



GRANT CONTRACT

(cost reimbursement grant contract with a federal or Tennessee local or quasi-governmental entity)

Begin Date 12/16/2013	End Date 12/15/2018	Agency Tracking # 33006-32214	Edison ID 4154
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Contractor Legal Entity Name Economic Development Growth Engine of the City of Memphis and County of Shelby (EDGE)	Edison Vendor ID 157544
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Subrecipient or Vendor <input checked="" type="checkbox"/> Subrecipient <input type="checkbox"/> Vendor	CFDA #
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Service Caption (one line only)
Assisting kgb USA, Inc. dba Conduit Global- ED

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	\$1,250,000.00				\$1,250,000.00
TOTAL:	\$1,250,000.00				\$1,250,000.00

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

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

Jessie L. Johnson 3/21/14

OCR USE - GG

Speed Chart (optional)	Account Code (optional)
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**GRANT CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT
AND
ECONOMIC DEVELOPMENT GROWTH ENGINE OF THE CITY OF MEMPHIS
AND COUNTY OF SHELBY, TENNESSEE**

This Grant Contract, by and between the State of Tennessee, Department of Economic and Community Development (the "State"), and Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (the "Grantee"), is for the provision of assisting kgb USA, Inc. d/b/a/ Conduit Global (the "Company"), as further defined in the "SCOPE OF SERVICES."

Grantee Edison Vendor ID #157544

A. SCOPE OF SERVICES:

- A.1. The Grantee shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Grant Contract.
- A.2. The Grantee shall utilize FastTrack Economic Development Program funds to assist the Company in the following project: Complete building and telecommunications improvements, to include telecommunications networks, security systems, fixture lighting, workspace renovations, and signage, at the Company's offices located at 7000 Goodlett Farms, Memphis, TN 38016. The Company will create 1,000 new jobs in Tennessee within the next 5 years.
- A.3. Incorporation of Additional Documents. Each of the following documents is included as a part of this Grant Contract by reference or attachment. In the event of a discrepancy or ambiguity regarding the Grantee's duties, responsibilities, and performance hereunder, these items shall govern in order of precedence below.
 - a. this Grant Contract document with any attachments or exhibits;
 - b. the Accountability Agreement, attached and incorporated hereto as Attachment B.

B. CONTRACT PERIOD:

This Grant Contract shall be effective for the period beginning December 16, 2013, and ending on December 15, 2018. The Grantee hereby acknowledges and affirms that the State shall have no obligation for Grantee services or expenditures that were not completed within this specified contract period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Grant Contract exceed One Million Two Hundred Fifty Thousand and no/100 Dollars (\$1,250,000.00). The Grant Budget, attached and incorporated hereto as Attachment A, shall constitute the maximum amount due the Grantee for all service and Grantee obligations hereunder. The Grant Budget line-items include, but are not limited to, all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Grantee.
- C.2. Compensation Firm. The maximum liability of the State is not subject to escalation for any reason unless amended. The Grant Budget amounts are firm for the duration of the Grant Contract and are not subject to escalation for any reason unless amended, except as provided in section C.6.



- C.3. Payment Methodology. The Grantee shall be reimbursed for actual, reasonable, and necessary costs based upon the Grant Budget, not to exceed the maximum liability established in section C.1. Upon progress toward the completion of the work, as described in section A of this Grant Contract, the Grantee shall submit invoices prior to any reimbursement of allowable costs.
- C.4. Travel Compensation. Reimbursement to the Grantee for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time, and shall be contingent upon and limited by the Grant Budget funding for said reimbursement.
- C.5. Invoice Requirements. The Grantee shall invoice the State no more often than monthly, with all necessary supporting documentation, and present such to:

