

CONTRACT #22
RFS # 339.10-51511
FA # Pending

**Mental Health and
Developmental Disabilities**

VENDOR:
J.M. Smith Corporation
d.b.a.
QS/1 Data Systems



STATE OF TENNESSEE
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES

CORDELL HULL BUILDING, THIRD FLOOR
425 FIFTH AVENUE, NORTH
NASHVILLE, TENNESSEE 37243

PHIL BREDESEN
GOVERNOR

VIRGINIA TROTTER BETTS, MSN, JD, RN, FAAN
COMMISSIONER

RECEIVED

OCT 21 2010

FISCAL REVIEW

MEMORANDUM

TO: Fiscal Review Committee

FROM: Heather Gundersen, Director
Office of Information Technology
Department of Mental Health and Developmental Disabilities

DATE: October 21, 2010

SUBJECT: J. M. Smith Corporation d/b/a QS/1 Data Systems
Contract Summary Letter

The Department of Mental Health and Developmental Disabilities respectfully requests that it be permitted to enter into a contract with J. M. Smith Corporation d/b/a QS/1 Data Systems on a non-competitive basis.

QS/1 Data Systems is a division of the J. M. Smith Corporation, the third largest privately held corporation in South Carolina, and one of the largest in the United States. This company not only develops, sells and supports its software programs, but also sells and services hardware. It has more than 500 employees in 22 offices across the United States. QS/1 has been in business since 1977, when its first pharmacy program was released, and currently has over ten thousand customers. Over this period of time, it has enhanced its products to provide a current and complete pharmacy system, including bar coding, image scanning and e-prescribing capabilities. Presently it is a software developer for the healthcare industry (retail, chain and close shop pharmacies, point of sale and home medical equipment software) as well as government entities.

An RFP for a pharmacy system was issued approximately 15 years ago resulting in the awarding of a five year contract to Compute-Rx, Inc. for the Compute-Rx Pharmacy Management System, a product subsequently acquired by QS/1 Data Systems. This product has been utilized by the State's five Regional Mental Health Institutes (RMHIs) since its acquisition. However, as a stand-alone application that operates within a given

Pharmacy office and does not provide pharmaceutical data to clinicians or management outside of that office, the existing pharmacy management system can no longer meet the Department's requirements. While the business of Healthcare has moved toward a more integrated environment to enable the sharing of data, and ultimately improved care, the current pharmacy software has not been upgraded to meet these new standards. Additionally, the current system operates in outdated technology that is no longer supported. The proposed software upgrade to QS/1's PrimeCare product will address all of these business needs:

Our agency used the competitive procurement process to initially purchase services from this vendor. During the past five years, departmental staff has continued to follow the behavioral healthcare software market via periodicals, direct contact from vendors and RFIs to identify other potential pharmacy system vendors. Most of the alternative pharmacy systems, however, are oriented toward retail pharmacies rather than inpatient psychiatric care and do not meet the unique needs of our agency. Upon careful consideration of all alternatives, we believe that having the vendor upgrade the current pharmacy system will provide significant cost savings over purchasing a new pharmacy system, while reducing the amount of training required, and providing a smooth transition (including the preservation and conversion of years worth of dispensing history).

The proposed contract provides for upgrading (conversion and installation) the currently installed pharmacy management system to the latest version of this application; provision for additional licensing, equipment and support services as may be necessary; and for maintenance of these products for four years (with no annual escalation of cost) following completion of conversion.

The currently installed software is proprietary to QS/1 Data Systems and no other vendor has upgrade and conversion rights.

After taking all of the above information into account, our Department has determined that J. M. Smith Corporation d/b/a QS/1 Data Services is the optimal choice for upgrading and supporting the pharmacy management function in the State's Regional Mental Health Institutes.

Thank you for your consideration of this request.

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Roy Upton	*Contact Phone:	532-6606		
*Original Contract Number:		*Original RFS Number:	33910-51511		
Edison Contract Number: <i>(if applicable)</i>		Edison RFS Number: <i>(if applicable)</i>			
*Original Contract Begin Date:	1-1-2011	*Current End Date:	6-30-2015		
Current Request Amendment Number: <i>(if applicable)</i>	N/A				
Proposed Amendment Effective Date: <i>(if applicable)</i>	N/A				
*Department Submitting:	Mental Health and Developmental Disabilities				
*Division:	Administrative Services				
*Date Submitted:	October 20, 2010				
*Submitted Within Sixty (60) days: <i>If not, explain:</i>	Yes				
*Contract Vendor Name:	J.M. Smith Corporation d/b/a QS/1 Data Systems				
*Current Maximum Liability:	\$853,554				
*Current Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY: 2011	FY: 2012	FY: 2013	FY: 2014	FY 2015	FY
\$301,827	\$173,649	\$126,271	\$ 128,191	\$123,616	\$
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from STARS or FDAS report)					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			N/A		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			N/A		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			N/A		

Supplemental Documentation Required for
Fiscal Review Committee

*Contract Funding Source/Amount:	State:	\$853,554	Federal:	
Interdepartmental:			Other:	
If "other" please define:				
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
Method of Original Award: <i>(if applicable)</i>				
*What were the projected costs of the service for the entire term of the contract prior to contract award?		\$853,554		

Supplemental Documentation Required for
Fiscal Review Committee

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

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

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

Deliverable description:	FY:11	FY:12	FY:13	FY:14	FY:15
Installation & Conversion	\$217,375				
Provision for Additional Licenses	\$9,000	\$9,000	\$9,000	\$9,000	\$9,000
Provision for Additional On-Site Assistance During Training and Conversion	\$10,000				
Provision for Additional On-Line Assistance During Training and Conversion	\$5,100				
Provision for Change Orders	\$47,500	\$95,000	\$47,500	\$47,500	\$47,500
Maintenance	\$12,852	\$54,408	\$56,328	\$58,248	\$60,168
Additional Hardware		\$13,141	\$11,343	\$11,343	\$4,848
Switching Fees		\$2,100	\$2,100	\$2,100	\$2,100
Total	\$301,827	\$173,649	\$126,271	\$128,191	\$123,616

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

Deliverable description:	FY:	FY:	FY:	FY:	FY:

Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.

Proposed Vendor Cost: (name of	FY:	FY:	FY:	FY:	FY:

Supplemental Documentation Required for
Fiscal Review Committee

vendor)					
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

Non-Competitive Contract Request

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

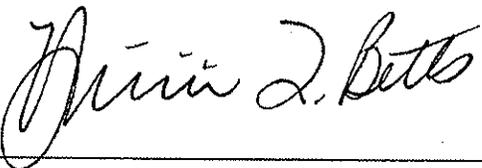
Route a completed request, as one file in PDF format, via e-mail attachment sent to: AgSprs.Agsprsr@state.tn.us

APPROVED

COMMISSIONER OF FINANCE & ADMINISTRATION

The proposed contract shall not begin before the date that this request is approved.

