	5,820.00	0002843991
Bill Hudson Agency	15,308.58	0002860288
Bill Hudson Agency	13,210.00	0002886311
Bill Hudson Agency	37,733.69	0002922090
Bill Hudson Agency	51,177.18	0002959326
	473,805.12	

Message	Recon Status
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REC

State of TN payment on invoice #011333-0000 da REC

State of TN payment on invoice 011596-0000 date REC

State of TN - Invoice 011874-0000 REC

State of TN payment on invoice 012025 dated 4/2 REC

State of TN Payment on Inv. 012281 dated 05/31/ REC

Advertising Invoice Dated 6/30/17. Invoice 01365. REC

State of TN Payments for Inv. 012758 Dated 7/31 REC

State of TN Payment on Inv. 013188 dated 09/26/ REC

State of TN Payment on Inv. 013158 dated 10/12/ REC

State of TN Payment on Inv. 013424 dated 10/30 REC

State of TN Payment on Inv, 013583 dated 11/20 REC

State of TN Payment on Inv. 013740 dated 12/14 UNR

cy18-10158

Amendment Request

This request form is not required for amendments to grant contracts. Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprrs.Agsprsr@tn.gov

APPROVED

CHIEF PROCUREMENT OFFICER

DATE

Agency request tracking #	30901-31917	
1. Procuring Agency	Treasury Department	
2. Contractor	Bill Hudson Agency	
3. Edison contract ID #	51274	
4. Proposed amendment #	1	
5. Contract's Original Effective Date	August 1, 2016	
6. Current end date	July 31, 2019	
7. Proposed end date	July 31, 2019	
8. Current Maximum Liability or Estimated Liability	\$ 1,500,000	
9. Proposed Maximum Liability or Estimated Liability	\$ 1,500,000	
10. Strategic Technology Solutions Pre-Approval Endorsement Request – information technology service (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
11. eHealth Pre-Approval Endorsement Request – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
12. Human Resources Pre-Approval Endorsement Request – state employee training service	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
13. Explain why the proposed amendment is needed	<p>This Contractor provides advertising and marketing services for the TNStars program. The purpose of the amendment is to change the name of the Contractor. The Contractor has merged with Dalton Agency, another marketing firm. The Contractor will retain its current name (Bill Hudson Agency) until mid-2018, and thereafter, the firm name will be legally changed to Dalton Agency.</p>	
14. If the amendment involves a change in Scope, describe efforts to identify reasonable, competitive, procurement alternatives to amending the contract.		

Agency request tracking #	30901-31917
N/A	
<p>Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)</p> <p> </p> <p>David H. Lillard, Jr., State Treasurer and Chair of the Tennessee Consolidated Retirement System</p>	

Approved for signature by CM 4/11/18



CONTRACT AMENDMENT COVER SHEET

Agency Tracking # 30901-31917	Edison ID	Contract # 51274	Amendment # 1		
Contractor Legal Entity Name Bill Hudson Agency			Edison Vendor ID 94750		
Amendment Purpose & Effect(s) Changes name of contractor to Dalton Agency					
Amendment Changes Contract End Date: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		End Date: July 31, 2019			
TOTAL Contract Amount INCREASE or DECREASE <u>per this Amendment</u> (zero if N/A):			\$ 0		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2017	\$500,000.00				\$500,000.00
2018	\$500,000.00				\$500,000.00
2019	\$500,000.00				\$500,000.00
TOTAL:	\$1,500,000.00				\$1,500,000.00
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
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.			<i>CPO USE</i>		
Speed Chart (optional)		Account Code (optional)			

**AMENDMENT ONE
OF CONTRACT 51274**

This Amendment is made and entered by and between the State of Tennessee, Department of Treasury, hereinafter referred to as the "State" and Bill Hudson Agency 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 (the "Contract") is hereby amended as follows:

1. The following is added as Contract section E.11:

E.11 Contractor Name. All references to "Bill Hudson Agency" shall be deleted and replaced with "Dalton Agency."

2. Section D.2. of the Contract is amended by deleting all language following "The Contractor:" and replacing it with the following:

Jim Dalton, CEO
Dalton Agency
140 W. Monroe Street
Jacksonville, Florida 32202
jdalton@daltonagency.com
Telephone # (904) 398-5222 x2301

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

3. 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).
4. Amendment Effective Date. The revisions set forth herein shall be effective May 1, 2018. All other terms and conditions of the Contract not expressly amended herein shall remain in full force and effect.