ECD Budget/Fiscal Office
312 Rosa L. Parks, 23rd Floor
Nashville, TN 37243

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice/Reference Number (assigned by the Grantee).
 - (2) Invoice Date.
 - (3) Invoice Period (to which the reimbursement request is applicable).
 - (4) Grant Contract Number (assigned by the State).
 - (5) Grantor: Department of Economic and Community Development.
 - (6) Grantor Number (assigned by the Grantee to the above-referenced Grantor).
 - (7) Grantee Name.
 - (8) Grantee Tennessee Edison Registration ID Number Referenced in Preamble of this Grant Contract.
 - (9) Grantee Remittance Address.
 - (10) Grantee Contact for Invoice Questions (name, phone, and/or fax).
 - (11) Itemization of Reimbursement Requested for the Invoice Period— it must detail, at minimum, all of the following:
 - i. The amount requested by Grant Budget line-item (including any travel expenditure reimbursement requested and for which documentation and receipts, as required by "State Comprehensive Travel Regulations," are attached to the invoice).
 - ii. The amount reimbursed by Grant Budget line-item to date.
 - iii. The total amount reimbursed under the Grant Contract to date.
 - iv. The total amount requested (all line-items) for the Invoice Period.
- b. The Grantee understands and agrees to all of the following.
- (1) An invoice under this Grant Contract shall include only reimbursement requests for actual, reasonable, and necessary expenditures required in the delivery of service described by this Grant Contract and shall be subject to the Grant Budget and any other provision of this Grant Contract relating to allowable reimbursements.
 - (2) An invoice under this Grant Contract shall not include any reimbursement request for future expenditures.
 - (3) An invoice under this Grant Contract shall initiate the timeframe for reimbursement only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.



- C.6. Budget Line-items. Expenditures, reimbursements, and payments under this Grant Contract shall adhere to the Grant Budget. The Grantee may vary from a Grant Budget line-item amount by up to twenty percent (20%) of the line-item amount, provided that any increase is off-set by an equal reduction of other line-item amount(s) such that the net result of variances shall not increase the total Grant Contract amount detailed by the Grant Budget. Any increase in the Grant Budget, grand total amounts shall require an amendment of this Grant Contract.
- C.7. Disbursement Reconciliation and Close Out. The Grantee shall submit any final invoice and a grant disbursement reconciliation report within sixty (60) days of the Grant Contract end date and in form and substance acceptable to the State.
- a. If total disbursements by the State pursuant to this Grant Contract exceed the amounts permitted by the section C, payment terms and conditions of this Grant Contract, the Grantee shall refund the difference to the State. The Grantee shall submit said refund with the final grant disbursement reconciliation report.
 - b. The State shall not be responsible for the payment of any invoice submitted to the state after the grant disbursement reconciliation report. The State will not deem any Grantee costs submitted for reimbursement after the grant disbursement reconciliation report to be allowable and reimbursable by the State, and such invoices will NOT be paid.
 - c. The Grantee's failure to provide a final grant disbursement reconciliation report to the state as required shall result in the Grantee being deemed ineligible for reimbursement under this Grant Contract, and the Grantee shall be required to refund any and all payments by the state pursuant to this Grant Contract.
 - d. The Grantee must close out its accounting records at the end of the contract period in such a way that reimbursable expenditures and revenue collections are NOT carried forward.
- C.8. Indirect Cost. Should the Grantee request reimbursement for indirect cost, the Grantee must submit to the State a copy of the indirect cost rate approved by the cognizant federal agency and the State. The Grantee will be reimbursed for indirect cost in accordance with the approved indirect cost rate and amounts and limitations specified in the attached Grant Budget. Once the Grantee makes an election and treats a given cost as direct or indirect, it must apply that treatment consistently and may not change during the contract period. Any changes in the approved indirect cost rate must have prior approval of the cognizant federal agency and the State. If the indirect cost rate is provisional during the period of this agreement, once the rate becomes final, the Grantee agrees to remit any overpayment of funds to the State, and subject to the availability of funds the State agrees to remit any underpayment to the Grantee.
- C.9. Cost Allocation. If any part of the costs to be reimbursed under this Grant Contract are joint costs involving allocation to more than one program or activity, such costs shall be allocated and reported in accordance with the provisions of Department of Finance and Administration Policy Statement 03 or any amendments or revisions made to this policy statement during the contract period.
- C.10. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any reimbursement, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount as an allowable cost.
- C.11. Unallowable Costs. Any amounts payable to the Grantee 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 or monitoring conducted in accordance with the terms of this Grant Contract, not to constitute allowable costs.



C.12. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Grantee under this or any contract between the Grantee and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Grantee.

C.13. Prerequisite Documentation. The Grantee shall not invoice the State under this Grant Contract until the State has received the following documentation properly completed.