Request Tracking #	33910-51511		
Procuring Agency	Department of Mental Health and Developmental Disabilities		
Proposed Contractor	J.M. Smith Corporation d/b/a QS/1 Data Systems		
Proposed Contract Period (with ALL options to extend exercised)	54 months		
Maximum Contract Cost (with ALL options to extend exercised)	\$ 853,554.00		
Office for Information Resources Endorsement (information technology service; N/A to THDA)	<input type="checkbox"/> Not Applicable	<input checked="" type="checkbox"/> Attached	
eHealth Initiative Support (health-related professional, pharmaceutical, laboratory, or imaging service)	<input type="checkbox"/> Not Applicable	<input checked="" type="checkbox"/> Attached	
Human Resources Support (state employee training service)	<input checked="" type="checkbox"/> Not Applicable	<input type="checkbox"/> Attached	
Procuring Agency Previously Procured the Subject Service			
<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, it was procured by... <input checked="" type="checkbox"/> RFP <input type="checkbox"/> Another Competitive Method <input type="checkbox"/> Non-Competitive Negotiation			
Service Description (brief summary only— do NOT restate the proposed scope of service)			
<p>The Contractor shall provide conversion and installation services to upgrade the CRx pharmacy systems at Middle Tennessee Mental Health Institute, Moccasin Bend Mental Health Institute, Lakeshore Mental Health Institute, Western Mental Health Institute, and Memphis Mental Health Institute ("all sites") to the PrimeCare System; move them to an Enterprise Server environment; add Multi-site Management Software and complete associated interfaces.</p>			
Explanation of Need for or Requirement Placed on the State to Acquire the Service			
<p>The existing pharmacy management system can no longer meet the Department's requirements. Since 1996, the State's five Regional Mental Health Institutes (RMHIs) have utilized the CRx Pharmacy System, a product of QS/1 Data Systems, Inc. This product is essentially a stand-alone application that operates within a given Pharmacy office and does not provide pharmaceutical data to clinicians or management outside that office. While the business of Healthcare has moved toward a more integrated environment to enable the sharing of data, and ultimately improved care, the current</p>			

Request Tracking #	33910-51511
<p>pharmacy software has not been upgraded to meet these new standards. Additionally, it operates in outdated technology that is no longer supported. The Department requires a system that will interface with its Hospital Information System, the core patient records management system. The proposed software upgrade to QS/1's PrimeCare product will address all of these business needs.</p>	
<p>Name & Address of the Contractor's Principal Owner(s) <i>(NOT required for a TN state education institution)</i></p> <p>J M Smith 201 W. St. John Street Spartanburg, SC 39306</p>	
<p>Evidence Contractor's Experience & Length Of Experience Providing the Service</p> <p>The Contractor, QS/1 Data Systems, is a division of the JM Smith Corporation, the third largest privately held corporation in South Carolina, and one of the largest in the United States. The contractor not only develops, sells and supports its software programs, but also sells and services hardware. It has more than five hundred (500) employees in twenty-two (22) offices across the United States.</p> <p>The Contractor currently has over ten thousand (10,000) customers, and has been in business since 1977, when its first pharmacy program was released. Over this period of time, the Contractor has enhanced its products to provide a current and complete pharmacy system, including bar coding, image scanning, and e-prescribing capabilities. Presently it is a software developer for the healthcare industry (retail, chain and close shop pharmacies, point of sale and home medical equipment software) as well as government entities.</p>	
<p>Efforts to Identify Reasonable, Competitive, Procurement Alternatives</p> <p>Our agency used the competitive procurement process to initially purchase services from this vendor. During the past five (5) years, departmental staff has continued to follow the behavioral healthcare software market via periodicals, direct contact from vendors and Requests for Information (RFIs) to identify other potential pharmacy system vendors. Most of the alternative pharmacy systems, however, are oriented toward retail pharmacies rather than inpatient psychiatric care and do not meet the unique needs of our agency. Upon careful consideration of all alternatives, we believe that having the vendor upgrade the current pharmacy system will provide significant cost savings over purchasing a new pharmacy system, while reducing the amount of training required, and providing a smooth transition including the preservation and conversion of many years worth of dispensing history.</p>	
<p>Justification – specifically explain why non-competitive negotiation is in the best interest of the state</p> <p>The current software (CRx) is proprietary to QS/1 Data Systems. Therefore, no other vendor has upgrade rights.</p>	
<p>Agency Head Signature and Date <i>(MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances)</i></p> <p> 10/19/10</p>	



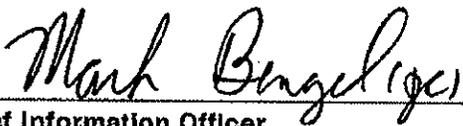
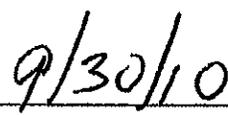
OIR Pre-Approval Endorsement Request E-Mail Transmittal

TO : Jane Chittenden, OIR Procurement & Contract Management Director
Department of Finance & Administration
E-Mail : Jane.Chittenden@tn.gov

FROM : Heather Gundersen, Director, Office of Information Technology
Mental Health and Developmental Disabilities
E-Mail : Heather.Gundersen@tn.gov

DATE : DATE: September 30, 2010

RE : Request for OIR Pre-Approval Endorsement

APPLICABLE RFS #	POLICY-COMPLIANT, AGENCY-ASSIGNED TRACKING # 33910-61511
OIR ENDORSEMENT SIGNATURE & DATE :	
 	
Chief Information Officer <i>NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.</i>	

Office for Information Resources (OIR) pre-approval endorsement appears to be required pursuant to professional service contracting regulations pertaining to procurements with information technology as a component of the scope of service. This request seeks to ensure that OIR is aware of and has an opportunity to review the procurement detailed below and in the attached documents.

Please document OIR endorsement of the described procurement (with the appropriate signature above), and return this document via e-mail at your earliest convenience.

1	SUBJECT PROCUREMENT DOCUMENT TYPE (mark one) :
	<input type="checkbox"/> RFP <input type="checkbox"/> Competitive Negotiation Request <input type="checkbox"/> Alternative Procurement Method Request <input checked="" type="checkbox"/> Non-Competitive Contract Request <input type="checkbox"/> Non-Competitive Amendment Request <input type="checkbox"/> Contract <input type="checkbox"/> Contract Amendment <input type="checkbox"/> Grant <input type="checkbox"/> Grant Amendment
2	INFORMATION SYSTEMS PLAN (ISP) PROJECT APPLICABILITY :
	<input type="checkbox"/> Not Applicable to this Request <input checked="" type="checkbox"/> Applicable – ISP PROJECT # CI97K311 RESPONSE CONFIRMED BY :
3	CONTRACTING AGENCY CONTACT :
	Roy Upton, Information Systems Manager 532-6606 Roy.Upton@tn.gov

APPLICABLE RFS # POLICY-COMPLIANT, AGENCY-ASSIGNED TRACKING # 33910-51511

4 SUBJECT INFORMATION TECHNOLOGY SERVICE DESCRIPTION

The Contractor shall provide conversion and installation services to upgrade the CRx pharmacy systems at Middle Tennessee Mental Health Institute, Moccasin Bend Mental Health Institute, Lakeshore Mental Health Institute, Western Mental Health Institute, and Memphis Mental Health Institute ("all sites") to the PrimeCare System; move them to an Enterprise Server environment; add Multi-site Management Software and complete associated interfaces.

5 REQUIRED ATTACHMENT(S) AS APPLICABLE (copies without signatures acceptable) :

RFP, Competitive Negotiation Request, Alternative Procurement Method Request, or Non-Competitive Contract/Amendment Request

proposed contract/grant or amendment

original contract/grant & any prior amendments



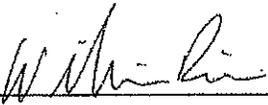
E-Health Pre-Approval Endorsement Request E-Mail Transmittal

TO : Lovel VanArsdale, Office of e-Health Initiatives
Department of Finance & Administration
E-Mail : Lovel.Vanarsdale@tn.gov

FROM : Heather Gundersen, Director, Office of Information Technology
Mental Health and Developmental Disabilities
E-Mail: Heather.Gundersen@tn.gov

DATE : DATE: September 30, 2010

RE : Request for eHealth Pre-Approval Endorsement

APPLICABLE RFS # POLICY-COMPLIANT, AGENCY-ASSIGNED TRACKING # 33910-51511
OFFICE OF E-HEALTH INITIATIVES ENDORSEMENT SIGNATURE & DATE :
 10/5/2010
Office of e-Health Initiatives

Office of e-Health Initiatives (eHealth) pre-approval endorsement appears to be required pursuant to professional service contracting regulations pertaining to procurements with medical/mental health-related professional, pharmaceutical, laboratory, or imaging type services as a component of the scope of service. This request seeks to ensure that eHealth is aware of and has an opportunity to review the procurement detailed below and in the attached document(s).