Signature page follows

IN WITNESS WHEREOF,

BILL HUDSON AGENCY:

SIGNATURE

DATE

PRINTED NAME AND TITLE OF SIGNATORY (above)

STATE OF TENNESSEE, DEPARTMENT OF TREASURY:

DAVID H. LILLARD, JR., STATE TREASURER

DATE



CONTRACT

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

Begin Date August 1, 2016	End Date July 31, 2019	Agency Tracking # 30901-31917	Edison Record ID 51274
Contractor Legal Entity Name Bill Hudson Agency			Edison Vendor ID 94750

Goods or Services Caption (one line only)
For the marketing and advertising services for the State's TNStars College Savings Plan

Contractor <input checked="" type="checkbox"/> Contractor	CFDA #
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Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2017	\$500,000.00				\$500,000.00
2018	\$500,000.00				\$500,000.00
2019	\$500,000.00				\$500,000.00
TOTAL:	\$1,500,000.00				\$1,500,000.00

Contractor Ownership Characteristics:

Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American

Woman Business Enterprise (WBE)

Tennessee Service Disabled Veteran Enterprise (SDVBE)

Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.

Other:

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

Competitive Selection

The Department engaged in an alternative competitive procurement to obtain these services based on the authority contained in Tenn. Code Ann. §49-7-805(5) which provides that the Board of Trustees of the Baccalaureate Education System Trust Fund Program ("Board") has the authority to "[c]ontract with financial consultants, actuaries, auditors, investment managers and other consultants and professionals as necessary to carry out its responsibilities under this part. These services may be procured in the manner prescribed by the board without regard to the requirements of former §12-4-109, if the board determines that the services are necessary or desirable for the efficient administration of the board programs." The Board has determined that engaging in an alternative competitive procurement is an acceptable procurement method that can be used to obtain services.

Key Huntley

Other

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.

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TREASURY
AND
BILL HUDSON AGENCY**

This Contract, by and between the State of Tennessee, Department of Treasury ("State") and Bill Hudson Agency ("Contractor"), is for the provision of marketing and advertising services for the State's TNStars College Savings Plan pursuant to Section 529 of the Internal Revenue Code ("Plan"), as further defined in the "SCOPE." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

The Contractor is a For-Profit Corporation.
Contractor Place of Incorporation or Organization: Tennessee
Contractor Edison Registration ID #

A. SCOPE:

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Contractor shall provide the State with a comprehensive, strategic and innovative communications and promotional campaign for the Plan in an effort to accomplish, including, but not limited to, the following: creating awareness of the purpose of the Plan; communicating how the Plan can assist families in preparing for higher education expenses; highlighting the tax and incentive advantages of the Plan; and communicating how the Plan distinguishes itself from other college savings §529 plans. Toward that end, the Contractor shall develop, create and design a unique message tailored to the Plan that communicates the distinct advantages that the Plan can offer across all platforms, including, but not limited to, print, television, radio, community events, social media, and internet. The Contractor shall accomplish these goals by performing the following:
- a. Marketing Strategy and Initiatives. The Contractor, at the direction of and in consultation with the State, shall develop a marketing strategy for the Plan. The Contractor shall also develop promotional and informational material for the Plan in connection with the marketing strategy; the material shall only be disseminated by the Contractor upon receiving the State's written permission. The Contractor shall work with the State to ensure that the Plan's marketing and informational materials are in compliance with the Municipal Securities Rulemaking Board's ("MSRB") rules, including, but not limited to, MSRB Rule G-21, as well as all other applicable federal and state laws, rules and guidance relative to the marketing and sale of securities. The Contractor shall perform the following marketing initiatives, at the direction of and in consultation with the State, including, but not limited to:
- i. Write, produce and schedule promotions in print, radio, television and electronic media;
 - ii. Develop a marketing approach that promotes saving for higher education generally and specifically encourages saving for higher education expenses in the Plan. The strategy shall include the promotion of the following, including, but not limited to, utilizing the Plan's gifting platform to contribute to a college savings account, applicable incentives, direct deposit offered by employers for college savings contributions, and the investment advisor portal;
 - iii. Design, draft and print brochures, postcards, flyers, advertisements and web designs to promote information about the Plan purpose, achievements and advantages;