- a. The Grantee shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Grantee acknowledges and agrees that, once said form is received by the State, all payments to the Grantee, under this or any other contract the Grantee has with the State of Tennessee shall be made by Automated Clearing House (ACH).
- b. The Grantee shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Federal Employer Identification Number or Social Security Number referenced in this Grant Contract or the Grantee's Tennessee Edison Registration.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Grant Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

D.2. Modification and Amendment. Except as specifically provided herein, this Grant Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

D.3. Termination for Convenience. The State may terminate this Grant Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Grantee at least thirty (30) days written notice before the effective termination date. The Grantee shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the State be liable to the Grantee for compensation for any service which has not been rendered. The final decision as to the amount, for which the State is liable, shall be determined by the State. Should the State exercise this provision, the Grantee shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

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

D.5. Subcontracting. The Grantee shall not assign this Grant Contract or enter into a subcontract for any of the services performed under this Grant Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this contract pertaining to "Conflicts of Interest," "Lobbying,"



"Nondiscrimination," "Public Accountability," "Public Notice," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Grantee shall be the prime contractor and shall be responsible for all work performed.

- D.6. Conflicts of Interest. The Grantee warrants that no part of the total Grant 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 Grantee in connection with any work contemplated or performed relative to this Grant Contract.
- D.7. Lobbying. The Grantee certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Grantee shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The Grantee shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

- D.8. Nondiscrimination. The Grantee 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 Grant Contract or in the employment practices of the Grantee on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Grantee shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.9. Public Accountability. If the Grantee is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4, or if this Grant Contract involves the provision of services to citizens by the Grantee on behalf of the State, the Grantee agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Grantee shall display in a prominent place, located near the passageway through which the public enters in order to receive Grant supported services, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER



TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S
TOLL-FREE HOTLINE: 1-800-232-5454

- D.10. Public Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Grantee shall include the statement, "This project is funded under an agreement with the State of Tennessee." Any such notices by the Grantee shall be approved by the State.
- D.11. Licensure. The Grantee and its employees and all sub-grantees shall be licensed pursuant to all applicable federal, state, and local laws, ordinances, rules, and regulations and shall upon request provide proof of all licenses.
- D.12. Records. The Grantee (and any approved subcontractor) shall maintain documentation for all charges under this Contract. The books, records, and documents of the Grantee (and any approved subcontractor), 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 agency, the Comptroller of the Treasury, or duly appointed representatives. The records of not-for-profit entities shall be maintained in accordance with the *Accounting and Financial Reporting for Not-for-Profit Recipients of Grant Funds in Tennessee*, published by the Tennessee Comptroller of the Treasury and found at <http://www.comptroller1.state.tn.us/ma/finreptmanual.asp>. The records for local governments shall be maintained in accordance with the *Internal Control and Compliance Manual for Tennessee Municipalities*, published by the Tennessee Comptroller of the Treasury and found at <http://www.comptroller1.state.tn.us/ma/citymanual.asp> and in accordance with GFOA's publication, *Governmental Accounting, Auditing and Financial Reporting*.
- D.13. Prevailing Wage Rates. All grants and contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*
- D.14. Monitoring. The Grantee's activities conducted and records maintained pursuant to this Grant Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.15. Progress Reports. The Grantee shall submit brief, periodic, progress reports to the State as requested.
- D.16. Annual Report and Audit. The Grantee shall prepare and submit, within nine (9) months after the close of the reporting period, an annual report of its activities funded under this Grant Contract to the commissioner or head of the Granting agency, the Tennessee Comptroller of the Treasury, and the Commissioner of Finance and Administration. The annual report for any Grantee that receives five hundred thousand dollars (\$500,000) or more in aggregate federal and state funding for all its programs shall include audited financial statements. All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Grantee may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit contract between the Grantee and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the *Audit Manual for Governmental Units and Recipients of Grant Funds* published by the Tennessee Comptroller of the Treasury. The Grantee shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the



licensed independent public accountant by the Grantee shall be subject to the provisions relating to such fees contained in the prescribed contract form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the State Granting Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.