Please indicate eHealth endorsement of the described procurement (with the appropriate signature above), and return this document via e-mail at your earliest convenience.

MEDICAL/MENTAL HEALTH-RELATED SERVICE DESCRIPTION :
The Contractor shall provide conversion and installation services to upgrade the CRx pharmacy systems at Middle Tennessee Mental Health Institute, Moccasin Bend Mental Health Institute, Lakeshore Mental Health Institute, Western Mental Health Institute and Memphis Mental Health Institute ("all sites") to the PrimeCare System; move them to an Enterprise Server environment; add Multi-site Management Software and complete associated interfaces.
CONTRACTING AGENCY CONTACT :
Roy Upton, Information Systems Manager 532-6606 Roy.Upton@tn.gov
REQUIRED ATTACHMENT(S) AS APPLICABLE (copies without signatures acceptable) :
<input checked="" type="checkbox"/> RFP, Competitive Negotiation Request, Alternative Procurement Method Request, or Non-Competitive Contract/Amendment Request <input checked="" type="checkbox"/> proposed contract or amendment



CONTRACT

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

Begin Date January 1, 2011	End Date June 30, 2015	Agency Tracking # 33910-51511	Edison ID
Contractor Legal Entity Name J. M. Smith Corporation d/b/a QS/1 Data Systems			Registration ID 26108
Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor		CFDA #	FEIN or SSN

Service Caption (one line only)
Upgrade pharmacy system at Regional Mental Health Institutes

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011	\$301,827.00				\$301,827.00
2012	\$173,649.00				\$173,649.00
2013	\$126,271.00				\$126,271.00
2014	\$128,191.00				\$128,191.00
2015	\$123,616.00				\$123,616.00
TOTAL:	\$853,554.00				\$853,554.00

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

Ownership/Control

African American Asian Hispanic Native American Female

Person w/Disability Small Business Government NOT Minority/Disadvantaged

Other:

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

RFP The procurement process was completed in accordance with the approved RFP document and associated regulations.

Competitive Negotiation The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.

Alternative Competitive Method The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.

Non-Competitive Negotiation The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.

Other The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with all interested parties or all parties in a predetermined "class."

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

OCR USE - FA

Speed Code	Account Code
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**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES
AND
J.M. SMITH CORPORATION D/B/A QS/1 DATA SYSTEMS**

This Contract, by and between the State of Tennessee, Department of Mental Health and Developmental Disabilities, hereinafter referred to as the "State" and J.M. Smith Corporation D/B/A QS/1 Data Systems, hereinafter referred to as the "Contractor," is for the provision of necessary services for the upgrade of the CRx pharmacy system to PrimeCare at each of the five (5) Regional Mental Health Institutes (RMHIs), as further defined in the "SCOPE OF SERVICES."

The Contractor is a For-Profit Corporation
Contractor Edison Registration ID 26108
Contractor Place of Incorporation or Organization: Spartanburg, South Carolina

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all services and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. Service Definition. The Contractor shall provide conversion and installation services to upgrade the CRx pharmacy system at each of the five (5) Regional Mental Health Institutes (RMHIs): Middle Tennessee Mental Health Institute (MTMHI), Moccasin Bend Mental Health Institute (MBMHI), Lakeshore Mental Health Institute (LMHI), Western Mental Health Institute (WMHI), and Memphis Mental Health Institute (MMHI) (collectively "all sites"; individually "each RMHI site") to the PrimeCare System; move them to an Enterprise Server environment; add Multi-site Management Software and complete associated interfaces.
- A.3. Project Management.
- a. The Contractor shall assign a Contractor staff member to be the Project Manager. This Project Manager shall be experienced in managing conversions from CRx to PrimeCare pharmacy systems in multi-site enterprise environments that employ interfaces to third-party applications. The Contractor's project management tasks shall include, but are not limited to, delivery of the following:
- (1) A Project Plan. The Contractor shall provide a Project Plan at the beginning of the implementation, to include:
- i. The major phases of the project, including all tasks, deliverables and milestones; and
 - ii. A timetable for each task, deliverable, and milestone including items identified in Section A.4.e.
- (2) Implementation Wrap-Up Document. The Contractor shall provide an Implementation Wrap-Up Document at the end of the implementation, to include:
- i. Documentation that all the requirements have been met;
 - ii. Documentation that all deliverables itemized in section A.4.e. have been provided to and approved by the State;
 - iii. Status and assessment of the implementation at each site;

- iv. Outstanding Issues that the Contractor has not resolved and the process and schedule for their resolution, if applicable; and
 - v. Signature of authorized Contractor staff.
- b. Conversion Services. The Contractor shall convert the State's CRx system data to an acceptable format and import it into the PrimeCare system for each site. This is not a total data conversion and will require the State's review and re-entering of certain data. The patient file, with medication dispensing data and prescribing physician, are included in the conversion process.
- c. Hardware.
- (1) For the implementation of PrimeCare, the software for all sites will be loaded on a State supplied enterprise server and the sites will run as independent pharmacies on the enterprise server. No more than one enterprise server shall be required for the independent pharmacy directories. The PrimeCare system will support the installation and management of multiple pharmacies across time zones and geographical regions without requiring duplicate equipment or management.
 - (2) The State shall meet the Contractor's hardware requirements: The minimum server configuration providing satisfactory performance is a 2.0GHz PC with 1GB RAM, and 80GB hard disk drive. The minimum workstation configuration providing satisfactory performance is a Windows 2000 Professional PC with 512MB RAM and 20GB hard disk drive.
 - (3) The State shall provide a separate web server for the WebConnect application.
 - (4) The Contractor shall provide, at each RMHI site, one (1) each of the following printers: a Zebra GX430T Thermal Printer with Custom FirmWare (FW); an HP P4014DN Forms Only Printer; and a Lexmark C734DN Color Laser Printer. Other printers required to meet the Contractor's hardware requirements will be acquired through existing State contracts.
 - (5) The Contractor shall provide printer maintenance on all printers purchased from Contractor and any exchange printers that may be needed as follows: It is the State's responsibility to decide when the printers purchased from, or supplied by, Contractor need service. Before requesting service, the State must complete the Problem Determination Procedures, provided by Contractor, which include running the Diagnostic Program. After completing such procedures, the State will call Contractor's toll-free number and provide the information requested. If an on-site call is necessary, Contractor's regional office will schedule the call on a prioritized basis. Contractor will respond within the next business day. Printer maintenance service under this Contract provides, at Contractor's option, for exchange or repair by Contractor of printers purchased from, or supplied by, Contractor requiring remedial maintenance, during Contractor's normal business hours, at a location agreed upon by State and Contractor. Exchange service provides for the replacement of a printer which may not be new, but will be in good working order (exchange printer). If the exchange printer is not a new one, but only one "in good working order", it will also be covered by this same maintenance provision. In the event of such exchange, Contractor will arrange to 1) disconnect the failing printer, 2) connect the exchange printer, 3) verify the printer's operation, and 4) remove the failing printer. If the exchange printer is not a new one, but only one "in good working order", the State agrees to accept the "in good working order" printer until such time a new printer is available or the

State agrees to keep the "in good working order printer". The State agrees to provide a suitable environment for the printers as agreed upon by State and Contractor, and to provide Contractor full, free, and safe access to the printers in order to provide maintenance service. Contractor shall have access to the equipment upon arrival. In the event of exchange, the State will remove all programs, programming, data, storage media, and any printer element(s) not under maintenance with Contractor from the failing printer.

d. Software.

