

STATE OF TENNESSEE



DAVID H. LILLARD, JR.
STATE TREASURER

TREASURY DEPARTMENT

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David.Lillard@tn.gov

STATE CAPITOL
NASHVILLE, TENNESSEE 37243-0225

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

April 8, 2019

Fiscal Review Committee
The Honorable Ron Travis, Chair
The Honorable Todd Gardenhire, Vice-Chair
8th Floor, Rachel Jackson Building
425 5th Avenue North
Nashville, Tennessee 37243

To the Distinguished Members of the Fiscal Review Committee,

The Department of Treasury respectfully requests to amend its contract with Wagers & Associates, Inc. for the provision of maintenance services to the State's unclaimed property computer management system. The Department seeks to expand the scope of the contract to allow the contractor to use enhanced identity verification techniques so that more claims may be auto-approved. The amendment would also reflect a change in the contractor's name (to Avenu Unclaimed Property Systems, LLC), resulting from a corporate acquisition.

Thank you for your consideration of this request. If you need additional information, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Heather Iverson".

Heather Iverson,
Legal Services Director

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Heather Iverson	*Contact Phone:	615-770-1754		
*Presenter's name(s):	Steve Summerall				
Edison Contract Number: <i>(if applicable)</i>	47845	RFS Number: <i>(if applicable)</i>			
*Original or Proposed Contract Begin Date:	October 15, 2015	*Current or Proposed End Date:	October 14, 2020		
Current Request Amendment Number: <i>(if applicable)</i>	One				
Proposed Amendment Effective Date: <i>(if applicable)</i>	June 15, 2019				
*Department Submitting:	Department of Treasury				
*Division:	Unclaimed Property				
*Date Submitted:	April 8, 2019				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	Wagers & Associates, Inc.				
*Current or Proposed Maximum Liability:	\$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: 2016	FY: 2017	FY: 2018	FY: 2019	FY: 2020	FY: 2021
\$67,000	\$100,000	\$100,000	\$100,000	\$100,000	\$33,000
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)					
FY: 2016	FY: 2017	FY: 2018	FY: 2019	FY: 2020	FY: 2021
\$39,418.75	\$93,737.50	\$120,183.30	\$27,825.00	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			Surplus funds across the allocation timeframe have remained with the program.		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			While there is no carry forward provision for the program, there is recurring spending authority for administrative expenses, such as paying for holder audit services. Under T.C.A. §§ 66-29-146 and 66-29-148, all funds received by the program are deposited in the general fund,		

Supplemental Documentation Required for
Fiscal Review Committee

	except that the treasurer may deduct administrative costs.		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:	N/A		
*Contract Funding Source/Amount:			
State:		Federal:	
<i>Interdepartmental:</i>		<i>Other:</i>	100%
If “ <i>other</i> ” please define:		All program funds come from unclaimed property located by the program and its vendors. Under T.C.A. §§ 66-29-146 and 66-29-148, the Department may withhold sufficient funds from its transfer to the general fund each year to pay for administrative expenses.	
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>		Sole source	
*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 State based its projections on historical spending on similar services, and this contractor’s proposed cost was in line with those projections.	
*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.		This vendor owns the computer system and is the only vendor who could provide improvements, enhancements and properly maintain the system.	

Payments against a Contract

Unit	Sum Merchandise Amt	Edison Contract ID	Vendor ID
30901	\$11,593.75	00000000000000000000000047845	0000069997
30901	\$13,912.50	00000000000000000000000047845	0000069997
30901	\$13,912.50	00000000000000000000000047845	0000069997

Total FY 2016	\$39,418.75
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Unit	Sum Merchandise Amt	Edison Contract ID	Vendor ID
30901	\$13,912.50	00000000000000000000000047845	0000069997
30901	\$13,912.50	00000000000000000000000047845	0000069997
30901	\$13,912.50	00000000000000000000000047845	0000069997
31320	\$52,000.00	00000000000000000000000047845	0000069997

Total FY 2017	\$93,737.50
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Unit	Sum Merchandise Amt	Edison Contract ID	Vendor ID
30901	551.310	00000000000000000000000047845	0000069997
30901	3082.540	00000000000000000000000047845	0000069997
30901	13912.500	00000000000000000000000047845	0000069997
30901	13912.500	00000000000000000000000047845	0000069997
30901	13912.500	00000000000000000000000047845	0000069997
30901	25774.250	00000000000000000000000047845	0000069997
30901	49037.700	00000000000000000000000047845	0000069997

Total FY 2018	\$120,183.30
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Unit	Sum Merchandise Amt	Edison Contract ID	Vendor ID
30901	13912.500	00000000000000000000000047845	0000069997
30901	13912.500	00000000000000000000000047845	0000069997

Total* FY 2019	\$27,825.00
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*We are in FY 2019

Vendor Name	Type	PO ID	Voucher ID	Invoice	Date	Fiscal Year
Affiliated Computer Services	DFA	0000006483	00061354	1243122	4/28/2016	2016
Affiliated Computer Services	DFA	0000006482	00061355	1250223	4/28/2016	2016
Affiliated Computer Services	DFA	0000006666	00062006	1271983	7/8/2016	2016

Vendor Name	Type	PO ID	Voucher ID	Invoice	Date	Fiscal Year
Affiliated Computer Services	DFA	0000006879	00063491	1299159	10/11/2016	2017
Affiliated Computer Services	DFA	0000007074	00064889	1325435	1/3/2017	2017
Affiliated Computer Services	DFA	0000007340	00066098	1352438	3/31/2017	2017
Affiliated Computer Services	DFA	0000007672	00231318	1359678	7/11/2017	2017

Vendor Name	Type	PO ID	Voucher ID	Invoice	Date	Fiscal Year
Conduent Unclaimed Property Sy:	DFA	0000007734	00068876	1772 UPR	7/28/2017	2018
Conduent Unclaimed Property Sy:	DFA	0000007732	00068837	1776 UPR	8/1/2017	2018
Conduent Unclaimed Property Sy:	DFA	0000008224	00073373	1430464	1/18/2018	2018
Conduent Unclaimed Property Sy:	DFA	0000008525	00077059	1451570	4/13/2018	2018
Conduent Unclaimed Property Sy:	DFA	0000008842	00078736	1467430	7/6/2018	2018
Conduent Unclaimed Property Sy:	DFA	0000007736	00068810	CU 14179	8/17/2017	2018
Conduent Unclaimed Property Sy:	DFA	0000007739	00068878	CL 10688	8/18/2017	2018

Vendor Name	Type	PO ID	Voucher ID	Invoice	Date	Fiscal Year
Conduent Unclaimed Property Sy:	DFA	0000009128	00082311	1484668	10/9/2018	2019
Conduent Unclaimed Property Sy:	DFA	0000009425	00086611	1503989	1/28/2019	2019

cy19-13055

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: AgSprs.Agsprs@tn.gov

APPROVED

CHIEF PROCUREMENT OFFICER

DATE

Agency request tracking #	30901-43319	
1. Procuring Agency	Treasury Department	
2. Contractor	Wagers & Associates, Inc.	
3. Edison contract ID #	47845	
4. Proposed amendment #	1	
5. Contract's Original Effective Date	October 15, 2015	
6. Current end date	October 14, 2020	
7. Proposed end date	October 14, 2020	
8. Current Maximum Liability or Estimated Liability	\$ 500,000	
9. Proposed Maximum Liability or Estimated Liability	\$ 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>The amendment makes two principal changes: First, the amendment implements enhancements to the State's unclaimed property computer system to use identity verification techniques to allow more claims to be auto-approved (i.e., without the use of State or vendor personnel). The State desires this functionality to help process claims more quickly while still maintaining the appropriate level of security. Second, the amendment changes the Contractor's name to Avenu Unclaimed Property Systems, LLC as a result of the contractor's acquisition by another company.</p>	
14. If the amendment involves a change in Scope, describe efforts to identify reasonable, competitive,		

Agency request tracking #	30901-43319
<p>procurement alternatives to amending the contract.</p> <p>These are enhancements to the State's existing system which is proprietary to this Contractor. In order for another vendor to provide these services, the State would need to replace its entire computer system.</p>	
<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><i>David H. [Signature]</i> March 24, 2014</p>	

**AMENDMENT ONE
OF CONTRACT 47845**

This Amendment is made and entered by and between the State of Tennessee, Department of Treasury, hereinafter referred to as the "State" and Wagers & Associates, Inc., 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. Section A.2. of the Contract is amended by adding the following new subsection (f):
 - f. The Contractor shall upgrade the UPS2000 system to provide Level One Match, Level Two Basic Verification and Level Three Authentication through the Contractor's web service, as more fully described in the Contractor's proposal attached hereto as Exhibit 1. The State shall not be obligated to pay the amounts indicated in Section C.3.e. below until the State has provided to the Contractor written approval of the implementation of the web service.

2. Section C.3. of the Contract is amended by adding the following new subsection (e):

The Contractor shall be compensated for work performed pursuant to Section A.2.f. hereof based upon the payment rates detailed in the schedule below:

Service Description	Amount (per compensable increment)
Website and Web Service Annual Fee with respect to the service described in Section A.2.f.	\$18,000.00
Website Hosting Annual Fee with respect to the service described in Section A.2.f.	\$6,000.00
Level One Match as described in Exhibit 1	\$0.25 per claim
Level Two Basic Verification as described in Exhibit 1	\$0.50 per transaction
Level Three Authentication as described in Exhibit 1	\$1.25 per claim

3. The Contract is amended by deleting the phrase "Wagers & Associates, Inc." wherever it may be found and substituting instead the phrase "Avenu Unclaimed Property Systems, LLC."

4. 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).

5. Amendment Effective Date. The revisions set forth herein shall be effective June 15, 2019. 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,

WAGERS & ASSOCIATES, INC.

SIGNATURE

DATE

STATE OF TENNESSEE DEPARTMENT OF TREASURY:

DAVID H. LILLARD, JR., STATE TREASURER

DATE

EXHIBIT 1

Proposal

See attached



Avenu Insights & Analytics, LLC
Finance & Revenue Solutions

Claims Processing Website
with eClaims Proposal
For the State of Tennessee
Department of Treasury

Submission Date: March 20, 2019

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Introduction

Introduction

Avenu is pleased to provide this overview for our Unclaimed Property Claims Website with eClaims web service to the State of Tennessee, Department of Treasury.