- D.17. Procurement. If other terms of this Grant Contract allow reimbursement for the cost of goods, materials, supplies, equipment, and/or contracted services, such procurement(s) shall be made on a competitive basis, including the use of competitive bidding procedures, where practical. The Grantee shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Grant Contract. In each instance where it is determined that use of a competitive procurement method is not practical, supporting documentation shall include a written justification for such decision and non-competitive procurement. Further, and notwithstanding the foregoing, if such reimbursement is to be made with funds derived wholly or partially from federal sources, the determination of cost shall be governed by and reimbursement shall be subject to the Grantee's compliance with applicable federal procurement requirements.

The Grantee shall obtain prior approval from the State before purchasing any equipment under this Grant Contract.

- D.18. Strict Performance. Failure by any party to this Grant Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Grant Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.19. Independent Contractor. The parties hereto, in the performance of this Grant Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Grant Contract shall be construed to create a principal/agent 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 Grantee, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, *Tennessee Code Annotated*, Sections 29-20-101 *et seq.*, for causes of action sounding in tort. Further, no contract provision requiring a Tennessee political entity to indemnify or hold harmless the State beyond the liability imposed by law is enforceable because it appropriates public money and nullifies governmental immunity without the authorization of the General Assembly.

- D.20. State Liability. The State shall have no liability except as specifically provided in this Grant Contract.
- D.21. Force Majeure. The obligations of the parties to this Grant Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.22. State and Federal Compliance. The Grantee shall comply with all applicable state and federal laws and regulations in the performance of this Grant Contract.
- D.23. Governing Law. This Grant Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Grantee agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Grant Contract. The Grantee acknowledges and agrees that any rights or claims against the State of



Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

- D.24. **Completeness.** This Grant 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 Grant Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.25. **Severability.** If any terms and conditions of this Grant 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 Grant Contract are declared severable.
- D.26. **Headings.** Section headings are for reference purposes only and shall not be construed as part of this Grant 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 Grant Contract, these special terms and conditions shall control.
- E.2. **Communications and Contacts.** All instructions, notices, consents, demands, or other communications required or contemplated by this Grant Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Leslie Hathaway, Contract Specialist
Tennessee Department of Economic and Community Development
312 Rosa L. Parks Avenue, 27th floor
Nashville, TN 37243
Telephone # 615-253-1906
Fax # 615-532-1296
leslie.hathaway@tn.gov

The Grantee:

Reid Dulberger, President & CEO
Economic Development Growth Engine Industrial Development Board
of the City of Memphis and County of Shelby, Tennessee
100 Peabody Place, Suite 100, Memphis, TN 38103
Telephone # 901-341-2100
FAX # 901-527-9224
rdulberger@growth-engine.org

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



- E.3. Subject to Funds Availability. The Grant 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 Grant Contract upon written notice to the Grantee. Said termination shall not be deemed a breach of contract by the State. Upon receipt of the written notice, the Grantee shall cease all work associated with the Grant Contract. Should such an event occur, the Grantee shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Grantee shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. No Equipment Acquisition. This Grant Contract does not involve the acquisition and disposition of equipment acquired with funds provided under this Grant Contract.

IN WITNESS WHEREOF,

ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD
OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE:



GRANTEE SIGNATURE



DATE

Reid Dulberger, President & CEO

PRINTED NAME AND TITLE OF GRANTEE SIGNATORY (above)

TENNESSEE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT:



WILLIAM F. HAGERTY, COMMISSIONER



DATE



ATTACHMENT A

GRANT BUDGET

GRANT CONTRACT #

GRANTEE:

Economic Development Growth Engine Industrial Development Board
of the City of Memphis and County of Shelby, Tennessee

GRANTEE CONTACT:

Reid Dulberger, 901-341-2100

PROGRAM AREA:

Economic Development

THE FOLLOWING IS APPLICABLE TO EXPENSE INCURRED IN THE PERIOD: 12/16/2013 through 12/15/2018

EXPENSE OBJECT LINE-ITEM CATEGORY	GRANT CONTRACT	GRANTEE PARTICIPATION	TOTAL PROJECT
Construction	\$1,000,000.00		\$1,000,000.00
Site Preparation			
Construction Inspection			
Engineering Design			
Engineering (other than design)			
Appraisals			
Acquisition of Property - Land & ROW			
Professional Fee (Detail attached)			
Other Non-Personnel Expenses (Detail attached)	\$250,000.00		\$250,000.00
Project Contingency (for potential project costs exceeding the total budget amount in line items above)			
GRAND TOTAL	\$1,250,000.00		\$1,250,000.00