- (1) PrimeCare: This comprehensive pharmacy system will replace the legacy CRx application. Sixteen (16) PrimeCare network clients at each site shall be included during the implementation. Additional network clients are available in sets of four (4). Network clients are required for any workstation connected to the PrimeCare System, any additional QS/1 sessions used on a workstation, and any network printers accessing the PrimeCare software.
- (2) Export Software: This component will replace the "Custom Report Generator" in the existing CRx system. The Export Software will allow for the export of data from user-determined fields within PrimeCare to other file types, such as .TXT, .DOC or .XLS.
- (3) WebConnect: This component will allow clinical staff to electronically update patient information and submit new and refill prescription orders. Four (4) threads for each site shall be included during the implementation. Additional threads are available in sets of four (4). A WebConnect thread is a dedicated QS/1 task that is used for WebConnect communication with the PrimeCare server.
- (4) Enterprise Server Manager (ESM): This component will run multiple sites from a central server, control time zone, perform software updates, and manage system maintenance. Use of ESM includes one "Test Pharmacy" setup.
- (5) Enterprise Site Software: This is the site license for the pharmacy at each RMHI site that will be on the Enterprise server.
- (6) Multi-Site Management (MSM) One to Six (1-6) Licenses: This component will provide centralized control and management of inventory, configuration, and patient data for all sites.
- (7) MSM Site Software: This is the site license for the pharmacy at each RMHI site and is responsible for multisite management.
- (8) MSM Central Profile: This component allows for central profiles for all service recipients for compiling and reporting collated data.
- (9) MSM Central Reconciliation One to Six (1-6) Licenses: This component provides for reconciliation of third party claims through the central location.
- (10) MSM Reconciliation Site Software: This is the site license for the pharmacy at each RMHI and is responsible for central reconciliation of third party claims.
- (11) Interface Bundle: This component will allow communication from the State's systems to PrimeCare; interfaces will be installed at the State's request. The interface bundle includes the following:

- i. Service recipient demographic data from the State's Admissions, Discharges and Transfers (ADT) system to PrimeCare (inbound);
 - ii. New Orders from the State's Computerized Provider Order Entry (CPOE) system to PrimeCare (inbound);
 - iii. Refill Orders from the State's Computerized Provider Order Entry (CPOE) system to PrimeCare (inbound); and
 - iv. Orders from PrimeCare to the State's Electronic Medication Administration Records (EMAR) system (outbound).
- (12) Automated Batch Interface: This component provides for communication between PrimeCare and a dispensing machine for specialty packaging.
- e. Training.
 - (1) Training for ESM and MSM will be provided by the Contractor in one (1) of the State's training rooms. This includes two (2) days of ESM training and three (3) days of MSM training.
 - (2) Training for PrimeCare at each site shall include three (3) days on-site and sixteen (16) hours online, provided via a PrimeCare account representative. The training shall be scheduled at a time mutually agreeable between the State and the Contractor at each site. Any alternative training medium must be approved, in writing, by the State. Additional on-site and online assistance is available upon the State's request.
 - (3) Though a formal training class for the interface bundle is not offered, the Contractor shall provide technical instruction to the State's system administrators to include the following: steps required for monitoring the correct operation of the interfaces; identification of issues leading to faulty operation and directions on their resolution; and appropriate measures required to bring the interfaced applications back into synchronization.
 - (4) The Contractor shall permit all training materials provided by the Contractor to be reproduced and used as needed by the State.
- f. Documentation. The Contractor shall provide the State with user manuals and technical manuals. The user manuals shall provide complete information and instructions in the day-to-day, non-technical business use for the PrimeCare and WebConnect applications and associated modules, and the technical manuals shall provide directions and guidelines for system administration functions for use by the State's Information Technology (IT) personnel. Subject to the terms of Section C.3., the Contractor shall revise at no additional cost all training materials, user and technical manuals, and online help features to reflect systems updates, changes and/or upgrades as supported by the Contractor, and for the correction of any deficiencies or errors.
- g. System Maintenance and Support. The Contractor shall:
 - (1) Provide online, electronic mail (e-mail), and telephone support during the Contractor's standard support hours. Toll free telephone support is available Monday through Friday 7:00 A.M. – 12:00 P.M. EST and Saturday 8:00 A.M. – 6:00 P.M. EST. Only Emergency Services are available on Sunday.
 - (2) Make all necessary adjustments and repairs, at no additional cost to the State, to keep the software operating without interruption and to correct latent deficiencies

- with respect to the software specifications in accordance with the terms of the software maintenance provisions of this Contract.
- (3) Maintain the current version of the licensed programs in substantial conformance with its specifications as amended from time to time by the Contractor, and with applicable Federal regulatory requirements and laws. The Contractor shall assign priority support resources to either:
 - i. Correct any reproducible errors or malfunctions in the licensed programs by the Contractor which prevent it from operating in substantial conformance with said specifications and applicable Federal regulatory requirements; or
 - ii. Provide a commercially reasonable alternative that shall substantially conform to the specifications and applicable Federal regulatory requirements and laws.
 - (4) Provide the State, on a timely basis, with:
 - i. Such updates as are distributed without charge to other licensees which reflect modifications and incremental improvements made to the licensed programs by the Contractor; and
 - ii. An opportunity to obtain enhancements to the licensed programs for which charges are imposed on the same terms as such enhancements are generally made available to other Licensees.
 - (5) Provide new versions of the software to keep the State abreast of the Contractor's current software product in accordance with the terms of this Contract. Complete documentation of all system enhancements or revisions shall be provided with new releases of software.
 - (6) Provide new versions of the software if needed to support critical systems software upgrades and updates by the systems software providers (e.g., Microsoft Windows Operating System) to ensure that security of the State's information is maintained.
 - (7) Correct problems as follows: If reasonable analysis by the Contractor indicates that a reported error or malfunction is caused by either: 1) a problem related to hardware used by the State; or 2) system software or applicable software other than the licensed programs, then the Contractor's responsibility shall be limited to the correction of the portion, if any, of the problem caused by the licensed programs listed in Section A.3.d..
 - (8) Provide, at the State's request, modifications and enhancements, at a cost based upon the Change Order Rate defined in Section C.3, and a schedule proposed by the Contractor and agreed upon in writing by the State. These modifications and enhancements:
 - i. Must be developed consistent with, and must operate with, the existing systems at no loss of function to the existing software;
 - ii. Must substantially provide the functions as required by the specifications supplied by the State; and

- iii. Must introduce no undesirable effects, such as causing an otherwise operational function to no longer function properly, to the existing systems.

A.4. Implementation.