- iv. Develop sweepstakes and incentive promotions to be implemented by the State to encourage savings in the Plan;
 - v. Develop partnerships, sponsorships or alliances with other individuals or entities (including, but not limited to Chambers of Commerce, financial institutions, educational organizations, government agencies and any other corporations, partnerships, and associations) to market the Plan, encouraging the entities to allow its employees to make contributions to a Plan account through direct deposit; and
 - vi. Develop and implement a marketing strategy that encourages continued contributions in the Plan by account owners and family members for those accounts established as of the date of this Contract.
- b. Research and Analytics. In consultation with and at the direction of the State, the Contractor shall perform ongoing research to determine a creative strategy and to identify target audiences for marketing and public relations efforts to promote and encourage participation in the Plan. Such research shall include, but not be limited to, surveys, focus groups, census data, income by zip code analysis, and Tennessee savings rate data. The Contractor shall also utilize appropriate unique URL's, phone numbers, or other methods deemed appropriate to track activity and the effectiveness of marketing and advertising efforts and campaigns. The Contractor shall evaluate the Plan's image and brand, conduct an assessment of consumer perceptions of the Plan's branding and provide recommendations regarding whether or not a new or updated image or brand is needed for the Plan's marketing initiatives. To the extent that the market research indicates that new or revised branding is needed for the Plan, the Contractor shall develop a new brand and themes for the State's consideration and with the written approval of the State, shall assist the State in creating updated or revised branding for the Plan.
- A.3. Copywriting. The Contractor shall obtain the necessary and appropriate copyrights on all of the material the Contractor creates and produces for the State under the terms and provisions of this Contract. The Contractor is responsible for the payment of any costs, expenses or fees associated with the copyright of any materials and shall be reimbursed by the State for the cost, expenses or fees pursuant to Section C.3.b. in the Contract.
- A.4. Direct Mailing. At the direction of the State, the Contractor shall mail (by hard copy or electronic means) the marketing materials that it creates and produces for the State under the terms and provisions of this Contract. The Contractor is responsible for the payment of any costs, expenses or fees associated with the direct mailing of any materials.
- A.5. Additional Marketing, Advertising and Research Services. In the event that the State requests that the Contractor perform additional marketing, advertising and research services for the Plan not specifically addressed in Section A of this Contract, yet still falling under the Contract's Scope of Services, the State shall request that these additional services in writing to the Contractor detailing the services requested and time frame in which the State requests the services be provided. Payment for these additional services will be done in accordance with Section C.3.b. in the Contract.
- A.6. Monitoring and Reporting. On an ongoing basis, the Contractor shall develop a monitoring system and performance measures to assess the effectiveness of the various marketing methods, efforts and campaigns utilized to market the Plan. The Contractor shall evaluate the effectiveness of the marketing, advertising and promotion campaigns systematically based on research and analytics, and at least annually or upon the State's request, provide a written report to the State of its findings. The Contractor shall also provide a summary of activity after each marketing campaign and detailed reports at increments agreed upon by the Contractor and the State, which may include, but is not limited to, weekly, monthly and/or quarterly reports. The Contractor's reports shall specifically include an evaluation of the effectiveness of each marketing campaign. The Contractor shall provide at least bi-weekly report of digital marketing. The Contractor shall provide

proof of performance affidavits as appropriate for campaigns and copies of subcontractor or vendor invoices for marketing campaigns. The Contractor shall also provide progress reports in accordance with C.3.c. of this Contract. The Contractor is responsible for the printing and delivery of all reports developed pursuant to this Section. At the State's request, the Contractor may be required to attend in-person meetings with the State relative to the Contractor's progress and performance pursuant to the Contract provisions.