GRANT BUDGET LINE-ITEM DETAIL:

OTHER NON-PERSONNEL	AMOUNT
Telecommunications systems upgrades.	\$250,000.00
TOTAL	\$250,000.00



ATTACHMENT B
ACCOUNTABILITY AGREEMENT



**TENNESSEE DEPARTMENT OF ECONOMIC
AND COMMUNITY DEVELOPMENT**

FASTTRACK ECONOMIC DEVELOPMENT PROGRAM

ACCOUNTABILITY AGREEMENT

This Accountability Agreement (this "Agreement") is made and entered into as of March 1, 2014 (the "Effective Date") by and among the Tennessee Department of Economic and Community Development, a department of the State of Tennessee (the "State"), the Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee (the "Development Authority"), and kgb USA, Inc. d/b/a/ Conduit Global (the "Company") (the State, the Development Authority, and the Company, collectively, the "Parties").

RECITALS

WHEREAS, the purpose of the State's incentive programs is to promote long-term job growth by providing financial assistance to eligible applicants to induce and assist companies to relocate, expand, or construct projects in Tennessee;

WHEREAS, one of the economic development incentives offered by the State is an award from the FastTrack Economic Development Program ("FEDP") and the State has committed to provide an award (the "Award") under the FEDP to the Development Authority for the project summarized in Section 1.2. (the "Project") and more particularly described in the Grant Contract (as defined below), a copy of which is attached hereto as Attachment A and incorporated into this Agreement;

WHEREAS, the Development Authority, in accordance with its statutory purposes, will utilize the Award to participate in the Project to assist the Company;

WHEREAS, in consideration for the Award, the Company has committed to create the number of jobs noted in Section 2.1.;

WHEREAS, on or around the date of the execution of this Agreement, the Development Authority has or will execute a grant contract between the State and the Development Authority (the "Grant Contract") that provides the terms of the Award, and the Company has or will execute a grant contract between the Development Authority and the Company with respect to the Award;

WHEREAS, this Agreement obligates the Company to report the employment levels of the Company relevant to the Project and the calculation of the number of Net New Jobs (as defined below) to the State on an annual basis for the period commencing on the Start Date and ending on the End Date (as such terms are defined below).



Now, therefore, upon and in consideration of the respective promises and covenants contained herein and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I – AWARD

- 1.1. Grant Award Amount. Subject to approval of the Grant Contract, the State shall provide to the Development Authority an Award of \$1,250,000 (the “Award Amount”) for the Project.
- 1.2. Project Description. The Development Authority and the Company shall use the Award to implement the Project, which is summarized as follows:
Complete building and telecommunications improvements, to include telecommunications networks, security systems, fixture lighting, workspace renovations, and signage, at the Company’s offices located at 7000 Goodlett Farms, Memphis, TN 38016.

ARTICLE II – PERFORMANCE REQUIREMENT

- 2.1. Company Commitment. For purposes of this Agreement, a Job is defined as a new, full-time position created and filled during the period beginning on December 16, 2013 (the “Start Date”) and ending on December 15, 2018 (the “End Date”) that is held for a minimum of twenty-six weeks in a calendar year by a Company employee who is offered medical benefits. As consideration for the Award, the Company shall create 1,000 new Jobs (“Committed Jobs”) between the Start Date and the End Date (the “Performance Requirement”). The State may, in its sole discretion, extend the End Date due to an event of Force Majeure. For purposes of this Agreement, the term “Force Majeure” shall mean any of the following events that directly impact the Company’s ability to meet the Performance Requirement: flood, earthquake, storm, lightning, fire, or other Acts of God; sabotage or terrorism. However, an extension of the End Date shall be for a term no longer than one year following the End Date.
- 2.2. Compliance with the Performance Requirement. Pursuant to Section 3.2., the State shall, on an annual basis, obtain from the Company the cumulative number of Jobs created and filled (“Net New Jobs”) as of each annual anniversary of the Start Date (each anniversary, an “Interim Date”) during the period commencing on the Start Date and ending on the End Date (and, if the End Date is extended pursuant to Section 2.1., on a stub period basis for the period ending on the End Date). Net New Jobs shall not include positions created as a result of a merger, acquisition, or other business combination unless such positions are new positions in the State of Tennessee. In accordance with the formula on Item 3 of Exhibit A, the number of Net New Jobs as of the End Date shall be divided by the number of Committed Jobs to determine the performance percentage (the “Performance Percentage”) as of the End Date; provided, however, that if the End Date has been extended pursuant to Section 2.1., the number of Net New Jobs as of the extended End Date shall be used in this calculation. The Company shall be deemed in compliance with the