- a. The State shall work with the Contractor to schedule the implementation of all software. The implementation schedule must be approved, in writing, by the State.
- b. The Contractor and all Contractor personnel who will be onsite at each RMHI site shall observe and comply with all policies of each RMHI site while onsite, including but not limited to policies on: use of tobacco products (no smoking); use and possession of firearms (no firearms); use of cameras and other recording devices (no cameras); and maintaining the privacy and confidentiality of service recipients.
- c. The Contractor shall work closely with the State in initiating, executing, and completing a pilot environment for the software implementation. Once the Contractor receives written acceptance of the pilot site from the State, the Contractor shall work closely with the State in implementing the software for the remaining sites. The implementation of software shall be considered completed at a given site with the State's written acceptance of all software components at that site.
- d. At the end of implementation at all facilities, the Contractor shall provide a written Wrap-Up document as described in Section A.3.a.(2).
- e. The following table identifies the minimal tasks to be performed during installation, conversion and training:

Item Reference	Description
A1	Delivery of a Project Plan as described in Section A.3.a.(1)
A2	Delivery and Installation of Enterprise Server Manager Software on a State Supplied Server as described in Section A.3.d.(4)
A3	Delivery and Installation of Enterprise Site Software (for five (5) sites) on a State Supplied Server as described in Section A.3.d.(5)
A4	Delivery of On-Site Enterprise Server Management Training as described in Section A.3.e.(1)
A5	Delivery and Installation of Multi-Site Management one to six (1-6) Licenses as described in Section A.3.d.(6)
A6	Delivery and Installation of Multi-Site Management Site Software (for five (5) sites) as described in Section A.3.d.(7)
A7	Delivery and Installation of Multi-Site Management Central Profile as described in Section A.3.d.(8)
A8	Delivery and Installation of Multi-Site Management Central Reconciliation one to six (1-6) Licenses as described in Section A.3.d.(9)
A9	Delivery and Installation of Multi-Site Management Reconciliation Site Software (for five (5) sites) as described in Section A.3.d.(10)
A10	Delivery of On-Site Multi-Site Management Training as described in Section A.3.e.(1)
B1	Delivery and Installation of one (1) each Zebra GX430T Thermal Printer with Custom FW; HP P4014DN Forms Only Printer; and Lexmark C734DN Color Laser Printer; including Freight for Middle Tennessee Mental Health Institute (MTMHI) as described in Section A.3.c.(3)

Item Reference	Description
B2	Delivery and Installation of PrimeCare Software (nine to sixteen (9-16) Clients) for MTMHI as described in Section A.3.d.(1)
B3	Delivery of On-Site PrimeCare Training Package for MTMHI as described in Section A.3.e.(2)
B4	Delivery of CRx to PrimeCare conversion services at MTMHI as described in Section A.3.b.
B5	Delivery and Installation of the Interface Bundle Software for MTMHI as described in Section A.3.d.(11)
B6	Delivery and Installation of Automated Batch Interface for MTMHI as described in Section A.3.d.(12)
B7	Delivery and Installation of WebConnect for MTMHI as described in Section A.3.d.(3)
B8	Delivery and Installation of Export Software for MTMHI as described in Section A.3.d.(2)
C1	Delivery and Installation of one (1) each Zebra GX430T Thermal Printer with Custom FW; HP P4014DN Forms Only Printer; and Lexmark C734DN Color Laser Printer; including Freight for Lakeshore Mental Health Institute (LMHI) as described in Section A.3.c.(3)
C2	Delivery and Installation of PrimeCare Software (nine to sixteen (9-16) Clients) for LMHI as described in Section A.3.d.(1)
C3	Delivery of On-Site PrimeCare Training Package for LMHI as described in Section A.3.e.(2)
C4	Delivery of CRx to PrimeCare conversion services at LMHI as described in Section A.3.b.
C5	Delivery and Installation of the Interface Bundle Software for LMHI as described in A.3.d.(11)
C6	Delivery and Installation of Automated Batch Interface for LMHI as described in Section A.3.d.(12)
C7	Delivery and Installation of WebConnect for LMHI as described in Section A.3.d.(3)
C8	Delivery and Installation of Export Software for LMHI as described in Section A.3.d.(2)
D1	Delivery and Installation of one (1) each Zebra GX430T Thermal Printer with Custom FW; HP P4014DN Forms Only Printer; and Lexmark C734DN Color Laser Printer; including Freight for Moccasin Bend Mental Health Institute (MBMHI) as described in Section A.3.c.(3)
D2	Delivery and Installation of PrimeCare Software (nine to sixteen (9-16) Clients) for MBMHI as described in Section A.3.d.(1)
D3	Delivery of On-Site PrimeCare Training Package for MBMHI as described in Section A.3.e.(2)
D4	Delivery of CRx to PrimeCare conversion services at MBMHI as described in Section A.3.b.
D5	Delivery and Installation of the Interface Bundle Software for MBMHI as described in Section A.3.d.(11)
D6	Delivery and Installation of Automated Batch Interface for MBMHI as described in Section A.3.d.(12)
D7	Delivery and Installation of WebConnect for MBMHI as described in Section A.3.d.(3)
D8	Delivery and Installation of Export Software for MBMHI as described in Section A.3.d.(2)

Item Reference	Description
E1	Delivery and Installation of one (1) each Zebra GX430T Thermal Printer with Custom FW; HP P4014DN Forms Only Printer; and Lexmark C734DN Color Laser Printer; including Freight for Western Mental Health Institute (WMHI) as described in Section A.3.c.(3)
E2	Delivery and Installation of PrimeCare Software (nine to sixteen (9-16) Clients) for WMHI as described in Section A.3.d.(1)
E3	Delivery of On-Site PrimeCare Training Package for WMHI as described in Section A.3.e.(2)
E4	Delivery of CRx to PrimeCare conversion services at WMHI as described in Section A.3.b.
E5	Delivery and Installation of the Interface Bundle Software for WMHI as described in Section A.3.d.(11)
E6	Delivery and Installation of Automated Batch Interface for WMHI as described in Section A.3.d.(12)
E7	Delivery and Installation of WebConnect for WMHI as described in Section A.3.d.(3)
E8	Delivery and Installation of Export Software for WMHI as described in Section A.3.d.(2)
F1	Delivery and Installation of one (1) each Zebra GX430T Thermal Printer with Custom FW; HP P4014DN Forms Only Printer; and Lexmark C734DN Color Laser Printer; including Freight for Memphis Mental Health Institute (MMHI) as described in Section A.3.c.(3)
F2	Delivery and Installation of PrimeCare Software (nine to sixteen (9-16) Clients) for MMHI as described in A.3.d.(1)
F3	Delivery of On-Site PrimeCare Training Package for MMHI as described in Section A.3.e.(2)
F4	Delivery of CRx to PrimeCare conversion services at MMHI as described in Section A.3.b.
F5	Delivery and Installation of the Interface Bundle Software for MMHI as described in Section A.3.d.(11)
F6	Delivery and Installation of Automated Batch Interface for MMHI as described in Section A.3.d.(12)
F7	Delivery and Installation of WebConnect for MMHI as described in Section A.3.d.(3)
F8	Delivery and Installation of Export Software at MMHI as described in Section A.3.d.(2)

A.5. Licensing Provisions.

- a. The Contractor shall provide a license (or "licenses") to the State. This license is, or these licenses are, referred to herein as the "base license". The base license shall also include system maintenance and support, as described in Section A.3.g. At the State's option, Software Licensure/System Support for the base license shall be renewed annually, with renewal fees paid in quarterly installments, throughout the term of the Contract. The Contractor affirms its right to license to the State all software listed in Section A.3.d. (hereinafter "Licensed Programs").
- b. The State recognizes that the Contractor may require the State to agree to certain Contractor licensing provisions for the proposed software. If this is the case, any and all Contractor licensing agreements are included (in original or modified form) as follows in this Section. The State's signature on this Contract shall constitute the State's written agreement to the provisions so included. The State shall not sign separate Contractor licensing agreements.