A.7. Account Management Personnel. Upon the mutual agreement of the parties, the parties shall determine the individuals employed by the Contractor who shall be assigned as the Contractor's project team members and key people assigned to deliver the goods or services under the terms of this Contract. Should any of the project team member or key persons mutually agreed upon by the parties be removed from the project team or leave the Contractor's employment during the term of the Contract, the State reserve the right to: (1) approve the appointment of the person designated to replace the team members or key people; or (2) immediately terminate the Contract pursuant to Section D.5. in the Contract. Upon such termination, the Contractor shall have no right to any actual, general, specific, incidental, consequential or any other damages whatsoever of any description or amount as a consequence of the State terminating the Contract under the provisions of this Section.

A.8. Warranty. Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty general offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

A.9. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

This Contract shall be effective on August 1, 2016 ("Effective Date") and extend for a period of thirty-six (36) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. **Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed one million five hundred thousand dollars (\$1,500,000.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. **Compensation Firm.** The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. **Payment Methodology.** The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
- b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
Media Buys (Agency Commission)	15 % of Agency commission on broadcast invoices
Banners, Signage, Booths	\$5,000.00
Talent and Media Production	\$33,050.00
Digital and Search Marketing	\$200.00 per hour
Research and Analytic Services	\$200.00 per hour
Account Management	\$150.00 per hour
Art Direction	\$175.00 per hour
Copywriting (including any fees to copyright material)	\$150.00 per hour
Creative Direction	\$175.00 per hour
Digital Services	\$100.00 per hour
Illustration	\$150.00 per hour
Production Supervision	\$150.00 per hour
Public Relations	\$150.00 per hour
Graphic Design	\$150.00 per hour
Direct Mail Services (including any costs to mail material)	\$135.00 per hour
Additional Services at the request of the State pursuant to Section A.5. in the Contract.	\$135.00 per hour

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

LaKesha Page
Director of College Savings
Tennessee Department of Treasury
Andrew Jackson Building, 15th Floor
502 Deaderick Street
Nashville, Tennessee 37243-0206

- a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
- (1) Invoice number (assigned by the Contractor);
 - (2) Invoice date;
 - (3) Contract number (assigned by the State);
 - (4) Customer account name: Tennessee Department of Treasury; Division of Financial Empowerment;
 - (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
 - (6) Contractor name;
 - (7) Contractor Tennessee Edison registration ID number;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
 - (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
 - (13) Amount due for each compensable unit of good or service; and
 - (14) Total amount due for the invoice period.
- b. Contractor's invoices shall:
- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
 - (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
 - (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
 - (4) Include shipping or delivery charges only as authorized in this Contract.
- c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.
- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
 - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.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. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

LaKeshia Page
Director of College Savings
Tennessee Department of Treasury
Andrew Jackson Building, 15th Floor
502 Deaderick Street
Nashville, Tennessee 37243
LaKeshia.Page@tn.gov
Telephone # (615) 532-5888
FAX # (615) 734-6467

The Contractor:

Steve Travis, President
Bill Hudson Agency

814 Church Street, Suite 100
Nashville, Tennessee 37203
stravis@billhudsonagency.com
Telephone # (615) 259-9002

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. 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 materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation 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 under 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 (6) 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 (6) months has been, an employee of the State of Tennessee.

- D.9. 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, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) 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.12. 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.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, 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 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.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party 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 are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- D.19. Hold Harmless. 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, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 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 under Tenn. Code Ann. §§ 8-35-101, *et seq.*, 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 Term.
- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, 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, whether written or oral.
- D.28. 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 of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

D.30. 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's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:

- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
- b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes **Attachments 1 and 2**;
- c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
- d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
- e. any technical specifications provided to proposers during the procurement process to award this Contract; and
- f. the Contractor's response seeking 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, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. 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 that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, 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. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law. The obligations set forth in this Section shall survive the termination of this Contract.
- E.3. State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.
- E.4. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of Tenn. Code Ann. §§ 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 Tenn. Code Ann. § 12-7-103 (d).
- E.5. Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.6. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- E.7. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal

contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352.

E.8. Intellectual Property. 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 concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

E.9. Applicable Gifts and Solicitations Policy. The Contractor shall not offer to give, or give, any gift to any employee of the Treasury Department or to any member of a Board, Commission or Committee administratively attached to the Treasury Department that would violate the Treasury Department's Gifts and Solicitations Policy, attached hereto as **Attachment "2"**.