Performance Requirement if the Performance Percentage is equal to or greater than eighty percent (80%). The Company's failure to be in compliance with the Performance Requirement as of the End Date shall result in the reimbursement of all or a portion of the Award Amount that has been received by the Development Authority in accordance with Section 4.1.

ARTICLE III – REPORTING REQUIREMENTS

- 3.1. **Baseline Report.** On or before the 60th day following the Effective Date (or such later date as shall have been approved by the State), the Company shall deliver to the State a report substantially similar to Exhibit C (the "Baseline Report") that provides the number of the Company's Jobs existing as of the Start Date. Notwithstanding the provisions of Section 2.1. that limit the definition of the term "Job" to positions that are "created and filled between the Start Date and the End Date," for purposes of the Baseline Report and of establishing the number of Jobs that the Company had as of the Start Date, persons employed prior to the Start Date and who otherwise meet the requirements to be included as a "Job" will be included in the calculation of the number of Jobs as of the Start Date.
- 3.2. **Performance Reports.** On or before the 60th day (or such later date as shall have been approved by the State) following each Interim Date (or, in the case of the final Performance Report, following the End Date), the Company shall deliver to the State a report substantially similar to Exhibit D (a "Performance Report") that provides the number of Net New Jobs existing as of the Interim Date applicable to such report (and, if the End Date is extended pursuant to Section 2.1., on or before the 60th day following the extended End Date, or such later date as shall have been approved by the State). Each Performance Report will be signed by a duly authorized representative of the Company and will certify the number of Net New Jobs as of the Interim Date applicable to such Performance Report (or, if the End Date has been extended pursuant to Section 2.1., as of the extended End Date). The Baseline and Performance Reports shall include appropriate back-up data for the Jobs reported. Back-up data shall provide reasonable assurance that information provided to the State pursuant to this Agreement is true and correct in all material respects.

ARTICLE IV – DEFAULT

- 4.1. **Events of Default and Repayment Amount.** In the event that (i) the Company fails to satisfy the Performance Requirement as of the End Date pursuant to Article II, (ii) the Company fails to provide the Baseline Report or all of the Performance Reports required pursuant to Sections 3.1. and 3.2. or the supporting documentation applicable to such Baseline Report or Performance Reports on or before the due date established in Sections 3.1. and 3.2. (or otherwise approved by the State pursuant to Section 2.1.), or (iii) the Company ceases to operate or fails to complete the Project described in Section 1.2. between the Start Date and the End Date (unless the End Date has been extended pursuant to Section 2.1.), the Company shall repay directly to the State all (in the case of the happening of the event of default identified in Sections 4.1.(ii) or 4.1.(iii) above) or a portion of the Award Amount that has been received by



the Development Authority (in the case of the happening of the event of default identified in Section 4.1.(i) above) (in each case, the "Repayment Amount"). For purposes of events of default under Section 4.1.(i), the Repayment Amount shall be determined by (A) multiplying the Award Amount by the Performance Percentage, then (B) subtracting the resulting number (the "Adjusted Award Amount") from the Award Amount that has been received by the Development Authority. The Company shall repay to the State the difference between the Award Amount that has been received by the Development Authority and the Adjusted Award Amount as shown on Exhibit B.

- 4.2. Notification and Repayment. In the event the Company has failed to meet the Performance Requirement or has otherwise defaulted as described in Sections 4.1.(ii) or 4.1.(iii) of this Agreement, the State shall deliver written notice (a "Notification Letter") to the Development Authority and the Company of such failure or default that will include a summary of the basis of the State's claim and shall include a demand that the Company pay the State the Repayment Amount (in which case such Notification Letter shall include the State's determination of the Repayment Amount).