- (1) Responsibility of Accuracy of Information. State shall remain solely responsible for accuracy of information obtained from the use of the Software and the use of such information. Specifically, and without limitation, State shall remain solely responsible for all drugs dispensed, procedures performed, or information provided to third parties.
- (2) Use by State. Contractor has no control over the conditions under which State makes use of the Software, and does not and cannot warrant the results obtained by such use. The State shall be exclusively responsible for the supervision, management, and control of its use of the Software, including but not limited to: audit controls and operating methods; establishing adequate backup plans; and implementing sufficient procedures and checkpoints to satisfy its requirements for security and accuracy of input and output.
- (3) The Contractor hereby grants the State a non-exclusive, non-transferable license to use the Licensed Programs throughout the term of the Contract, in object code form only:
 - i. For the State's internal business purposes and not to process the data of any other entity; and
 - ii. While the State is not otherwise in default under this Contract.
- (4) Any Third Party Programs, those programs not owned by Contractor, shall be licensed subject to the same restrictions as are set forth in Section A.5.b.(3).
- (5) Nothing in this Contract shall be deemed to convey any title or ownership interest in the Licensed Programs to the State. The State acknowledges the Contractor's rights, and the rights of the owner of any Third Party Programs, those programs not owned by Contractor, to the Licensed Programs and agrees that the Licensed Programs are trade secrets and unpublished works on which the Contractor and such third party(s) hold and shall hold the sole and exclusive copyright. The State shall not dispute the rights of the Contractor and any third party(s) in the Licensed Programs. The State shall take reasonable efforts to protect the confidentiality of the Licensed Programs.
- (6) No copies of the Licensed Programs may be made by the State without the prior written consent of the Contractor except two archival copies for backup purposes in accordance with normal data processing practices. The State agrees to reproduce any copyright notices and/or other proprietary legends, regardless of form, contained in, affixed to, or appearing on the Licensed Programs. State shall not transfer the Software or any copy thereof without the prior written consent of the Contractor. State shall have no other right to copy or print the Software, in whole or in part. All copies made by State are the exclusive property of the Contractor.
- (7) The State shall not disassemble or reverse engineer any of the Licensed Programs nor attempt to access or modify the source code version of the Licensed Programs and shall not make any derivations, adaptations, or translations of the Licensed Programs in whole or in part or use the Licensed Programs to develop functionally similar computer software or to otherwise compete with Licensor.

A.6. System Warranty.

- a. The Contractor expressly warrants all software provided to be defect-free, properly functioning, and compliant with the terms of the Contract. Throughout the Warranty Period, the Contractor shall provide corrections for any errors, defects, and/or design deficiencies in all software reported by the State, and to provide such corrections in a timeframe mutually determined by the State and Contractor.
- b. The Contractor warrants that for ninety (90) days after acceptance, the Software will conform to the Software Specifications set forth in the copyrighted materials provided in connection with the Software including, but not limited to, operating performance, timing characteristics and compatibility. During the warranty period, Contractor will use its best efforts to correct defects which substantially affect system performance and shall, without additional charge, correct system errors, and issue corrected releases to the State. After the expiration of the warranty period, Contractor shall provide maintenance for the Software under the terms of this Contract.

A.7. Source Code in Escrow.

- a. The Contractor represents that it maintains, in a secure environment, a current copy of the software source code in escrow with its escrow agent, Holcombe Bomar, P.A. located at 100 Dunbar Street Suite 200, Spartanburg, South Carolina 29306 ("Escrow Company"). Contractor acknowledges that throughout the term of the Contract, the source code in escrow shall be kept current with the most current version of the Source Code periodically escrowed by the Contractor.
- b. The Contractor shall ensure that a copy of the up-to-date Source Code shall be deposited with the Escrow Company at the time of the execution of this Contract. State may demand confirmation at any time during the course of the Contract from the Contractor or Escrow Company that the Source Code in escrow is up to date and Contractor or Escrow Company will provide confirmation of such within thirty (30) days of such request.
- c. If the Contractor goes out of business the State shall be able to obtain the source code from the Escrow Company.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning January 1, 2011, and ending on June 30, 2015. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Eight Hundred Fifty-Three Thousand Five Hundred Fifty-Four Dollars (\$853,554.00). The payment rates in section C.3. shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with

the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

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

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in section C.1.

a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.

b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Item Reference	Service Description	Amount (per compensable increment)				
		1/01/2011 to 6/30/2011	7/01/2011 to 6/30/2012	7/01/2012 to 6/30/2013	7/01/2013 to 6/30/2014	7/01/2014 to 6/30/2015
Section A.4.e. Items A2 and A3	Completion and State Written Acceptance of: 1) Installation of Enterprise Server Manager (ESM) Software on a State Supplied Server; and 2) Installation of Enterprise Site Software (ESS) (for five (5) sites) on a State Supplied Server.	\$1,150.00	\$0.00	\$0.00	\$0.00	\$0.00
Section A.4.e. Item A4	Completion and State Written Acceptance of two (2) days of On-Site ESM Training at \$1,000 per day.	\$2,000.00	\$0.00	\$0.00	\$0.00	\$0.00
Section A.4.e. Items A5 through A9	Completion and State Written Acceptance of: 1) Installation of Multi-Site Management (MSM) one to six (1-6) Licenses; 2) Installation of MSM Site Software for five (5) sites; 3) Installation of MSM Central Profile; 4) Installation of MSM Central Reconciliation one to six (1-6) Licenses; and 5) Installation of MSM Reconciliation Site Software for five (5) sites.	\$1,750.00	\$0.00	\$0.00	\$0.00	\$0.00

Item Reference	Service Description	Amount (per compensable increment)				
		1/01/2011 to 6/30/2011	7/01/2011 to 6/30/2012	7/01/2012 to 6/30/2013	7/01/2013 to 6/30/2014	7/01/2014 to 6/30/2015
Section A.4.e. Item A10	Completion and State Written Acceptance of three (3) days of On-Site MSM Training at \$1,000 per day.	\$3,000.00	\$0.00	\$0.00	\$0.00	\$0.00
Section A.4.e. Items B1 through B8	Middle Tennessee Mental Health Institute (MTMHI): Completion and State Written Acceptance of: 1) Delivery and Installation of Printers including freight; 2) Installation of PrimeCare Software (nine to sixteen (9-16) Clients); 3) On-Site PrimeCare Training Package; 4) CRx to PrimeCare Conversion Services; 5) Installation of the Interface Bundle Software; 6) Installation of Automed Batch Interface; 7) Installation of WebConnect; and 8) Installation of Export Software.	\$9,393.00	\$0.00	\$0.00	\$0.00	\$0.00
Section A.4.e. Items C1 through C8	Lakeshore Mental Health Institute (LMHI): Completion and State Written Acceptance of: 1) Delivery and Installation of Printers including freight; 2) Installation of PrimeCare Software (nine to sixteen (9-16) Clients); 3) On-Site PrimeCare Training Package; 4) CRx to PrimeCare Conversion Services; 5) Installation of the Interface Bundle Software; 6) Installation of Automed Batch Interface; 7) Installation of WebConnect; and 8) Installation of Export Software.	\$9,393.00	\$0.00	\$0.00	\$0.00	\$0.00

Item Reference	Service Description	Amount (per compensable increment)				
		1/01/2011 to 6/30/2011	7/01/2011 to 6/30/2012	7/01/2012 to 6/30/2013	7/01/2013 to 6/30/2014	7/01/2014 to 6/30/2015
Section A.4.e. Items D1 through D8	Moccasin Bend Mental Health Institute (MBMHI): Completion and State Written Acceptance of: 1) Delivery and Installation of Printers including freight; 2) Installation of PrimeCare Software (nine to sixteen (9-16) Clients); 3) On-Site PrimeCare Training Package; 4) CRx to PrimeCare Conversion Services; 5) Installation of the Interface Bundle Software; 6) Installation of Automated Batch Interface; 7) Installation of WebConnect; and 8) Installation of Export Software.	\$9,393.00	\$0.00	\$0.00	\$0.00	\$0.00
Section A.4.e. Items E1 through E8	Western Mental Health Institute (WMHI): Completion and State Written Acceptance of: 1) Delivery and Installation of Printers including freight; 2) Installation of PrimeCare Software (nine to sixteen (9-16) Clients); 3) On-Site PrimeCare Training Package; 4) CRx to PrimeCare Conversion Services; 5) Installation of the Interface Bundle Software; 6) Installation of Automated Batch Interface; 7) Installation of WebConnect; and 8) Installation of Export Software.	\$9,393.00	\$0.00	\$0.00	\$0.00	\$0.00