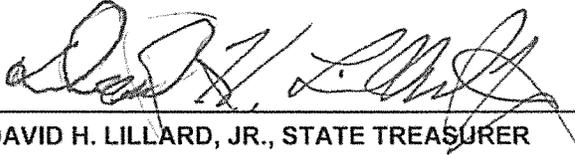
E.10. Survival. The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.

IN WITNESS WHEREOF,

BILL HUDSON AGENCY:

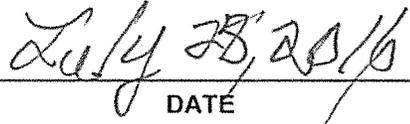
	7 - 29 - 16
_____ CONTRACTOR SIGNATURE	_____ DATE
STEVEN D. TRAVIS	PRESIDENT
_____ PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)	

DEPARTMENT OF TREASURY:



Handwritten signature of David H. Lillard, Jr. in black ink, written over a horizontal line.

DAVID H. LILLARD, JR., STATE TREASURER



Handwritten date "July 28, 2016" in black ink, written over a horizontal line.

DATE

Approved for signature by CA 7/28/16

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
EDISON VENDOR IDENTIFICATION NUMBER:	

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



CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

STEVEN D. TRAVIS

PRESIDENT

PRINTED NAME AND TITLE OF SIGNATORY

7-29-16

DATE OF ATTESTATION

ATTACHMENT 2

TREASURY DEPARTMENT GIFTS AND SOLICITATION POLICY

No employee or any member of a Board, Commission or Committee administratively attached to the Department shall solicit, accept or agree to accept, directly or indirectly, on behalf themselves or their immediate family, any gift in violation of state law including, but not limited to, any gratuity, service, favor, entertainment, lodging, transportation, loan, loan guarantee rebate, money, any promise, obligation or contract for future awards or compensation or any other thing of monetary value, from any **individual** or **entity** that:

- Has, or is seeking to obtain, contractual or other business or financial relations with the Treasury Department or the Tennessee Consolidated Retirement System;
- Conducts operations or activities that are regulated by the Treasury Department;
- May bid on future procurement from the Department or a Board, Commission, or Committee administratively attached to the Department based on the employee's reasonable belief that the person or entity intends to submit a bid; or
- Has an interest that may be substantially affected by the performance or nonperformance of the employee's official duties.

Generally, gifts from a lobbyist or an employer of a lobbyist are prohibited; however, the following are exceptions to the general gift prohibition:

- A gift given for nonbusiness purpose and motivated by a close personal friendship and not by the position of the employee, and specifically authorized and defined by the Ethics Commission;
- Informational materials in the form of books, articles, periodicals, other written materials, audiotapes, videotapes, or other forms of communication;
- Sample merchandise, promotional items, and appreciation tokens if they are routinely given to customers, suppliers or potential customers or suppliers in the ordinary course of business;
- Unsolicited tokens or awards of appreciation, honorary degrees, or bona fide awards in recognition of public service in the form of a plaque, trophy, desk item, wall memento, and similar items, provided that any such item shall not be in a form which can readily be converted to cash;
- Benefits resulting from business, employment, or other outside activities of the employee or the employee's immediate family, if such benefits are customarily provided to others in similar circumstances and are not enhanced due to the status of the employee;

- Opportunities and benefits made available to all members of an appropriate class of the general public, including but not limited to, discounts afforded to the general public or prizes and awards given out in public contests;
- Expenses of out-of-state travel, if such expenses are paid for or reimbursed by a governmental entity or an established and recognized organization of elected or appointed state government officials;
- Food, refreshments, amenities, goody bags, entertainment, or beverages provided as part of a meal, reception or similar event including tradeshows and professional meetings; and
- Food, refreshments, meals, foodstuffs, entertainment, beverages that are provided in connection with the following: an event where the employee is a speaker or part of a panel discussion at a scheduled meeting of an established or recognized membership organization which regularly meets at in-state events in which invitations are extended to legislative or executive branch employees. The value of the items shall not exceed fifty dollars (\$50.00) per person, per day.*

* The amount may be increased to reflect the percentage of change in the average consumer price index. The Ethics Commission publishes the increased amount on its website.

For other gifts offered which are not included in the exceptions above, the employee must obtain the written approval of the Assistant Treasurer for Legal, Compliance, and Audit.