No later than forty-five (45) days after the date of its receipt of a Notification Letter in which the State demands such repayment, the Company shall submit the Repayment Amount to the State. Any portion of the Repayment Amount that remains unpaid after the end of such forty-five (45) day period shall accrue interest from and after such period at the rate provided under T.C.A. §47-14-105 plus 200 basis points, and should the Company fail to remit the Repayment Amount to the State, the State shall have the right to seek any and all remedies available to it through its administrative processes or to seek remedies available at law or equity. Notwithstanding the foregoing, if the Company believes that the State has improperly demanded payment of the Repayment Amount (either in whole or in part), the Company shall have the right to remit the Repayment Amount demanded by the State pursuant to the State's Notification Letter under protest, in which case (i) the Company shall provide to the State a written explanation of the nature of the protest (the "Protest Letter"); (ii) the Repayment Amount paid by the Company shall not be subject to interest as described in this Section 4.2. if paid within the forty-five (45) day period described above; and (iii) the Company shall not be deemed to have waived any rights or defenses with respect to the Award Amount or the Repayment Amount (including, without limitation, any rights or defenses the Company may have under this Agreement or the Grant Contract with respect to the Award); provided, however, that the Company shall not be entitled to file a claim against the State with respect to funds repaid pursuant to this Section 4.2. after the first anniversary of the date on which the Company receives the Notification Letter pursuant to which the Company shall have repaid such funds. Further, any such claim against the State shall be made to the Tennessee Claims Commission in accordance with Title 9, Chapter 8 of the Tennessee Code Annotated and shall be limited to disputes relating to matters described in the Protest Letter.

ARTICLE V - MISCELLANEOUS



- 5.1. Records. The Company shall maintain documentation regarding the reporting requirements of Sections 3.1. and 3.2. for the latter of (i) three years following the End Date or extended End Date or (ii) one year after the resolution of any claim against the State filed pursuant to Section 4.2. The documentation shall be subject to audit by the State or its duly appointed representative at any reasonable time and upon reasonable notice. In the event that any audit conducted pursuant to this Section 5.1. reveals that the Company has inaccurately calculated or reported the number of Jobs consistent with the intent of this Agreement, the State may adjust the number of Jobs as reported by the Company to a number of Jobs consistent with the intent of this Agreement and adjust the Performance Percentage and Repayment Amount accordingly.
- 5.2. Change of Control. Change of Control is defined as (i) a reorganization, merger, consolidation or other transaction that will result in the transfer of ownership of more than 50% of the Company's shares; or (ii) the liquidation or dissolution of the Company or sale of substantially all of the Company's assets; or (iii) a change in the majority of members of the board within a 24-month period unless the election or nomination for election by the Company stockholders of each new director was approved by a vote of two-thirds of the directors then still in office who were in office at the beginning of the 24-month period.

In the event of a Change of Control that occurs during the period between the Start Date and the End Date, (A) the Company must notify the State of such Change of Control promptly following the approval of the Change of Control pursuant to corporate, partnership, limited liability company, or other similar proceedings applicable to the Change of Control event and (B) either the new owner or other successor entity resulting from the Change of Control (the "Successor Company") following the completion of the applicable transaction must assume the obligations contained in this Agreement by executing an assumption agreement in a form acceptable in all reasonable respects to the State (the "Assumption Agreement"). However, if the Company continues as a legal entity after a Change of Control, the Company and the Successor Company shall be jointly and severally liable for the obligations contained in this Agreement. In lieu of executing an Assumption Agreement, the Company or the Successor Company may elect to pay the State the Award Amount that has been received by the Development Authority pursuant to the Grant Contract.

- 5.3. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Company agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Agreement. The Company 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.



- 5.4. Exhibits. The Exhibits and Attachment hereto attached will be construed to be a part of this Agreement by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each Exhibit and Attachment were set forth in full and at length every time it is referred to or otherwise mentioned. In the event of a discrepancy or ambiguity regarding the grant of funds from the State to the Development Authority under the Grant Contract, the terms of the Grant Contract shall govern.
- 5.5. Severability. If any one or more of the provisions contained herein will for any reason be held by any court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect any other provision hereof, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- 5.6. Authorized Signatures. Each of the individuals executing this Agreement represents that they are authorized to execute this Agreement on behalf of their respective entities.
- 5.7. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same Agreement.