Item Reference	Service Description	Amount (per compensable increment)				
		1/01/2011 to 6/30/2011	7/01/2011 to 6/30/2012	7/01/2012 to 6/30/2013	7/01/2013 to 6/30/2014	7/01/2014 to 6/30/2015
Section A.4.e. Items F1 through F8	Memphis Mental Health Institute (MMHI): Completion and State Written Acceptance of: 1) Delivery and Installation of Printers including freight; 2) Installation of PrimeCare Software (nine to sixteen (9-16) Clients); 3) On-Site PrimeCare Training Package; 4) CRx to PrimeCare Conversion Services; 5) Installation of the Interface Bundle Software; 6) Installation of Automated Batch Interface; 7) Installation of WebConnect; and 8) Installation of Export Software.	\$9,393.00	\$0.00	\$0.00	\$0.00	\$0.00
Sections A.3.a.(2), A.3.d., and A.4.d.	Completion and State Written Acceptance of Implementation at All Sites as shown through an Implementation Wrap-Up Document, documenting the delivery, successful implementation, and acceptable operation of the application at all sites and as a whole; and any recommendations to the State to improve the performance of the application. Includes payment for software products installed as noted above in Sections A.4.e. Items A2 through F8.	\$162,510.00	\$0.00	\$0.00	\$0.00	\$0.00

Item Reference	Service Description	Amount (per compensable increment)				
		1/01/2011 to 6/30/2011	7/01/2011 to 6/30/2012	7/01/2012 to 6/30/2013	7/01/2013 to 6/30/2014	7/01/2014 to 6/30/2015
MF1	Quarterly Maintenance Fees for Software on State Supplied Server: 1) ESM Software; 2) ESS Software; 3) MSM one to six (1-6) Licenses; 4) MSM Site Software for five (5) sites; 5) MSM Central Profile; 6) MSM Central Reconciliation one to six (1-6) Licenses; and 7) MSM Reconciliation Site Software for five (5) sites. (Refer to Payment Terms and Conditions Section C.3.c.)	\$1,679.00	\$6,716.00	\$6,716.00	\$6,716.00	\$6,716.00
MF2	Quarterly Maintenance Fees for Software Installed at each RMHI site covering all sites: 1) Interface Bundle Software; 2) Automated Batch Interface; and 3) Export Software (Refer to Payment Terms and Conditions Section C.3.c.)	\$2,308.00	\$9,232.00	\$9,232.00	\$9,232.00	\$9,232.00
MF3	Quarterly Maintenance Fee for PrimeCare Software Clients: nine to sixteen (9-16) clients at each RMHI site (45-80 clients across all sites) (Refer to Payment Terms and Conditions Section C.3.c.)	\$3,618.00	\$14,472.00	\$14,472.00	\$14,472.00	\$14,472.00
MF4	Quarterly Maintenance Fee for WebConnect Software Threads: (one (1) set of four (4) threads at each RMHI site; total twenty (20) threads) (Refer to Payment Terms and Conditions Section C.3.c.)	\$1,248.00	\$4,992.00	\$4,992.00	\$4,992.00	\$4,992.00
MF5	Quarterly Maintenance Fee for five (5) Zebra GX430T Thermal Printers with Custom FW (at \$42.00 per printer per quarter) (Refer to Payment Terms and Conditions Section C.3.c.)	\$210.00	\$840.00	\$840.00	\$840.00	\$840.00

Item Reference	Service Description	Amount (per compensable increment)				
		1/01/2011 to 6/30/2011	7/01/2011 to 6/30/2012	7/01/2012 to 6/30/2013	7/01/2013 to 6/30/2014	7/01/2014 to 6/30/2015
MF6	Quarterly Maintenance Fee for five (5) Lexmark C734DN Color Laser Printers (at \$135.00 per printer per quarter) (Refer to Payment Terms and Conditions Section C.3.c.)	\$675.00	\$2,700.00	\$2,700.00	\$2,700.00	\$2,700.00
MF7	Quarterly Maintenance Fees for Updates at each RMHI site covering all sites: 1) Weekly Electronic Internet Price Updates AWP; and 2) Clinical Database Updates (Refer to Payment Terms and Conditions Section C.3.c.)	\$1,700.00	\$6,800.00	\$6,800.00	\$6,800.00	\$6,800.00
MF8	Quarterly Maintenance Fees for: 1) Images and Imports Quarterly on CD ROM at each RMHI site covering all sites; and 2) Architext Label Fonts for Thermal Labels at each RMHI site covering all sites (Refer to Payment Terms and Conditions Section C.3.c.)	\$488.00	\$1,952.00	\$1,952.00	\$1,952.00	\$1,952.00
SF	Monthly Switching Fees: To be charged at the end of each month; twenty five hundred (2,500) claims per month across all sites; thirty thousand (30,000) claims annually across all sites; at \$0.07 per claim.	\$0.00	\$2,100.00	\$2,100.00	\$2,100.00	\$2,100.00

Item Reference	Service Description	Amount (per compensable increment)				
		1/01/2011 to 6/30/2011	7/01/2011 to 6/30/2012	7/01/2012 to 6/30/2013	7/01/2013 to 6/30/2014	7/01/2014 to 6/30/2015
Section A.3.g.(8)	Change Order Payment Rate – applicable only to each completed person hour required to complete the requirements of a Change Order authorized by the State pursuant to this Contract at \$95.00 per hour; not to exceed five hundred (500) hours during the periods January 1, 2011 through June 30, 2011 and July 1, 2012 through June 30, 2015; and not to exceed one thousand (1,000) hours during the period July 1, 2011 to June 30, 2012	\$47,500.00	\$95,000.00	\$47,500.00	\$47,500.00	\$47,500.00
OPT1	Additional on-site assistance during training and conversion; not to exceed ten (10) days at \$1,000.00 per day; five (5) sites at two (2) days per site. (Refer to Payment Terms and Conditions Section C.3.d.)	\$10,000.00	\$0.00	\$0.00	\$0.00	\$0.00
OPT2	Additional online assistance during training and conversion; not to exceed sixty (60) hours at \$85.00 per hour; five (5) sites at twelve (12) hours per site. (Refer to Payment Terms and Conditions Section C.3.d.)	\$5,100.00	\$0.00	\$0.00	\$0.00	\$0.00
OPT3	Additional WebConnect Software Threads (set of four (4) at \$1,000.00 per set; one (1) set of four (4) at each RMHI site); five (5) sets (twenty (20) threads) (Refer to Payment Terms and Conditions Section C.3.d.)	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00

Item Reference	Service Description	Amount (per compensable increment)				
		1/01/2011 to 6/30/2011	7/01/2011 to 6/30/2012	7/01/2012 to 6/30/2013	7/01/2013 to 6/30/2014	7/01/2014 to 6/30/2015
OPT4	Additional Quarterly Maintenance Fee for Additional WebConnect Software Threads (set of four (4) at \$250.00 per quarter per set; up to five (5) sets (twenty (20) threads) (Refer to Payment Terms and Conditions Section C.3.d. and Item Reference MF4 above)	\$250.00	\$1,000.00	\$1,000.00	\$1,000.00	\$1,000.00
OPT5	Additional PrimeCare Client Sets (set of four (4) clients at \$2,000 per set; up to four (4) sets (sixteen (16) clients) at each RMHI site to bring total number of clients at each site to thirty-two (32) (Refer to Payment Terms and Conditions Section C.3.d.)	\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00	\$8,000.00
OPT6	Additional Quarterly Maintenance Fee for Additional PrimeCare Client Sets at \$337.00 per quarter if number of clients at each RMHI site becomes seventeen to twenty-four (17-24) clients (85-120 total across all sites) (Refer to Payment Terms and Conditions Section C.3.d. and Item Reference MF3 above)	\$337.00	\$1,348.00	\$1,348.00	\$1,348.00	\$1,348.00
OPT7	Additional Quarterly Maintenance Fee for Additional PrimeCare Client Sets at \$676.00 per quarter if number of clients at each RMHI site becomes twenty-five to thirty-two (25-32) clients (125-160 total across all sites) (Refer to Payment Terms and Conditions Section C.3.d. and Item Reference MF3 above)	\$676.00	\$2,704.00	\$2,704.00	\$2,704.00	\$2,704.00