Avenu Insights and Analytics

Avenu Insights and Analytics is the premier provider of unclaimed property support services, including the design, development and support of unclaimed property management solutions as well as other services such as claims processing, securities custody, and holder report processing. This broad experience provides Avenu with not only the technological expertise to deliver a solution that meets all of State's current and anticipated future needs, but also with the operational expertise to help develop and implement best practices and to generate innovative solutions as the State's administrative needs and public policy approaches may change over time.

Claims Website with eClaims Web Service

Avenu's Claims Website with optional eClaim Web Service provides the ability for eligible claims to be paid without paper. It provides self-service to the claimants allowing them to search for and initiate a claim on the website. The Claims Website can be hosted by Avenu or by the State.

Our website allows claimants to register, search across multiple properties, add properties to a claims "cart," create a claim, provides the claimant with required forms and letters, systematically forward claims to the core application for State's staff to work and provide updates to claimants on claim status.

The website is designed with a shopping cart approach to manage multiple claims for different types of claimants as well as property types. We will include your current claim form or we can include a form specific for the website claims for the State.

Claimants will be able to search specific properties and will be provided with the option of adding these claims to their "cart" or "basket". There are multiple options for searching in order to ensure that the process is intuitive and easy for claimants to access records. Upon entering their search criteria, they will be provided with a list of properties along with a count which the state can limit. The claimant selects claim and will be asked to provide their relationship to the owner for each property selected to claim.

Optionally the website can ask the user if they are a third party claiming the property for someone else. If they are a third party the website will capture the claimant's information and the third parties information. This feature is configurable and can be turned off.

After all properties have been claimed, the State has the option of allowing the claimant to download and print claim forms or the State can mail the forms to the owner. In addition the claim form is emailed to the user. All data that has been entered to the website will be loaded to UPS2000 using claims import.

A claimant can also upload documents in an approved format to the website as evidence for the claim.

All eligible property available for claim based upon criteria established by the State will appear and be searchable on the website, 24 hours a day and 7 days a week with the exception of scheduled maintenance. A file will be generated and systematically loaded to the website for new data loaded to UPS2000. If a claim is filed, the property will no longer be displayed and be available for claiming in order to avoid duplicate claims. If property is not paid at 100% or is dropped, it will remain on the website for claiming. The use of our eClaims solution decreases the turnaround time to pay claims and ensures that all eligible property is listed on the website.

eClaims Web Service (Fast Tracking)

Our eClaims Web Service allows states to pay claims by verifying and authenticating a claimant's identity in real time while the claimant is initiating a claim without the need for a claim form and other supporting documentation. States have successfully paid hundreds of thousands of claims using our solution which provides the ability to manage a higher volume of claims without the need for additional staff.

A claimant, as part of any claims process, is asked for their first and last name, address and social security number as well as relationship to the property they are trying to claim. The solution allows for the systematic matching and verification of the data entered by claimants in order to eliminate paper claim forms and provide a fully paperless processing environment. As part of this solution, single owner, cash claims are paid quickly, systematically and accurately according to state thresholds with the data used to determine eligibility and approval being maintained and available within UPS2000 as a permanent record.

The Process

- User enters the website to search for their name
- User finds one or more properties with their name available for claim
- User initiates a claim and is asked to enter their name, address, social security number and relationship to owner

The solution determines if the claim is eligible for fast-tracking. For those that are eligible the website uses the data obtained from the claimant to approve the claim systematically, or determine if it does not pass the criteria for automatic approval and moves the claim for manual review.

Level 1 – SSN match – Matching Claimant Data to UPS2000 records

Using our Avenu Claims Processing Website, we match the claimant's social security number to the social security number reported by the holder on the state's database to verify that the claimant is the owner for the claim to be fast-tracked if the claim meets the criteria established by the state. If the claimant's last name and first three (3) letters of the first name entered on the website match the owner name AND the claimant provides the same SSN when submitting the claim on the website that is in the State's database, the claim will be approved as a fast track claim and routed directly to settlement with the unique approval code. If the SSN provided by the claimant does not match the SSN on the state's database, the claim will be processed as a normal paper claim.

A transaction fee is only charged for a successful Level 1 match and approved claim.

Level 2 – Basic Verification – Validation of Owner

For those properties that qualify for claims fast tracking (the user selected they were the owner and the property fits the criteria established by the State for type of claim and dollar threshold) our web service will make the following calls for verification.

- The first call is made using information obtained on the website from the user (claimant) for verifying the information. The checks completed with this first call are:
 - Social security number provided by user is not associated with someone who is deceased
 - Social security number is valid
 - Address provided by user is confirmed to be associated with the user
 - Social security number is associated with the user name
 - Social security number is not associated with multiple individuals

- Based on the results of the first call:
 - If the first call “passes” the verification, a second call will be made to verify the user has been known to live at the address they are trying to claim property for. A call will be made for each new address. If there are multiple properties selected with the same address a call will not be made for the subsequent properties as those will be taken from our cache for 30 days. This is the validation that the user/claimant is the owner of the property.
 - If the property has an SSN and there is a match to the SSN provided by the claimant then this LexisNexis call is not made
 - If the property does not have an SSN a LexisNexis call is made to verify the claimant’s association with the property owner’s address
 - If the first call “fails”, we will revert this to a paper claim and will not move forward with additional calls to verify the claimant is the owner as they have failed the test that the user is the owner.
 - The State can establish how many properties to verify for the same claimant and if the verification should continue or end once an error/fail is encountered.

A transaction fee is charged for each call made as described above for Level 2.

Level 3 – Authentication

For claims that pass level 2 and are of a higher value chosen by the state, Avenu offers the Authentication option of our web service. This level will provide the claimant with a list of questions to answer in order to authenticate their identity if the claim fits the criteria for level 3, which is established by the State.

This level presents “out of wallet” questions to the claimant and if they answered the defined number of questions correctly the claim would be approved for fast tracking. The State can determine the number of questions asked and the number of questions that must be answered correctly. If the questions are not answered correctly, the claim will revert to a paper claim. Notes will be systematically entered to UPS2000 for the claim showing the pass or fail information.

There is one transaction fee charged for the claim at this Authentication Level 3. If the claimant passes the verification and authentication processes, they will be provided a message, which can be customized and defined by the State, that makes them aware no additional information is needed and the claim is in process or other status such as when they can expect a check. If the claimant fails, they will receive standard forms and letters for a manual claim that allows them to print the claim form.

For those claims approved through the Claims Fast-track process, Avenu will transmit the claim information electronically to the State’s UPS2000 system and assign an approval based upon successfully passing all appropriate levels of matching, verification and/or authentication based upon the State’s criteria. These files will be transmitted on a daily basis. The transmission of claim information will include all required information to verify that the claim has met the State’s approval/Claims Fast-tracking criteria for a fully integrated solution.



Integrated Web service

To ensure data security, our web service is hosted by Avenu on a site with secure socket layer (SSL). Depending upon the properties selected, they may or may not qualify for the Claims Fast-tracking process based upon the information reported as well as the dollar amount of the property. The State will select the threshold for claims that qualify for Claims Fast-tracking and the levels of validation or authentication.

Each level of validation in the Claims Fast-tracking process is performed with pass or fail results. If the claimant fails any of the verification or authentication tests, the claims process will proceed as it normally would and the claimant will be prompted to print and submit their claim form along with supporting documentation or other process as the State directs.

The claimant will not know the information they are providing is being matched against the unclaimed property records or is being verified until the authentication step. If the property qualifies and the claimant passes all of the required levels of verification or authentication, they can receive a notification on the State's website that their claim will be expedited and they should receive payment. If the claim qualifies and requires authentication, the claimant is alerted that the claim may be expedited by answering several questions. It is only at that time that a claimant is aware that there is any validation being performed. This minimizes fraud, allows the claimant to feel informed of the process and reduces the number of unhappy claimants by not alerting them that they failed anywhere within the online claims process.

Avenu will work with the State's unclaimed property and IT for changes regarding the website which will be performed by the State. All of the results of the matching will be captured and passed to the website or uploaded to UPS2000 during a scheduled batch process so that the information will be available for any processor to view at any time as well as for audit purposes.

Implementation

It may be necessary to provide the State with current UPS2000 and Claims Import builds for the Claims Website with eClaims web service to function.

A Claims Fast-tracking procedure can be implemented in phases in order to develop a comfort with the process and then the criteria can be modified as the State's comfort level increases. States have begun the process for claims with a value of \$500 or less and have gradually increased that value to as much as \$5,000. In both phases, the State will have the flexibility to modify the thresholds for each of the levels. For the third level, authentication, the number of and types of questions can be modified. We estimate having a test site available for the State within two months of a fully executed contract and the State has established the Claims Fast-tracking criteria, provided the account data, and Avenu has adequate access to the State's UPS2000 system and database. The responsibilities of both parties are outlined below.

State Responsibilities

- If required the State will update the UPS2000 and Claims Import versions to the current release provided by Avenu.
- The State will allow adequate access to the State's UPS2000 system and database to complete the implementation.
- The State will be responsible for final acceptance testing of the entire Claim Fast-tracking process once Avenu has completed our testing.

Avenu Responsibilities

- Avenu's Claims Fast-tracking web service shall be operational seven days a week, 24 hours a day, with the exception of planned system maintenance and upgrades.
- Avenu will provide current releases of UPS2000 and Claims Import.
- Avenu will fully test with the state the entire Claims Fast-tracking process before turning it over to the State for acceptance testing.

Configurable Solution

The solution was designed to allow for many areas to be configurable by the State which includes settings on what qualifies for fast-tracking such as the levels and dollar thresholds of the levels the State will utilize. Also configurable are the messages/text to the claimant on the website and the emails. The website has a setting to turn on recapture for security purposes to prevent against bots searching the site.



Summary

The Avenu Claims Website with eClaims web service provides the claimants with a user friendly self-service feature while providing the state with additional efficiency with processing claims.

If additional customization is required for the State, Avenu would work with the State to determine the business requirement to define the work effort and schedule. Additional customization could include adding another level of fast-tracking service where a call is made to another date agency to information the other agency may have on the claimant to the information provided by the claimant.

Solution Pricing

Website and Web Service Fees

- Website and web service Annual Fee \$18,000
- Hosting Annual Fee \$ 6,000

Claims Fast-tracking Transaction Fees:

- Level I: SSN Matching \$0.25 per claim
- Level II: Basic Verification \$0.50 per transaction
- Level III: Authentication \$1.25 per claim

Note: Our solution avoids a charge for verification of the same property and/or exact same claimant information/data if a claimant who has been previously verified submits a claim(s) for additional properties eligible for claims fast-tracking within 30 days after the previous verification.

In addition, our criteria have been refined to increased successful results through modification of databases used and returned data for an overall improved success rate.



Contact

**Primary
Contact**

Mark Capprini
Operations Director

Avenu Insights and Analytics
100 Hancock Street
10th Floor
Quincy, MA 02171

617-722-9643
Mark.Capprini@AvenuInsights.com



CONTRACT

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

Begin Date October 15, 2015	End Date October 14, 2020	Agency Tracking # 30901-28415	Edison Record ID 47845
Contractor Legal Entity Name Wagers & Associates, Inc.			Edison Vendor ID 69997

Goods or Services Caption (one line only)
Software maintenance and upgrades for the unclaimed property computer system

Contractor <input checked="" type="checkbox"/> Contractor	CFDA #
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Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2016				\$67,000	\$67,000
2017				\$100,000	\$100,000
2018				\$100,000	\$100,000
2019				\$100,000	\$100,000
2020				\$100,000	\$100,000
2021				\$33,000	\$33,000
TOTAL:				\$500,000	\$500,000

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

Other – Sole Source

Wagers & Associates, Inc. owns the computer system at issue and, therefore, is the only company that can provide any improvements, enhancements and new releases of the System or to otherwise properly maintain the System

The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms and price. A copy of the approved Special Contract Request is attached hereto

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 Handley

Speed Chart (optional)	Account Code (optional)
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**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF TREASURY
AND
WAGERS & ASSOCIATES, INC.**

This Contract, by and between the State of Tennessee, Department of Treasury ("State") and Wagers & Associates, Inc. ("Contractor"), is for the provision of computer software services, 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: State of Colorado
Contractor Edison Registration ID # 69997

WITNESSETH:

WHEREAS, the Contractor is the owner of an unclaimed property computer software system known as the UPS2000 Software System, hereinafter referred to as "the System"; and

WHEREAS, the State and the Contractor entered into a License Agreement on January 1, 1999 under the terms of which the Contractor licensed to the State a limited, non-sublicensable, nontransferable and nonexclusive right to use the UPS2000 Software System including its documentation, manuals and applications to permit the State authorized and continued use of the System for a term of ninety-nine (99) years from the installation date thereof; and

WHEREAS, pursuant to the License Agreement, the Contractor provided certain warranties for the System for a fixed period of time after delivery of the System to the State (the "Warranty Period"); and

WHEREAS, the State desires the Contractor to provide maintenance services for the System after expiration of the Warranty Period and the Contractor desires to provide such services.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein contained, the Parties have agreed and do hereby enter into this Contract according to the provisions set out herein:

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. System Maintenance; Problem Resolution; Consulting Services; and Training.

a. Maintenance. The Contractor shall maintain the System at or above the "Operative" level (i.e., functions in accordance with the documentation and technical specifications for the System as set forth in the License Agreement, which is attached hereto and incorporated herein by reference as "Attachment A") and shall furnish to the State the following support and services in addition to those specified above:

(1) Incorporate any improvements, enhancements and new releases of the System developed by the Contractor that are generally made available to other licensees of the System along with explanatory reference documentation. Such modified software shall not degrade current performance levels and in all respects shall be compatible with then-existing State business uses for the System. Documentation of the existing System shall be changed as necessary for purposes of removing errors, providing consistency of interpretation and/or documenting improvements. All such improvements, enhancements and new releases shall be considered part of the System.

- (2) Provide to the State updates to any portions of the System released at no cost to the Contractor by other software suppliers (such as Seagate Crystal Reports). Such updates shall be tested by the Contractor prior to furnishing the same to the State.
 - (3) Provide access to the Contractor's online support documentation via the Contractor's website.
 - (4) Provide ability to download updated System components from the Contractor's website.
 - (5) Diagnose, verify and correct errors, malfunctions and defects in the System. However, if such System errors or malfunctions are a direct result of either an act or omission by the State or of any act or event beyond the control of the Contractor that could not be avoided by the exercise of due care, the State shall pay the Contractor for its services rendered in analyzing the error or malfunction in accordance with Section A.5 of this Contract. At the State's request, the Contractor shall correct any System error or malfunction caused by the State or by the act or event beyond the control of the Contractor and, upon correction of the error or malfunction, the State shall pay the Contractor for such services in accordance with the change order procedures prescribed in Section A.5 of this Contract below.
 - (6) Provide the NAUPA File Encryption Utility to the State.
 - (7) Provide to the State registration to Web-ex meetings hosted by the Contractor for the purpose of providing training and information sharing.
 - (8) On an annual basis, provide to the State two (2) user registrations to personally attend user training conferences hosted by the Contractor.
- b. Problem Resolution. The State shall notify the Contractor of a System problem by entering a request on the Contractor's website. If the problem is critical, the State shall also notify the Contractor by telephone. The Contractor shall reply to the State within twenty-four (24) hours after notification by the State. The response shall include an estimated date on which the problem will be corrected. The State shall submit to the Contractor a listing of output and all such other data which the Contractor reasonably may request in order to reproduce operating conditions similar to those present when the System problem occurred. The Contractor shall correct the problem within a reasonable period of time, unless the problem is critical or unless the State requests priority correction of the problem. If the problem is critical or if the State requests priority correction of the problem, the Contractor shall give the problem its highest priority and use commercially reasonable efforts to correct the problem within twenty-four (24) hours after the Contractor received from the State a listing of output and other data as described above. Where the problem cannot be corrected within twenty-four (24) hours, a plan and schedule for resolution shall be provided to the State by the Contractor. A problem shall be deemed critical if there is no means of temporary circumvention ("work-around") of the problem and the problem either (i) prevents the System from operating or (ii) prevents State personnel from performing their assigned tasks. If the State requests priority correction of a non-critical problem, the Contractor shall be compensated at the applicable rate set forth in Section C.3 below.
- c. Consulting. The Contractor shall provide to the State off-site telephone support in the form of consultation, assistance and advice on the use and maintenance of the System. The Contractor and the State shall from time to time designate a telephone number for a Maintenance and Consulting Contact Point. The State shall have the right to call such telephone number for assistance with the use or maintenance of the System from 8:00 a.m. Eastern Time until 7:00 p.m. Eastern Time Monday through Friday. Such technical support

shall also be available to the State at additional times and dates provided the particular support services are prearranged by the Parties.

- d. Training. The Contractor shall, at the State's request, provide five (5) days per year of on-site training services to the State relative to the operation and use of the System. The training shall occur on such dates and at such times as shall be mutually agreed to by the Parties. The State shall provide office space for use by State and Contractor personnel. The State's commitment to provide office space applies only to the Contractor staff required to carry out the training services. Space will be provided to the Contractor at the Andrew Jackson State Office Building; 502 Deaderick Street; Nashville, Tennessee.
 - e. State Telephone Contacts. The State shall designate from time to time one person who shall be responsible for coordinating requests for services under this Contract. At the State's discretion, the State may designate two (2) additional persons who may coordinate requests for services hereunder. When appropriate, the Contractor shall work with other State personnel to explain the System and solve problems.
- A.3. Online Holder Reporting Maintenance; Problem Resolution; Consulting Services; and Training. Upon successful implementation of the unclaimed property holder reporting website as described in Attachment B hereto (the "Website"), the Contractor shall maintain the Website at or above the "Operative" level (i.e., functions in accordance with the documentation and technical specifications for the Website as set forth in Attachment B) and shall furnish to the State the same support and services for the Website as described in Section A.2 above.
- A.4. Additional User Licenses. The Parties acknowledge that the license granted under the License Agreement, which is attached hereto as Attachment A, was initially limited to fifteen (15) State users and was thereafter expanded to twenty-one (21) users. The Contractor agrees to further expand said license to include such additional State users as may be requested in writing by the State at the applicable unit rates set forth in Section C.3 below. Within fifteen (15) calendar days of receipt of the State's request, the Contractor shall perform whatever actions are necessary to give such additional users access to the System.
- A.5. Change Orders.
- a. Scope. The State may at any time, with written notice to the Contractor, request changes within the general scope of Attachments A or B, without a formal amendment of this Contract except as otherwise provided in Section A.5.e. below. Such changes may include changes to the System or Website as are required in order to conform to State or Federal regulations, rules, statutes and court interpretations thereof involving unclaimed property and accounting, and such changes as are necessary due to State personnel changes (e.g., new State Treasurer or Unclaimed Property Director name on claim forms and correspondence). Other changes might involve System or Website customization for State specific tasks, development of custom System or Website reports, modifying System or Website functions and workflow, changing claims payment formats, and correcting and troubleshooting NAUPA files. All such changes and enhancements, once made, shall be considered part of the System or Website, as applicable, thereby entitling the State to the maintenance and support services described in Sections A.2 and A.3 above with respect to such changes and enhancements.

The Contractor agrees to provide up to one hundred fifty (150) hours annually of such changes, including any training, consulting or testing that the State may request relative to such changes, at no charge during the term of this Contract. The State acknowledges that these hours cannot be carried over to the following year without mutual agreement of the Parties by October 14th of the respective year. Otherwise, the unused hours for that year are forfeited. Any such agreement shall be reduced to writing and signed by the respective Parties without a formal amendment of this Contract. Any correction of System deficiencies

and any capabilities required in this Contract are the Contractor's responsibility to make without charge to the State and shall not be included within the above free hours, provided such deficiencies were not as a result of the State's errors. If the problem requiring the change is due to System deficiencies or any capabilities required in this Contract and not as a direct result of the State's errors, any investigation necessary to determine the source of the problem shall be the responsibility of the Contractor. Otherwise, such investigation shall be included within the above free hours, or if such hours have been expended, shall be charged to the State in accordance with subsections (d) or (e) of this Section below.

- b. Change Order Creation. 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. The Contractor's 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 maximum number of person hours required for the change(s); and
 - (5) the maximum cost for the change(s)— this maximum cost shall in no instance exceed the product of the person hours required multiplied by the appropriate payment rate proposed for such work.

The Contractor may also provide in its proposal a flat maximum fee amount for performing the services irrespective of the number of hours actually required to perform the services *provided that* the maximum cost to the State for the services shall be determined by the *lesser of*: (i) multiplying the maximum number of hours required as specified in the Contractor's proposal by the hourly rate detailed for such services in Contract Section C.3.c. below, or (2) the flat maximum fee amount proposed by the Contractor for performing the services. 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 Change Order between the Contract Parties pertaining to the specified change(s) and shall be incorporated, hereby, as a part of this Contract.

- c. Change Order Performance. Subsequent to creation of a Change Order, 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.
- d. Change Order Remuneration. The State will remunerate the Contractor only for acceptable work. All acceptable work performed pursuant to an approved Change Order, 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 person hours worked to complete the necessary work, not to exceed the maximum cost for the change detailed in the Change Order. The maximum cost for the project as detailed in the Change Order shall be the lesser of the product of the maximum number of hours required to perform the services, as specified in the Change Order, by the hourly rate detailed for such services in Contract Section C.3.c. below, or (2) the flat maximum fee amount proposed by the Contractor for performing the services. In no instance shall the State be liable to the Contractor for any amount exceeding the maximum cost specified by the Change Order authorizing the services. Upon State approval of the work, the Contractor shall invoice the State in accordance with the relevant provisions of this Contract.

e. Maximum Change Order Hours. Notwithstanding any provision of this Contract to the contrary, the total aggregate number of hours the State may request for change orders under this Section A.5 shall not exceed one hundred fifty hours (150) hours annually during the term of this Contract, unless such change orders involve (i) changes to the System as are required in order to conform to State or Federal regulations, rules, statutes and court interpretations thereof involving unclaimed property and accounting, and such changes as are necessary due to State personnel changes (e.g., new State Treasurer or Unclaimed Property Director name on claim forms and correspondence), (ii) changes in the unclaimed property claims payment formats; (iii) changes made necessary due to changes in the State's server configuration; (iv) corrections to or troubleshooting NAUPA files; (v) development of new custom System reports; or (vi) changes or corrections resulting from State errors or by an act or event beyond the control of the Contractor. Nothing in this Section shall be construed to prohibit the State from requesting changes within the general scope of this Contract beyond that which is provided for in this Section A.5.e provided that any such changes will be effected through an amendment to this Contract pursuant to Section D.3 hereof and the cost to the State for completing any such services or changes shall be based on the hourly rate detailed for such projects in Section C.3.c. below.

A.6. Warranty. The 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 generally offered by the 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.

The 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, in conformity with standards generally accepted in the 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.7. 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 October 15, 2015 ("Effective Date") and extend for a period of sixty (60) 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 five hundred thousand dollars and no cents (\$500,000) (“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. and the Travel Compensation in Section C.4 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 rates:
- (1) For services performed from October 15, 2015 through October 14, 2016, the following rates shall apply:

Service Description	Amount (per compensable increment)
System Maintenance; Problem Resolution; Consulting Services and Training as described in Section A.2 above.	\$13,912.50 per quarter
Priority Correction of Non-Critical Problem as described in Section A.2.b above	\$185 per hour
Online Holder Reporting Maintenance; Problem Resolution; Consulting Services and Training as described in Section A.3 above.	\$2,500 per quarter (prorated as applicable)
Additional User Licenses as described in Section A.4	\$5,000 one-time charge plus \$437.50 per quarter (prorated as applicable) for each additional user license above twenty-one (21)

- (2) For service performed from October 15, 2016 through October 14, 2017, the Contractor shall be compensated based upon the payment rates in Section C.3.b.(1) above, but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, All Items expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in September 2016 and that figure published in the same month, 12-months prior, up to a maximum of three percent (3%).
- (3) For service performed from October 15, 2017 through October 14, 2018, the Contractor shall be compensated based upon the payment rates in Section C.3.b.(1) above but adjusted by the percentage increase, if any, between the

Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, All Items expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in September 2017 and that figure published in the same month, 12-months prior, up to a maximum of three percent (3%).

- (4) For service performed from October 15, 2018 through October 14, 2019, the Contractor shall be compensated based upon the payment rates in Section C.3.b.(1) above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, All Items expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in September 2018 and that figure published in the same month, 12-months prior, up to a maximum of three percent (3%).
- (5) For service performed from October 15, 2019 through October 14, 2020, the Contractor shall be compensated based upon the payment rates in Section C.3.b.(1) above but adjusted by the percentage increase, if any, between the Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, All Items expenditure category, not seasonally adjusted, index base period: 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics in September 2019 and that figure published in the same month, 12-months prior, up to a maximum of three percent (3%).

c. The Contractor shall be compensated for changes requested and performed pursuant to Contract Section A.5, without a formal amendment of this Contract, based upon the payment rates detailed in the schedule below and as agreed pursuant to Section A.5., PROVIDED THAT compensation to the Contractor for such "change order" work shall not exceed TWENTY-FIVE PERCENT (25%) 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 A.2. through A.4.). If, at any point during the Term, the State determines that the cost of necessary "change order" work would exceed the maximum amount, the State may amend this Contract to address the need.

Service Description	Amount (per compensable increment)
Change Orders as described in and subject to the terms and limitations (including the provision of at least one hundred fifty (150) hours annually of change order work at no charge to the State) detailed in Section A.5 above	(1) CSR Support - \$150/hour (2) Development Team - \$200/hour (3) Senior Support & Development - \$250/hour (OR the flat maximum fee amount proposed by the Contractor in the applicable Change Order, whichever is less)

d. The Contractor shall not be compensated for travel time to the primary location of service provision.

C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the current "State Comprehensive Travel Regulations", and shall only be compensable for the travel, meals, or lodging incurred in performance of the on-site training services set forth in Section A.2.d. above.

The Contractor must include (in addition to other invoice requirements of this Contract) a complete itemization of requested travel compensation and appropriate documentation and receipts as required by the "State Comprehensive Travel Regulations."

- 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 quarter, and no later than thirty (30) days after goods or services have been provided to the following address:

Tennessee Treasury Department
Unclaimed Property Division
15th Floor, Andrew Jackson State Office Building
502 Deaderick Street
Nashville, Tennessee 37243-0203

- 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 Treasury Department, Unclaimed Property Division;
 - (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.
 - 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:

John Gabriel, Director of Unclaimed Property Division
Tennessee Treasury Department
15th Floor, Andrew Jackson State Office Building
502 Deaderick Street
Nashville, Tennessee 37243-0203
john.gabriel@tn.gov
Telephone # (615) 253-5354
FAX # (615) 253-5354

The Contractor:

Karen Severy, Contracts Manager
Wagers & Associates, Inc.
100 Hancock Street, 10th Floor
Quincy, Massachusetts 02171
karen.severy@xerox.com
Telephone # (703) 891-8716
FAX #: (703) 891-8980

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 a Party ("Breaching Party") fails to properly perform its obligations under this Contract, or if a Party materially violates any terms of this Contract ("Breach Condition"), the other Party ("Non-breaching Party") may provide written notice to the Breaching Party specifying the Breach Condition. If within thirty (30) days of notice, the Breaching Party has not cured the Breach Condition, the Non-breaching Party may terminate the Contract. In the event the Non-breaching Party is the State, the State may withhold payments in excess of compensation for completed services or provided goods. The Breaching Party shall not be relieved of liability to the Non-breaching Party for damages sustained by virtue of any breach of this Contract, and the Non-breaching Party 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 C, 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 A – D to this Contract;
 - 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 Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor's use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less reasonable wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.
- E.4. Applicable Gifts and Solicitations Policy. The Contractor shall not offer to give, or give, any gift to any employee of the State or to any member of a Board, Commission or Committee administratively attached to the State that would violate the State's Gifts and Solicitations Policy, included as Attachment D to this Contract.

IN WITNESS WHEREOF,

WAGERS & ASSOCIATES, INC:



9-14-15

CONTRACTOR SIGNATURE

DATE

David Lemane, V.P.

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF TREASURY:



Sept. 17, 2015

DAVID H. LILLARD, JR., STATE TREASURER

DATE

Approved for signature by CH 9/16/15

CONTRACT
BETWEEN THE
STATE OF TENNESSEE, TREASURY DEPARTMENT
AND
WAGERS & ASSOCIATES, INC.

THIS CONTRACT, by and between the State of Tennessee, Treasury Department, hereinafter referred to as the State, and Wagers & Associates, Inc., hereinafter referred to as the Contractor, is for the provision of computer software services to the State in connection with its Unclaimed Property Program, as further defined in the "SCOPE OF SERVICES", below. The Contractor is a for-profit corporation chartered in the State of Colorado having its principal place of business at 2840 Wilderness Place, Suite G in Boulder, Colorado.

WITNESSETH:

WHEREAS, the Tennessee General Assembly enacted the Uniform Disposition of Unclaimed Property Act ("the Act") in 1978 and placed the administration of the same under the Tennessee State Treasury Department; and

WHEREAS, the Act defines abandoned property and governs reporting and disposition of such property. In general, holders of property presumed abandoned must report the existence of such property to the State Treasurer and deliver the property to the Treasurer for safekeeping on the absent owner's behalf; and

WHEREAS, the primary objective of the Act is to reunite the missing owner with the unclaimed property; and

WHEREAS, in order to effectively and efficiently perform such responsibilities, it is necessary the State obtain an unclaimed property computer system which is "year 2000

compliant” to record its unclaimed property holder reports and all associated property, claims, payment generation, correspondence, and accounting activity; and

WHEREAS, the Contractor is in the business of delivering such a system, known as the UPS2000 Software System, hereinafter referred to as the System; and

WHEREAS, the Contractor desires to deliver the System to the State, and to provide maintenance services with respect to the System.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein contained, the parties have agreed and do hereby enter into this Contract according to the provisions set out herein:

A. SCOPE OF SERVICES:

1. Incorporation of Other Documents.

a. Documents Incorporated. The following documents are hereby incorporated into this Contract as though fully set forth herein:

(1) The Contractor's System documentation provided at the internet site (<http://www.wagers.net>) and reproduced in paper form as Exhibit A hereto, dated October 28, 1998;

(2) The State's request for clarification titled "Functional Requirements, Resolution of Questions Regarding Potential Additional Requirements Submitted to Wagers During Conference Call on 9/16/98", which is attached hereto as Exhibit B; and

(3) The Contractor's response to Exhibit B, dated December 7, 1998, which is attached hereto as Exhibit C.

b. Order of Document Precedence. In the event of any conflict, ambiguity or discrepancy between or among any of the foregoing, the conflict shall be resolved first in favor of this Contract and then in the order of the following precedence: Exhibit C, Exhibit B and Exhibit A.

2. Business Day. The term "Business Day" as used herein shall mean a day in which State offices are opened for the transaction of public business. State offices are opened for the transaction of public business from 8:00 a.m. CS(D)T until 4:30 p.m. CS(D)T of each day except Saturdays, Sundays, and legal holidays as defined in Tennessee Code Annotated, Section 15-1-101, as amended.

3. Contractor Personnel.

a. Personnel Assignment. In performing the services as set forth in this Contract, the Contractor shall assign such qualified personnel as needed to perform the services required under this Contract. The Contractor shall not redeploy any of such personnel so assigned without the prior written consent of the State. Replacement of such personnel, if approved, shall be with personnel of equal ability and qualifications.

b. Reassignment or Removal of Personnel. During the term of this Contract, the State reserves the right to require the Contractor to reassign or otherwise remove from performance of this Contract any employees of the Contractor or subcontractor found unacceptable by the State.

4. Basic System Requirements. The System must perform as described in Exhibits A, B and C. The Contractor represents no additional or modified software to the base System software will be needed to meet such functional requirements, except as otherwise specifically provided in Exhibits B and C. The State acknowledges that deficiencies may exist in the System. If System deficiencies exist, the Contractor agrees to correct the same in accordance with Sections 13 and 14 hereof.

5. UPS2000 Application Software.

a. Contractor Responsibilities.

(1) The Contractor shall deliver to the State the UPS2000 Application Software and configure it to operate on the Sun Enterprise 3000 server using Oracle, providing all scripts necessary to create the database objects for the UPS2000 System. The

Contractor shall make it accessible by State personnel connected to the State's Local Area Network on workstations using a 32 bit Windows OS.

(2) The Contractor shall provide to the State three (3) copies of the UPS2000 Users Guide and a UPS2000 Data Dictionary. The Contractor acknowledges and agrees the State may make as many duplicates of the Guide and Dictionary as necessary for each State user of the System.

(3) The Contractor shall install all State related software on fifteen (15) State workstations.

(4) The Contractor shall provide an interface to the State's Statewide Accounting System (STARS) by developing the capability to select certain UPS2000 transactions to be placed in a file available for retrieval by STARS. This capability must include the ability to transfer files multiple times during the day without creating duplicate transactions.

b. State Responsibilities. The State shall provide the necessary information requested by the Contractor to perform the services set forth in this Section, including providing two (2) Oracle instances, one for test/training and one for production.

c. Deliverables. During performance of the services set forth in this Section A.5, the Contractor shall deliver the following deliverables to the State for written acceptance in accordance with Section A.8 of this Contract:

(1) The Contractor shall deliver a Project Plan outlining the projected schedule of events including the data conversion and verification, software installation, configuration, testing and training.

(2) UPS2000 Application Software configured to operate in the State's environment and connected to the State's Local Area Network.

(3) An interface capability from the UPS2000 System to STARS.

6. Training.

a. Contractor Responsibilities. After the installation has been completed and before the acceptance testing as provided in Section A.8 below begins, the Contractor shall, at the State's facilities and during regular State business hours, provide five (5) days training and accomplish the following tasks:

(1) The Contractor shall train an UPS2000 State System administrator covering such subject areas as detail system operation and issues concerning the password/security system.

(2) The Contractor shall train fifteen (15) State users in the operation and use of the UPS2000 Software System.

(3) The Contractor shall provide to the State training manuals and documentation for user personnel.

b. State Responsibilities. The State shall provide a training room and audio/visual equipment necessary to train user personnel.

c. Deliverables. During performance of the services set forth in this Section A.6, the Contractor shall deliver the following deliverables to the State for written acceptance in accordance with Section A.8 of this Contract:

(1) User training for fifteen (15) State personnel.

(2) UPS2000 System Administrator training.

(4) Three (3) copies of User Training manuals and documentation.

7. Conversion of IMS Unclaimed Property Data to UPS2000.

a. Contractor Responsibilities. The Contractor shall convert the State's IMS Unclaimed Property Data to the UPS2000 System using a format mutually agreeable by the Contractor and the State. The Contractor shall provide conversion totals and audit trails to verify the successful conversion to the satisfaction of the State.

b. State Responsibilities. The State shall provide the necessary information requested by the Contractor to perform the services set forth in this Section. The State shall provide the IMS Unclaimed Property Data to the Contractor in a format

mutually agreeable to the Contractor and the State. The State shall verify the accuracy of the conversion.

c. *Deliverables.* During performance of the services set forth in this Section A.7, the Contractor shall deliver to the State for written acceptance in accordance with Section A.8 of this Contract a data conversion plan, the UPS2000 System data base loaded with all records from the IMS Unclaimed Property Database, and data conversion audit trails report.

8. Acceptance Testing.

a. *Acceptance Criteria.* The acceptance criteria used by the State to determine when the Contractor has fulfilled the complete installation requirements shall be when the UPS2000 is running concurrently with the State's current system and producing similar results.

b. *Contractor Responsibilities.*

- (1) Develop a Test Plan.
- (2) Install a separate UPS2000 Test structure.
- (3) Provide assistance to the State to test the UPS2000 System.

c. *State Responsibilities.*

- (1) Assist in the development of a test plan.
- (2) Test the UPS2000 System.
- (3) Verify test results.

d. *Deliverables.* During performance of the services set forth in this Section A.8, the Contractor shall deliver the following deliverables to the State for written acceptance in accordance with Section A.9 of this Contract:

- (1) Test plan.
- (2) Assist in the verification of acceptance test results.

9. Deliverables. Within three (3) Business Days of the Contractor's delivery of a deliverable, the State shall provide to the Contractor written acceptance of the

deliverable or a detailed list of deficiencies. If there are deficiencies, the Contractor shall work as promptly as possible to resolve them and resubmit the deliverable to the State. The State shall provide written acceptance or a detailed list of deficiencies within two (2) Business Days of the Contractor's re-delivery of a deliverable. If the State does not respond within the three-day approval cycle, either with written acceptance or a list of deficiencies, the deliverable shall be considered accepted by the State. When all services in Sections A.1 through A.5 of this Contract have been completed by the Contractor and when all deliverables in such Sections have been accepted by the State, the milestone payment in Section C.3.a(2)(A) hereof shall be payable to the Contractor pursuant to such Section. When all services in Sections A.6 through A.8 of this Contract have been completed by the Contractor and when all deliverables in such Sections have been accepted by the State, the milestone payment in Section C.3.a(2)(B) hereof shall be payable to the Contractor pursuant to such Section. Notwithstanding any provision to the contrary, if the State determines that a previously accepted deliverable has become deficient as a result of a correction to a deficiency in a subsequent deliverable, the Contractor shall correct the deficiency in the previously accepted deliverable.

10. Source Code Escrow. In the event the Contractor discontinues operations, or fails to provide maintenance of the System pursuant to Section A.13 hereof, the State shall be entitled to secure for its own use the then-current product source code listings and related documentation free of charge. The source code listing shall be held in escrow by Hutchinson, Black & Cook, LLC, a Colorado limited liability company (hereinafter referred to as Escrow Agent), at the following location: 1215 Spruce Street, P.O. Box 1170; Boulder, Colorado 80306. The Contractor shall update the source code listing held by the Escrow Agent annually to reflect the then-current release of the product. The Contractor may change the Escrow Agent and the location

of the source code listing by notifying the State in writing at least thirty (30) calendar days in advance of the change.

11. Grant of License. Upon the Contractor's installation of the System, the Contractor agrees the State shall have a nontransferable and nonexclusive right to use the System and its associated documentation, manuals and applications to process its own data. The State acknowledges that the license granted herein is limited to fifteen (15) State users, unless expanded pursuant to Section A.12 below. The State shall not allow others to use the System, nor use the System to process the data of any other party without the Contractor's prior written consent. When installed, the State agrees to limit use to State Treasury and State Audit personnel.

12. Additional Users. The Contractor agrees to expand the license to include such additional State users as may be requested in writing by the State at the applicable unit rate set forth in Section C.1.a hereof. Within fifteen (15) calendar days of receipt of the State's request, the Contractor shall perform whatever actions are necessary to give such additional users access to the Software.

13. Maintenance and Consulting Services.

a. Maintenance. Upon installation of the System as provided in Section A.5 hereof, the Contractor shall maintain the System at or above the "Operative" level (i.e., functions in accordance with the documentation and technical specifications for the System as set forth in Exhibits A through C and in Section A hereof) and shall furnish to the State the following support and services in addition to those specified above:

(1) Incorporate any improvements, enhancements and new releases of the System developed by the Contractor along with explanatory reference documentation. Such modified software shall not degrade current performance levels and in all respects shall be compatible with then-existing State business uses for the System.

Documentation of the existing System shall be changed as necessary for purposes of

removing errors, providing consistency of interpretation and/or documenting improvements. All such improvements, enhancements and new releases shall be considered part of the System.

(2) Make and distribute to the State such changes to the System as are required in order to conform to Federal regulations, rules, statutes and court interpretations thereof involving unclaimed property and accounting. All changes so provided shall be considered part of the System.

(3) Post and maintain the State's Data Entry System for Holders on the Contractor's website.

(4) Diagnose, verify and correct errors, malfunctions and defects in the System. However, if such System errors or malfunctions are a direct result of either an act or omission by the State or of any act or event beyond the control of the Contractor, the State shall pay the Contractor for its services rendered in analyzing the error or malfunction in accordance with Section A.14 of this Contract. At the State's request, the Contractor shall correct any System error or malfunction caused by the State or by the act or event beyond the control of the Contractor and, upon correction of the error or malfunction, the State shall pay the Contractor for such services in accordance with the change order procedures prescribed in Section A.14 of this Contract.

b. Problem Resolution. The Contractor shall initiate System problem resolution within twenty-four (24) hours after telephone notification by the State. The State shall submit to the Contractor a listing of output and all such other data which the Contractor reasonably may request in order to reproduce operating conditions similar to those present when the error, defect or opinion unreasonably degrades System performance. The Contractor must correct the problem, or provide a means of temporary circumvention ("work-around") of the problem, within thirty-six (36) hours after the Contractor received from the State a listing of output and other data.

c. Consulting. The Contractor shall provide to the State, at no additional charge, off-site telephone support each Business Day, as defined in Section A.2 hereof, in the form of consultation, assistance and advice on the use and maintenance of the System. The Contractor and the State shall from time to time designate a telephone number for a Maintenance and Consulting Contact Point. The State shall have the right to call such telephone number for assistance with the use or maintenance of the System.

d. Free Maintenance and Consulting. The Contractor shall provide the above services at no charge to the State for the period beginning on the installation date of the System and ending on December 31, 1999. For such services performed after said period, the Contractor shall be compensated in accordance with Section C.3.c hereof.

14. Change Orders.

a. Notwithstanding Section D.2 of this Contract, the State may at any time, with written notice to the Contractor, request changes within the general scope of this Contract. Such changes may include modification in the functional requirements and processing procedures. Other changes might involve the correction of System deficiencies after the operations phase has begun, or other changes specifically required by new or amended Tennessee State laws and regulations. Any correction of System deficiencies and any capabilities required in this Contract are the Contractor's responsibility to make without charge to the State provided such deficiencies were not as a result of the State's errors. If the problem requiring the change is due to System deficiencies or any capabilities required in this Contract not as a result of the State's errors, any investigation necessary to determine the source of the problem shall be the responsibility of the Contractor. Otherwise, such investigation shall be charged to the State in accordance with Paragraph b of this Section below.

b. As soon as possible after receipt of a written change order, but in no event more than twenty (20) Business Days thereafter, the Contractor shall provide the State with a written cost proposal which shall include a description of the price involved in

implementing the change. The cost to the State resulting in a change shall specify the total cost based on the number of staff-hours required to complete the change, times the staff-hour rate set forth in Section C.3.d of this Contract. The Contractor shall not perform such services until the cost is approved in writing by the State.

c. Any claims, disputes, and other matters in question between the State and the Contractor arising out of or relating to change orders shall be decided in the manner set forth in Section E.7 of this Contract.

B. TERM:

1. **Licensing.** The License granted herein shall become effective on the installation date of the System as defined in Section A.5. Unless sooner terminated as provided herein, the License shall continue in full force and effect for a term of ninety-nine (99) years at which time it shall expire unless the State has renewed it for an additional term by notifying the Contractor in writing at least thirty (30) days prior to the expiration date.

2. **All Other Services.** For the provision of all other services, this Contract shall be effective for a period of five (5) years, commencing at 12:01 a.m., Central Time, on January 1, 1999 and shall end at 12:00 Midnight, Central Time, on December 31, 2003. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS.

1. **Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed three hundred thousand dollars and no cents (\$300,000.00). The Payment Rates in Section C.3 below shall constitute the entire compensation due the Contractor for the Services and all of the Contractor's obligations hereunder. Such Rates, include, but are not limited to, all applicable taxes, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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

3. Payment Methodology.

a. Installation, Training, Conversion and Licensing Services.

(1) Compensation. In consideration of the License granted in Section A.11 of this Contract and the services performed as required in Sections A.1 through A.10 of this Contract, the State shall pay the Contractor a one-time fee of one hundred twenty-nine thousand nine hundred dollars (\$129,900.00).

(2) Invoice Submittal. The payment of such fee shall be made only upon the satisfactory completion by the Contractor of each milestone as defined below and only upon receipt of an invoice therefor, in form and substance acceptable to the State with all of the necessary supporting documentation, in the amount stipulated below:

(A) Upon the successful delivery and installation of the UPS2000 Application Software, sixty-four thousand nine hundred fifty dollars (\$64,950.00).

(B) Upon the successful completion of the Acceptance Test period, the remaining fee amount of sixty-four thousand nine hundred fifty dollars (\$64,950.00).

b. Additional Users.

(1) Compensation. In the event that additional State users are included in the license as provided in Section A.12 hereof, the State shall pay the Contractor a one-time fee of five hundred dollars (\$500.00) for each such additional user.

(2) Invoice Submittal. The payment of such fee shall be made only upon the Contractor's satisfactory completion of the actions necessary to give such additional users access to the Software and only upon receipt of an invoice therefor, in form and substance acceptable to the State with all of the necessary supporting documentation.

c. Maintenance Services.

(1) Compensation. In consideration of the software maintenance services performed as required in Section A.13 of this Contract, the Contractor shall be compensated on a quarterly basis, and in arrears, the sum of six thousand two hundred eighty dollars (\$6,280.00), plus an additional amount equal to thirty-one dollars and twenty-five cents (\$31.25) for each State user included in the license at the end of the applicable quarter.

(2) Invoice Submittal. The Contractor shall submit invoices for the above maintenance services, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to payment. Such invoices shall be submitted to the State by the Contractor on a quarterly basis and in arrears.

d. Change Order Services.

(1) Compensation. Change orders issued by the State pursuant to Section A.14 hereof will be paid at an hourly change rate of one hundred twenty dollars and no cents (\$120.00) upon completion and acceptance by the State of the change. The amount paid for a change order shall not exceed the total cost of the Contractor's written change order statement for a change. The maximum liability for change orders under this Contract shall not exceed twenty-seven thousand six hundred dollars and no cents (\$27,600.00). The Contractor shall be under no obligation to perform change orders requested by the State should fees for such change orders place the State's financial obligation to the Contractor in excess of such amount, unless such amount is increased through an amendment to this Contract.

(2) Invoice Submittal. Payment for a change order shall be made only upon completion and acceptance by the State of the change. The amount paid for a change shall not exceed the total cost of the Contractor's written change order statement for a change.

4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be in the amount of actual costs, subject to maximum amounts and limitations

specified in the "State Comprehensive Travel Regulations," as they are amended from time to time. This amount shall not exceed six thousand two hundred fifty-six dollars and no cents (\$6,256.00) during the period of the Contract.

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

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

7. 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.

8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposits (ACH Credits) Form" provided by the State. This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, shall be made through the State of Tennessee's Automated Clearing House wire transfer system. The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State. The debit entries to correct errors authorized by the "Authorization Agreement for Automatic Deposits Form" shall be limited to those errors detected prior to the effective date of the credit entry. The remittance advice shall note that a correcting entry was made. All corrections shall be made within two (2) banking days of the effective date of the original transaction. All other errors detected at a later

date shall take the form of a refund, or in some instances, a credit memo if additional payments are to be made.

D. STANDARD TERMS AND CONDITIONS:

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

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

3. Termination for Convenience. The State may terminate this Contract by giving the Contractor at least thirty (30) days written notice before the effective termination date. In that event, the Contractor shall be entitled to receive equitable compensation for satisfactory, authorized services completed as of the termination date.

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

5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, Subsections D.6 and D.7 of this Contract. No such subcontracting shall relieve the Contractor from its obligations and liabilities under this Contract.

6. Conflicts of Interest. The Contractor warrants that no part of the total Contract amount shall be paid directly or indirectly to an employee or official of the State of

Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

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 and/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.

8. Records. The Contractor shall maintain documentation for all charges against the State 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.

9. 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.

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

11. 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.

12. Independent Contractor. The parties hereto, in the performance of this Contract, shall be acting in their individual capacities and not 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.

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

14. 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, bad faith, negligence, or willful misconduct 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 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.

In the event of any such suit or claim, the Contractor shall give the State immediate

notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.

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

16. 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 and the courts of the United States which are located within 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.

17. 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.

18. 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.

19. 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:

1. Conflict With Other Contract Terms. 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.

2. Title to System.

a. Title. The Contractor warrants it has complete ownership of the System except for portions of such System licensed from and copyrighted by other software suppliers, and that it has full rights to grant to the State the uses of and the privileges to the System granted herein. Based upon the Contractor's warranty, the State acknowledges that title and full ownership rights to the System licensed under this Contract and all copies and versions thereof shall at all times remain with the Contractor. The State agrees that it will not at any time do or cause to be done any act or thing impairing or tending to impair any part of such rights, title and interest. The State agrees that its use of the System shall not create in the State's favor any right, title or interest in the System beyond that of licensee. The Contractor expressly retains sole ownership of all source code, and no license granted under this Contract shall be construed to include source code as part of the System. The State understands and agrees that the System is proprietary information and a trade secret of the Contractor whether or not any portion thereof is or may be validly copyrighted or patented.

b. Indemnity. The Contractor agrees to indemnify and hold harmless the State and any of its directors, officers, employees and agents against any and all claims, costs, damages and judgments of whatever nature including, but not limited to, costs and expenses incurred by the State in defending any action pertaining to patent, trademark, or copyright infringement, or to violation of any trade secret, license, or proprietary rights, arising from the Contractor's provision of services hereunder; provided the Contractor is given written notice of any such claim and is given an opportunity to conduct its own defense thereof, together with full information and all reasonable cooperation from the

State. The State agrees to allow the Contractor to participate in the defense and settlement of any such claim; provided, however, nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by Tennessee Code Annotated, Section 8-6-106.

The State shall have final approval of any settlement on behalf of the State which shall be subject to those statutory approvals and procedures for the compromise and settlement of litigation involving the State. In addition to the above indemnity, if any such infringement is held to exist, then the Contractor shall at the Contractor's expense and at the State's option either:

- (1) procure for the State the right to continue using or copying the System, or
- (2) modify the System so that it becomes non-infringing so long as such modifications do not reduce the functionality of the software, or
- (3) replace the System with a non-infringing counterpart.

This obligation shall not be construed to limit the remedies otherwise available to the State in equity, at law, or otherwise.

3. Year 2000. The Contractor represents and warrants that the System will be designed or modified and fully tested in such a manner that it will not generate any invalid and/or incorrect date-related results or cause any of the problems commonly referred to as "Year 2000 problems" and shall, without interruption or manual intervention, continue to operate consistently, predictably, and accurately and in accordance with all of the requirements of this Contract, including and without limitation, meeting all specifications and/or functional and performance requirements, when used during any year prior to, during or after calendar year 2000.

4. Protection and Security. The State's right to use the System is limited to the license granted and may not be assigned, sub-licensed or otherwise transferred voluntarily or involuntarily, by operation of law or otherwise, without the prior written consent of the Contractor. The State shall not disclose, provide, or otherwise make available, in whole or

in part, the System to persons other than the State's employees, or authorized agents, in the scope of their employment. The State shall take all appropriate action with its employees and agents whether by instruction, agreement, or otherwise, to ensure the protection, confidentiality and security of the System. When installed, the System shall not be copied or duplicated, except as required as part of the State's normal and customary automated backup/archival procedures. The State shall document the existence of all backup/archival copies of the System. It is expressly understood and agreed that the obligations set forth in this Section shall survive the termination of this Contract.

5. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the State of Tennessee. This provision is not intended to prevent the Contractor from advertising the fact that the Contractor performed the services hereunder on behalf of the State.

6. State Property. The Contractor shall be responsible for the proper custody and care of the State owned property furnished for the Contractor's use in connection with the performance of this Contract and the Contractor shall reimburse the State for its loss or damage, normal wear and tear excepted.

7. Dispute Resolution. In the event of any dispute arising during the term of this Contract concerning performance of this Contract, either party shall serve written notice of such dispute on the other party, and the dispute shall be decided by the Tennessee State Treasurer who shall reduce his decision to writing and serve a copy on the Contractor. The decision of the Tennessee State Treasurer shall be final and conclusive unless, within fifteen (15) calendar days from the date of service of the decision, the Contractor files a petition for a hearing before the Tennessee Claims Commission. The Commission's decision shall be final subject to the right to appeal as provided by Tennessee law.

8. Subject to Funds Availability. This 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. Upon receipt of the written notice the Contractor shall cease all work associated with this Contract on or before the effective termination date specified. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the effective termination date.

9. 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 facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

State of Tennessee, Treasury Department
Division of Unclaimed Property
ATTN: Supervisor
9th Floor, Andrew Jackson State Office Building
500 Deaderick Street
Nashville, TN 37243-0242
Telephone Number: (615) 741-8202, extension 211
Facsimile Number: (615) 532-4979

The Contractor:

Wagers & Associates, Inc.
ATTN: Ken Wagers
2840 Wilderness Place, Suite G
Boulder, Colorado 80301
Telephone Number: (303) 413-9450
Facsimile Number: (303) 413-0442

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the date of delivery; as of the date specified for overnight courier

service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

IN WITNESS THEREOF, the parties have by their duly authorized representatives set their signatures.

WAGERS & ASSOCIATES, INC.

By: _____ DATE: _____
Ken Wagers, President

TREASURY DEPARTMENT
STATE OF TENNESSEE

By: _____ DATE: _____
Steve Adams, Treasurer

APPROVED:
DEPARTMENT OF FINANCE AND ADMINISTRATION
STATE OF TENNESSEE

By: _____ DATE: _____
John D. Ferguson, Commissioner

APPROVED:
COMPTROLLER OF THE TREASURY
STATE OF TENNESSEE

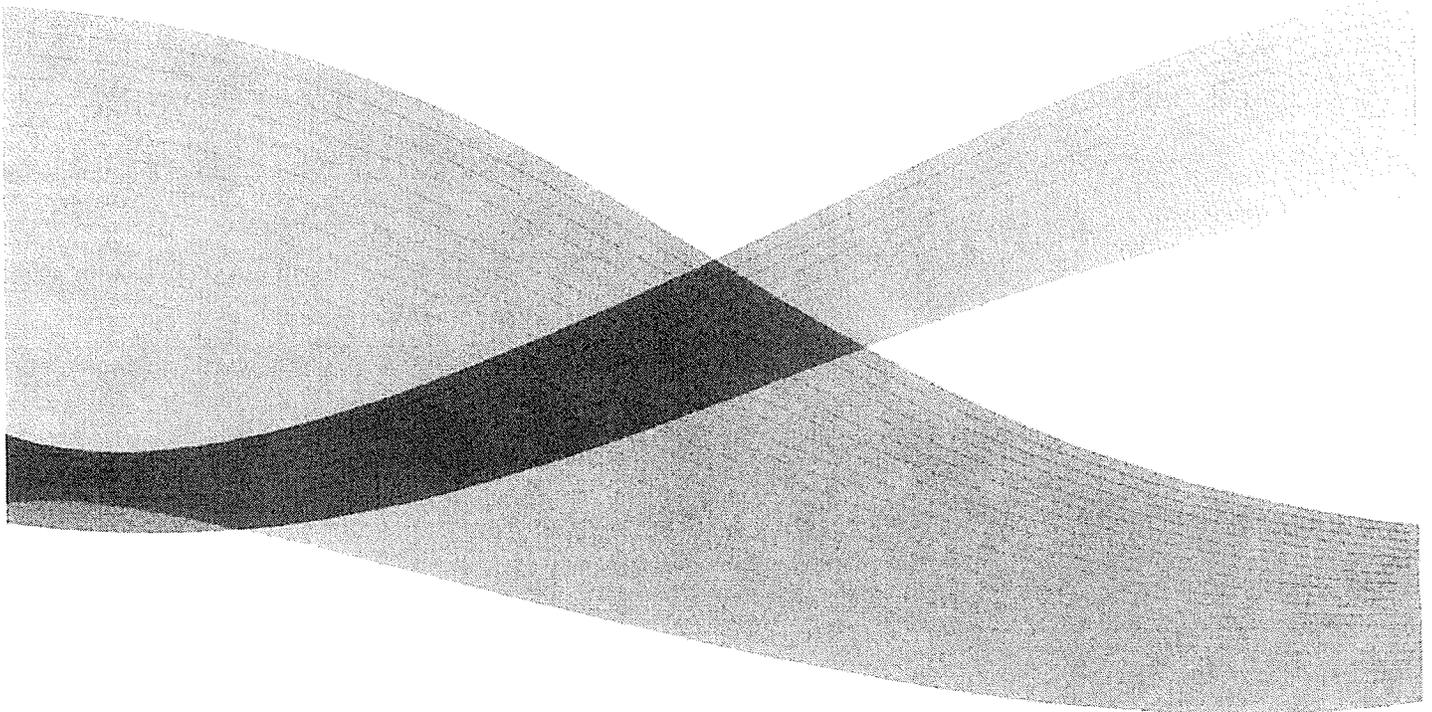
By: _____ DATE: _____
William R. Snodgrass, Comptroller

ATTACHMENT B

Unclaimed Property Overview Design Document

Holder Reporting State Web Site

Tennessee Unclaimed Property
August 2015



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1. Overview

Xerox has developed a Holder Reporting Web Site that provides the ability for State unclaimed property divisions to allow reporting entities (holders and companies) to automatically submit either unclaimed property positive or negative reports to the State Treasury's Unclaimed Property Division. Xerox will modify the Web Site to conform to the look and feel of the current Tennessee state web site, claimittn.gov, in terms of colors, style, fonts, etc. The site will integrate with the current state web site.

This site will provide real-time interaction with the UPS2000 database to provide pertinent information to the user and to update UPS2000 with uploaded file information. The site will provide functionality for verifying that uploaded files are in approved NAUPA format. The site will provide for the registration and management of User accounts that can be associated with one or more holders. The site will also provide the reporting entity with the capability to submit ACH payments for processing. An administrative function will also be included allowing the Treasury staff to assist reporting entities with the accounts.

2. Primary Functionality

2.1 Common functionality for all pages:

- Error messages when invalid (i.e.: login)
- Error messages when input data is in incorrect format
- Most pages will contain a "Return to Holder Main Page" hyperlink

2.2 User Screens

2.2.1 Home Screen

The Home screen contains text that introduces the web User to the holder site and directs the User to login to the site.

2.2.2 Register User Screen

Provides web User with the ability to register as a registered User.

Other Processes:

- Send email to registrant to confirm email address and activate account. User must respond to complete confirmation.

2.2.3 User Login Screen

Provides web User with the ability to login as a registered User, register as a new User, reset password if password is forgotten, or cancel and return to the Home page.

Other Processes:

- Error message is displayed if login is invalid.

2.2.4 Add Secondary Users

Provides the primary account owner with the ability to create the secondary users they wish to link to the account. Company name (Reporting Entity) is inferred for secondary users during user registration based on email address; a secondary user is not presented this screen.

Other Processes:

- Send notification to secondary accounts to notify them that they have been added as users to the account. Notification should include a link to take them to user registration.

2.2.5 Change Password Screen

Provides web User with the ability to change their password.

2.2.6 Forgot Password Screen

This screen provides registered Users with the ability to reset their password.

Other Processes:

- Send email to registrant with new generated password. User can manually change the new password.

2.2.7 Update User Screen

This screen provides registered Users with the ability to change their account information.

Other Processes:

- Email address change for primary account owner validates that user is not listed as a secondary account on another user account. If it is, a confirmation prompt is displayed and company would be deleted/disabled.
- Email address change invokes an email notification for user to confirm and accept the email address change.

2.2.8 Main Menu Screen

This is the initial screen that appears once a User is logged in. All users will be able to:

- review and select files that have been submitted and complete or not complete,
- create a new report (Positive or Negative),
- - make payment on any existing file or under Other Payments,
- The Primary User will be able to manage the user group for their reporting entity.

2.2.9 Post Negative Report Screen

This screen will provide for a User with the input controls to begin to process their negative reports.

Other Processes:

- A negative report will also be created in the UPS2000 database.
- The application will automatically "clear" negative holder reports in the UPS2000 database.
- When the Negative Report is posted the Negative Report Confirmation Screen will be displayed.
- A notification is sent to all users in the reporting entity

2.2.10 Negative Report Confirmation Screen

This screen simply displays all the report information along with a confirmation message that the report was submitted successfully. A second message will be displayed directing the user to the report dashboard for any additional information.

2.2.11 View Negative Reports Screen

This screen simply displays all the reports for the Holder(s) associated with the logged-in User.

Other Processes:

- If a user deletes a negative report, a notification is sent to an admin. The negative report is not actually deleted, it is marked as deactivated. A user can only delete the report if it has not been submitted and loaded to UPS2000

2.2.12 Positive Report Upload and Finalize Report Screens

This screen will provide for a User to upload a positive report file by browsing their workstation environment to locate the file. Only files of a specific type defined in the application configuration will be displayed in the select file window. If the User attempts to

upload a different file type the upload will fail and an error message will be displayed. A check box with the legal wording provided by State UCP staff will be provided so the User can place a check in the box indicating that he/she agrees to the file upload.

Other Processes:

- When the Upload button is clicked the site will:
 1. It will determine if the file is a readable file. If not, it will return an error message.
 2. It will determine if the file is in NAUPA format. If not, it will return an error message.
 3. It will determine if all required fields are populated.
 4. It will determine if the data in each field is in the proper format.
 5. It will determine if the counts and totals are correct.
 6. It will perform the same validation that is performed by Report Import. (The State will determine which validations are errors and which ones are warnings.)
 7. If errors occur, a report of the errors will be returned and displayed by the web application. The user will be presented with the ability to have the error report emailed to them. (The user will be provided an explanation of the error. The wording for this explanation will be managed by the state or provided to the vendor by the State.)
 8. If warnings occur, an alert that the report has warnings will appear. The file can still be completed with warnings. The report of the warnings will be returned and displayed by the web application. (The user will be provided an explanation of the warnings. The wording for this explanation will be managed by the state or provided to the vendor by the State.)
- The web application will display a preview of the file that was uploaded. The preview will include the summary of the file (total dollar amount and number of reports), summary of each report on the file (Holder Name, Report Amount, and Number of Properties on that report), and the first 10 properties on each report.
- Once the file has been successfully validated the user may choose to submit the file to the state. The web application will then perform a system match for the holder based on the information in the NAUPA file and link it to the holder in UPS2000. If the application does not find a match it will create the holder in UPS2000.
- If there is stock in the file, the user will be prompted to enter the stock date (This date will be used for the initial transaction date in UPS2000). A default custodian code of 41 will be applied to the records in UPS2000. The system will do a Stock ID match using Custodian 1 in UPS2000 for the lookup against the CUSIP on the file being submitted. If no match, the system will create the CUSIP using the information in the file. If there are duplicate matches, the system will use the lowest number in UPS2000.

User Notifications:

- The application will send an email notification to Users as defined by the State that the holder file has been submitted.
- The application will send an email notification to Users as defined by the State that the holder file has been rejected.
- The application must send an email notification to Users as defined by the State notifying him/her that the holder file has been loaded successfully.

2.2.13 Make Payment Screen

This screen will provide for a User to input all payment information

Other Processes:

- Securely store the User's payment information into the UPS2000 database, encrypting the routing number and account number.
- An Admin will manually create the ACH file that will be generated on demand which will place the file to a designated location defined by the State. When the ACH file is created, an UPS2000 batch, receipt and receipts splits for each report is assigned to the payment. The settle date used is the next business day after the ACH file is created by the State. Business days as defined by the Federal Reserve Calendar.
- If a holder submits payment by check, the State will enter the payment in UPS2000 by creating a receipt and linking it to the Holder Report. Payments received and processed in UPS2000 will be sent by a batch file job to the website on a scheduled basis so holders will be able to see the updated status of payment on the website.

User Notifications:

- Send an email notification to Users as defined by the State notifying him/her that the payment has been submitted. An email will be sent to the User when payment is accepted by the State. An email will be sent to the User regarding the ACH transaction, language to be provided by the State.

2.3 Administrative Screens

2.3.1 Admin Menu Screen

This screen provides a menu to go to the admin screens. This screen can only be accessed by a User with administrator permissions. The User inputs would consist of hyperlinks to the Admin screens.

2.3.2 Admin View User Accounts Screen

Provides a menu to search for Users, and display a list of search results. It also provides a way to select a User to edit.

2.3.3 Admin Process NACHA Return File Screen

The solution will receive a return ACH file and parsing the file to process receipt adjustments when necessary.

State Provided Return Reason Codes:

Return Reason Code	Description	Comments
R01	Insufficient funds	Available balance is not sufficient to cover the amount of the debit entry
R02	Bank account closed	Previously active amount has been closed by the customer of RDFI
R03	No bank account/unable to locate account	Account number does not correspond to the individual identified in the entry, or the account number designated is not an open account
R04	Invalid bank account number	Account number structure is not valid
R06	Returned per ODFI request	Originator requested the RDFI to return the entry (Example: Reversals, Recall Requests)
R07	Authorization revoked by customer	Receiver has revoked authorization
R08	Payment stopped	Receiver of a recurring debit has stopped payment of an entry
R09	Uncollected funds	Collected funds are not sufficient for payment of the debit entry
R10	Customer advises not authorized	Consumer has advised RDFI that originator is not authorized to debit his bank account
R29	Unauthorized Corporate Debit	Corporate advised RDFI that originator is not authorized to debit their bank account.

Other Processes:

- Create receipt adjustments for the associated UPS2000 holder report when an ACH payment has been rejected. The SSI S package must not delete any receipts.
- Copy the reason the payment was returned from the backend return file into the holder's 'Reject Reason' field in UPS2000.
- Once the Reporting Entity made the initial ACH payment the application will not allow a second payment on the same file regardless if the ACH was successful or rejected.
- Copy reject reason codes 'R07' (Consumer didn't authorize the debit) and 'R29' (Corporation didn't authorize the debit) along with the user's name, bank routing number, bank account number and date/time into a table.
- Send an email notification to all users within an account, to UCP personnel, and Program Accounting notifying the payment was rejected.

- For return codes of R07 and R29 the application will lock the reporting entity from submitting any further ACH payments for any other files or Other Payments until the account is unlocked by an Administrator. The State will contact the User to resolve the payment issue with the ACH. The Administrator will create an "other payment" for the Reporting Entity once the issue has been resolved and release the lock on the account to allow the User to submit payments on any other files or Other Payments.

The return file would contain the UPS2000 receipt ID or report ID, as passed in the outbound file. It would only contain the rejects.

3. Additional Functionality

3.1 Notifications

- The application must send an email notification on the second Tuesday in April to all users within an account notifying him/her that payment has not been received.
- The application must send an email notification on the last Thursday in April to all users within an account notifying him/her that payment has not been received.
- The application must send an email notification every last Thursday of the month to all users within an account notifying him/her that payment has not been received.

3.2 Make Other Payment Screen

3.2.1 User to input additional payment information

This screen will provide for a User to input additional payments

Other Processes:

- Securely send and store the User's payment information into the UPS2000 database.
- An Admin will manually create the ACH file that will be generated daily which will place the file to a designated location defined by the State.

User Notifications:

- Send an email notification to all Users within an account notifying him/her that the payment has been submitted.

3.2.2 User (Holder) to enter remittance on State Authorized Exam reported by Third Party Auditor

- The audit contractor that is identified by the state will load the file under their Reporting Entity.
- The Holder will make payment on any State Authorized Exams through the "Other Payments" function in 3.2.1. The State will enter the payment info in 3.3.2.
- For any Reporting Entities that are identified by the State as audit contractors they will not have the function to make a payment under 2.2.13 for any files that they upload.
- When the Holder has made payment the Reporting Entity will be able to see that this payment was made.

3.3 Administrator Functions

3.3.1 Admin Update User Account Information Screen

This screen provides an Administrator with the ability to change the account information of a User

Other Processes:

- Email address change for primary account owner validates that user is not listed as a secondary account on another user account. If it is, a confirmation prompt is displayed and company would be deleted/disabled.
- Promote Secondary user to Primary user
- Inactive users – confirm the user is not a primary user prior to inactivating
- Send email to User to advise that the User information has been changed.

3.3.2 Admin Enter Other Payments Screen

This screen will provide for an Administrator to input other payment information into both the web application database and the UPS2000 database. This screen does not include the processing of the payment.

Other Processes:

- Copy the amount entered into the 'other payment' amount field into the report's corresponding penalty field in UPS2000 when 'Penalty or Interest' is selected as the receipt type. For any other receipt type, it will not tie to any field in UPS2000, thus leaving the report in UPS2000 in an out of balance condition.

3.3.3 Admin Reports Menu Screen

This screen will contain display text and a menu of hyperlinks to the various reports of the application.

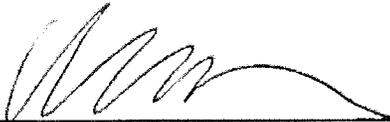
Other Processes:

- Create Audit Log Record
 - Date
 - Time
 - Receipt Number
 - Batch Number
 - Receipt Type
 - Description of Update

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Wagers & Associates, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security 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.

David Lemane, V.P.

PRINTED NAME AND TITLE OF SIGNATORY

9-16-15

DATE OF ATTESTATION

TREASURY DEPARTMENT'S GIFTS AND SOLICITATIONS 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 tradeshow 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.