[Signature Page Follows]



IN WITNESS WHEREOF, the Parties have hereunto set their signatures the day and year first written above.

Tennessee Department of Economic and Community Development

By: William F. Hagerty
Title: Commissioner
Date: 3/28/14

kgb USA, Inc. d/b/a/ Conduit Global

By: [Signature]
Title: BRUCE HAYES, PRESIDENT
Date: 3/17/2014

The Economic Development Growth Engine Industrial Development Board of the City of Memphis and County of Shelby, Tennessee

By: [Signature]
Title: PRESIDENT
Date: 3/21/2014



EXHIBIT A

Performance Percentage Calculation

For purposes of determining compliance with the Performance Requirement, the Performance Percentage shall be calculated in accordance with Section 2.2. and as illustrated below.

1. Committed Jobs pursuant to Section 2.2.

Committed Jobs _____

2. End Date - Net New Jobs Created

Net New Jobs _____
Total - Net New Jobs _____

3. Performance Percentage

$\frac{\text{Net New Jobs}}{\text{Committed Jobs}} = \text{_____ \% (Performance Percentage)}$



EXHIBIT B

Repayment Amount Calculation

(Required only if Performance Percentage is less than 80%)

STEP 1

Award Amount * Performance Percentage = Adjusted Award Amount

STEP 2

Award Amount - Adjusted Award Amount = Repayment Amount

Example A – Repayment Required

A \$1,500,000 Award to retrofit a building was part of Company A's consideration to locate in Tennessee. As part of the deal, Company A committed to create 800 jobs. At the End Date, Company A created an average of 528 Jobs.

- Award Amount = \$1,500,000
- Commitment = 800 jobs
- Net New Jobs (Average) created = 528 (66% actual Performance Percentage)
- Adjusted Award Amount = \$990,000
- \$1,500,000 - \$990,000 = \$510,000
- Repayment Amount = \$510,000 (34% of Award Amount)

Example B – No Repayment Necessary

A \$500,000 Award to retrofit a building was part of Company B's consideration to locate in Tennessee. As part of the deal, Company B committed to create 600 jobs. At the End Date, Company B created an average of 498 Jobs.

- Award Amount \$500,000
- Commitment = 600 jobs
- Net New Jobs (Average) created = 498 (83% actual Performance Percentage)
- No repayment required



EXHIBIT C

Baseline Report

Development Authority: _____

Company: _____

Grant Number: _____

Date: _____

Unless the State agrees to an extension, this report must be submitted to the State no later than 60 days following the Effective Date of the Accountability Agreement among the State, the Development Authority and the Company.

Please attach supporting documentation for each Job existing within the company and each affiliate as of the Start Date.

<i>[insert date]:</i>	Existing Employees
[Company]	
[Affiliate (if applicable)]	

I hereby certify that each Job listed above complies with the definition provided in Sections 2.1. and 2.2. of the Accountability Agreement and that all information contained in this Baseline Report is true and accurate. I understand that the information provided in this Baseline Report will be used to determine the number of Net New Jobs.

kgb USA, Inc. d/b/a/ Conduit Global

By: _____

Title: _____

Date: _____



EXHIBIT D

Performance Report

Development Authority: _____

Company: _____

Grant Number: _____

Date: _____

Check the applicable reporting period:

1st Interim 2nd Interim 3rd Interim 4th Interim 5th Interim

Unless the State agrees to an extension, this report must be submitted to the State no later than 60 days following each Interim Date for the period commencing on the first anniversary of the Start Date under the Accountability Agreement and ending on the End Date. Net New Jobs shall be calculated according to Section 2.2. of the Accountability Agreement.

Please attach supporting documentation for each Net New Job created by the company and each affiliate.

<i>[insert date]:</i>	Net New Jobs (Reporting Period)	Net New Jobs (Cumulative)
[Company]		
[Affiliate (if applicable)]		

I hereby certify that each Job listed above complies with the definition provided in Sections 2.1. and 2.2. of the Accountability Agreement and that all information contained in this Performance Report is true and accurate.

kgb USA, Inc. d/b/a/ Conduit Global

By: _____

Title: _____

Date: _____