Item Reference	Service Description	Amount (per compensable increment)				
		1/01/2011 to 6/30/2011	7/01/2011 to 6/30/2012	7/01/2012 to 6/30/2013	7/01/2013 to 6/30/2014	7/01/2014 to 6/30/2015
OPT8	Additional Zebra GX430T Thermal Printer with Custom FW (up to twenty (20) printers at \$610.00 each) (Refer to Payment Terms and Conditions Section C.3.d.)	\$0.00	\$3,050.00	\$3,050.00	\$3,050.00	\$3,050.00
OPT9	Additional Quarterly Maintenance Fee for five (5) Additional Zebra GX430T Thermal Printers with Custom FW (at \$42.00 per printer per quarter) (Refer to Payment Terms and Conditions Section C.3.d. and Item Reference MF5 above)	\$0.00	\$840.00	\$1,680.00	\$2,520.00	\$3,360.00
OPT10	Additional HP P4014DN Forms Only Printer (up to fifteen (15) printers at \$1,299.00 each) (Refer to Payment Terms and Conditions Section C.3.d.)	\$0.00	\$6,495.00	\$6,495.00	\$6,495.00	\$0.00
OPT11	Additional Lexmark C734DN Color Laser Printer (up to ten (10) printers at \$899.00 each) (Refer to Payment Terms and Conditions Section C.3.d.)	\$0.00	\$3,596.00	\$1,798.00	\$1,798.00	\$1,798.00
OPT12	Additional Quarterly Maintenance Fee for Additional Lexmark C734DN Color Laser Printers (at \$135.00 per printer per quarter) (Refer to Payment Terms and Conditions Section C.3.d. and Item Reference MF6 above)	\$0.00	\$2,160.00	\$3,240.00	\$4,320.00	\$5,400.00
	TOTALS:	\$301,827.00	\$173,649.00	\$126,271.00	\$128,191.00	\$123,616.00

- c. No maintenance fee detailed above (Item References MF1 through MF8) shall be effective or applicable prior to successful completion and State written acceptance of the initial installation and conversion at all sites. It is anticipated that installation and conversion will take six (6) months to complete; therefore, it is anticipated that maintenance fees will begin in Fiscal Year 2012 (July 1, 2011) and continue through Fiscal Year 2015 (June 30, 2015). In the event installation and conversion is completed in three (3) months, there will be one (1) quarter of maintenance fees in the fourth (4th) quarter of Fiscal Year 2011 (April 1, 2011 to June 30, 2011).

- d. Costs for Item References OPT1 through OPT12 shall not be effective or applicable without written request and approval of the State. For Item References OPT6 and OPT7, only one or the other will be incurred depending on the number of total PrimeCare client sets. For purposes of calculating maximum liability, the cost in OPT7 was used.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices upon completion for milestone payments; monthly for Change Orders and Switching Fees; and quarterly for maintenance fees, with all necessary supporting documentation, to:

Department of Mental Health and Developmental Disabilities
Fiscal Services
10th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, Tennessee 37243

- a. Each invoice shall clearly and accurately detail all of the following required 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: Department of Mental Health and Developmental Disabilities
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
 - (6) Contractor Name
 - (7) Contractor Federal Employer Identification, Social Security, or Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
 - (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
 - (9) Contractor Remittance Address
 - (10) Description of Delivered Service
 - (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
 - iv. Amount Due by Service
 - v. Total Amount Due for the invoice period
- b. The Contractor understands and agrees that an invoice under this Contract shall:
 - (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) only be submitted for completed service and shall not include any charge for future work;
 - (3) not include sales tax or shipping charges; and
 - (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.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 matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.
- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
 - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Personnel, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Personnel, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess

of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

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

D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 01, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated, Section 12-4-401 et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15: State Liability. The State shall have no liability except as specifically provided in this Contract.

- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Heather Gundersen, Director of Information Technology
Department of Mental Health and Developmental Disabilities
Andrew Johnson Tower, 12th Floor
710 James Robertson Parkway
Nashville, TN 37243
Heather.Gundersen@tn.gov
Phone: (615) 532-6603
Fax: (615) 253-5717

The Contractor:

Brent Thomasson
J.M. Smith Corporation D/B/A QS/1 Data Systems
201 West Saint John Street
Spartanburg, SC 29306
brent_Thomasson@qs1.com
Phone: 864.253.8600
Fax: 864.253.8690

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

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, et. seq., the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

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

- E.6. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA 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 HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.

E.7. Ownership of Software and Work Products.

- a. Definitions.
 - (1) "Contractor-Owned Software," which shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
 - (2) "Custom-Developed Application Software," which shall mean customized application software developed by Contractor solely for State.
 - (3) "Rights Transfer Application Software," which shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.
 - (4) "Third-Party Software," which shall mean software not owned by the State or the Contractor.
 - (5) "Work Product," which shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the system solution includes Rights Transfer Application Software, the definition of Work Product shall also include such software.
- b. Rights and Title to the Software
 - (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted herein.
 - (2) All data and other information entered into the Software shall remain the intellectual property of the State.
 - (3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted thereby.
- c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.

- d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.
- E.8. 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 temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.
- E.9. 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 Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.
- E.10. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the 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 Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

- E.11. 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 offence 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.

E.12. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.

E.13. 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 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.

E.14. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

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

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

- (1) In event of a Breach by Contractor, State shall allow Contractor thirty (30) days from the receipt of the State's written notice of an alleged breach, to cure said breach. Should the Contractor fail to cure the breach, the State shall have

available the remedy of Actual Damages and any other remedy available at law or equity.

- (2) Partial Default— In the event of a Breach, and upon Contractor's failure to cure, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

The State may assess Liquidated Damages against the Contractor for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is effective. Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

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

- b. State Breach— In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within thirty (30) days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach.

- E.15. Rule 2 Compliance. The State and the Contractor shall comply with obligations under Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations as codified at 42 CFR § 2.1 et seq.

- a. The Contractor warrants to the State that it is familiar with the requirements of Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations, and will comply with all applicable requirements in the course of this Contract.
- b. The Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its regulations, in the course of performance of the Contract so that both parties will be in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and that are reasonably necessary to keep the State and the Contractor in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, or if Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records permits the State to receive such information without entering into a business associate agreement or signing another such document

E.16. Additional Subcontracting Requirements. If subcontracts are approved by the State, they shall contain, in addition to those sections identified in D.5., sections on "Confidentiality of Records", "HIPAA Compliance", and "Rule 2 Compliance" (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.

IN WITNESS WHEREOF,

J.M. SMITH CORPORATION D/B/A QS/1 DATA SYSTEMS:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES:

VIRGINIA TROTTER BETTS, MSN, JD, RN, FAAN, COMMISSIONER

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	J.M. SMITH CORPORATION D/B/A QS/1 DATA SYSTEMS
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	57 0276334

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

CONTRACTOR SIGNATURE

NOTICE: This attestation **MUST** be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION