

**CONTRACT #4**  
**RFS # 343.10-127**  
**FA # 07-16959**

**Health**

**VENDOR:**  
**Optimum Technology, Inc.**



STATE OF TENNESSEE  
**DEPARTMENT OF HEALTH**  
CORDELL HULL BLDG.  
425 5TH AVENUE NORTH  
NASHVILLE TENNESSEE 37243

**PHIL BREDESEN**  
GOVERNOR

**SUSAN R. COOPER, MSN, RN**  
COMMISSIONER

June 10, 2009

Mr. James White, Director  
Fiscal Review Committee  
320 Sixth Avenue, North, 8<sup>th</sup> Floor  
Nashville, TN 37243

and

M.D. Goetz, Jr., Commissioner  
Department of Finance & Administration  
State Capitol, First Floor  
Nashville, TN 37243-0285

Dear Director White and Commissioner Goetz,

This Amendment is being proposed in order to continue to provide information technology consulting services to the controlled substance prescription data system. The Department of Health requests approval to non-competitively amend the Competitive Contract FA-07-16959-00 with Optimum Technology for the provision of consulting services for the controlled substance prescription data system by exercising the option to extend the term twelve (12) months.

In addition to the extension of the contract term, the Scope of Services has been amended to provide for modification of the user provisioning process of the system and to obtain and store the network/network user identifier for use in the alternative sign-on-process for users with a Federated Identity network sign on. This will streamline users' access to electronic health information. The maximum liability will increase an additional \$218,500 for the twelve (12) months.

The controlled substance prescription data system collects dispenser prescription data twice a month. The state will use this data acquired to assist in research, statistical analysis and the education of health care practitioners concerning patients who, by virtue

**RECEIVED**  
JUN 11 2009  
**FISCAL REVIEW**

of their conduct in acquiring controlled substances, may require counseling or intervention for substance abuse.

We appreciate your approval to proceed with the amendment. Thank you for considering this request.

Sincerely,

  
Susan R. Cooper, MSN, RN  
BHL

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Kevin Edison	*Contact Phone:	741-253-1300
*Contract Number:	FA0716959-02	*RFS Number:	343.10-127-07
*Original Contract Begin Date:	08/21/2006	*Current End Date:	08/20/2009
Current Request Amendment Number: <i>(if applicable)</i>	#3		
Proposed Amendment Effective Date: <i>(if applicable)</i>	August 21, 2009		
*Department Submitting:	Department of Health		
*Division:	Bureau of Health Licensure and Regulation/Health Related Boards/Board of Pharmacy		
*Date Submitted:	June 11, 2009		
*Submitted Within Sixty (60) days: <i>If not, explain:</i>	Yes		
*Contract Vendor Name:	Optimum Technology		
*Current Maximum Liability:	\$1,064,000		
<b>*Current Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)</b>			
FY:2007	FY: 2008	FY: 2009	FY: FY FY
\$493,500	\$356,500	\$214,000	\$ \$ \$
<b>*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from STARS or FDAS report)</b>			
FY:2007	FY:2008	FY:2009	FY: FY FY
\$493,500	214,000	\$160,500 currently but there are 3 more months expenditures	\$ \$ \$
<b>IF</b> Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	N/A		
<b>IF</b> surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	N/A		
<b>IF</b> Contract Expenditures	N/A		

Supplemental Documentation Required for  
Fiscal Review Committee

exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			
*Contract Funding Source/Amount	State: \$789,000	Federal:	\$493,500
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>	
Amendment #1		Name Change from Department of Commerce and Insurance to Department of Health	
Amendment #2		Increase of one year in maximum liability and additional year in the term of the contract	
Method of Original Award: <i>(if applicable)</i>		Request for Proposal	
Include a detailed breakdown of the actual expenditures anticipated in each year of the contract. Include specific line items, source of funding, and disposition of any excess fund. <i>(if applicable)</i>		July 1, 2009 – June 30, 2010 - \$23,500 Quarterly for System Maintenance and \$30,000 Quarterly for services provided toward collection of Dispenser Prescription Data, cleansing and transmission to state, and \$4,500 for sign-on modification – Total \$218,500 for the year	
Include a detailed breakdown, in dollars, of any savings that the department anticipates will result from this contract. Include, at a minimum, reduction in positions, reduction in equipment costs, reduction in travel. <i>(if applicable)</i>		N/A	
Include a detailed analysis, in dollars, of the cost of obtaining this service through the proposed contract as compared to other options. <i>(if applicable)</i>		N/A	

**PAYMENT HISTORY FOR OPTIMUM TECHNOLOGY**

FFY	ALLOT	COST	OBJRY	BATCHID	TCD	INVOICE	REFDOC	REFS	CURDOC	GRANT	SUBGR	VENDOR	VNDNO	VSUF	EXP	MONTH	YEAR	SERVDATE	WARRANT
07	33510	2201				21433	FA0716959	00				Optimum Technology	V311231081	00	50,000.00	11	06	9/30/2006	3847959
07	33510	2201				21433	FA0716959	00				Optimum Technology	V311231081	00	194,000.00	11	06	9/30/2006	3847959
07	33510	2201				21516	FA0716959	00				Optimum Technology	V311231081	00	40,000.00	1	07	12/1/2006	4012703
07	33510	2201				21516	FA0716959	00				Optimum Technology	V311231081	00	47,000.00	1	07	12/1/2006	4012703
07	33510	2201				21487	FA0716959	00				Optimum Technology	V311231081	00	30,000.00	3	07	12/06-02/08	4177783
07	33510	2201				21570	FA0716959	00				Optimum Technology	V311231081	00	30,000.00	5	07	2/28/2007	4278751
07	33510	2201				21614	FA0716959	00				Optimum Technology	V311231081	00	49,000.00	5	07	5/12/2007	4300417
07	33510	2201				21654	FA0716959	00				Optimum Technology	V311231081	00	30,000.00	6	07	5/31/2007	4387625
07	33510	2201				21667	FA0716959	00				Optimum Technology	V311231081	00	23,500.00	6	07	5/31/2007	4387625
													<b>FY07 Payments</b>		<b>493,500.00</b>				
DEPARTMENT OF C & I TRANSFERRED CONTRACT TO DEPARTMENT OF HEALTH																			
08	34310	46	08				FA0716959	1				Optimum Technology	V311231081	00	23,500.00	12	07	12/7/2007	4803112
08	34310	46	08				FA0716959	1				Optimum Technology	V311231081	00	30,000.00	2	08	2/28/2008	4994843
08	34310	46	08				FA0716959	1				Optimum Technology	V311231081	00	23,500.00	5	08	4/30/2008	5151985
08	34310	46	08				FA0716959	1				Optimum Technology	V311231081	00	23,500.00	6	08	6/12/2008	5253369
08	34310	46	08				FA0716959	1				Optimum Technology	V311231081	00	30,000.00	6	08	6/12/2008	5253369
08	34310	46	08				FA0716959	1				Optimum Technology	V311231081	00	30,000.00	6	08	6/12/2008	5253369
08	34310	46	08				FA0716959	1				Optimum Technology	V311231081	00	23,500.00	8	08	8/15/2008	5391074
08	34310	46	08				FA0716959	1				Optimum Technology	V311231081	00	30,000.00	8	08	8/15/2008	5391074
													<b>FY08 Payments</b>		<b>214,000.00</b>				
09	34310	46	08				FA0716959	2				Optimum Technology	V311231081	00	23,500.00	11	08	11/24/2009	5597074
09	34310	46	08				FA0716959	2				Optimum Technology	V311231081	00	30,000.00	11	08	11/24/2008	5597074
09	34310	46	08				FA0716959	2				Optimum Technology	V311231081	00	23,500.00	5	09	3/2/2009	5774016
09	34310	46	08				FA0716959	2				Optimum Technology	V311231081	00	30,000.00	5	09	3/2/2009	5774016
															23,500.00			5/20/2009	5918109
															30,000.00			5/20/2009	5918109
													<b>FY09 Payments</b>		<b>160,500.00</b>				
													<b>Payments from the beginning of the contract</b>		<b>868,000.00</b>				

# REQUEST: NON-COMPETITIVE AMENDMENT

APPROVED

Commissioner of Finance & Administration

Date:

EACH REQUEST ITEM BELOW MUST BE DETAILED OR ADDRESSED AS REQUIRED

RECEIVED

JUN 11 2009

FISCAL REVIEW

EXISTING CONTRACT INFORMATION

1) RFS #	343.10-127-07	
2) State Agency Name :	Department of Health	
3) Service Caption :	Design, construct and implement a data repository capable of collecting, maintaining and reporting controlled substance prescription data dispensed in the State of Tennessee	
4) Contractor :	Optimum Technology, Inc.	
5) Contract #	FA-07-16959-00	
6) Contract Start Date :	August 21, 2006	
7) <u>Current</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	August 20, 2009	
8) <u>Current</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$1,278,000	

PROPOSED AMENDMENT INFORMATION

9) <u>Proposed</u> Amendment #	#3
10) <u>Proposed</u> Amendment Effective Date : (attached explanation required if date is < 60 days after F&A receipt)	August 21, 2009
11) <u>Proposed</u> Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	August 20, 2010
12) <u>Proposed</u> Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$1,282,500 (\$218,500 current year)
13) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state
	<input type="checkbox"/> only one uniquely qualified service provider able to provide the service

14) Description of the Proposed Amendment Effects & Any Additional Service :

The Department requests permission to amend the original contract for one year, increase the maximum liability for one year. The amendment provides for continuation of quarterly system maintenance of the database and database software, quarterly collection of data from the dispenser, cleansing of data collected and transmission of that data to the State by the Contractor. Amendment of Scope of Service which are necessary modifications to the network, firewalls and the PING Federated Identity Server to test and implement the changes to the application.

**15) Explanation of Need for the Proposed Amendment :**

The Contractor has designed, constructed and implemented a data repository capable of collecting, maintaining and reporting Schedule II, III, IV and V controlled substance prescription data dispensed in the State of Tennessee. The amendment would be a continuation of system maintenance of the database software, cleansing of data collected and transmission of that data to the State. The Contractor shall be responsible for the data cleansing and data transmission as stated in the original contract. The acquisition of this service has allowed the State to quickly and more correctly identify cases of illegal activity and to act upon them, and by doing so better protect its citizens. The Contractor will modify the user provisioning process of the application to obtain and store the network/user identifier for use in the alternative sign on process for users with a Federated Identity network sign on. The Contractor will modify the authentication process to support current sign on and to accept federated security identity assertions for users of the Tennessee eHealth Network via the PING Federated Identity Management Server. The application will translate the network/network user identifier into the application userid and continue processing as if the user had signed on to the application using the current sign-on process.

**16) Name & Address of Contractor's Current Principal Owner(s) :**  
(not required if proposed contractor is a state education institution)

Josh M. Davda, President  
Optimum Technology, Inc.  
100 E. Campus View Boulevard, Suite 380  
Columbus, OH 43235

**17) Documentation of Office for Information Resources Endorsement :**  
(required only if the subject service involves information technology)

select one:

Documentation Not Applicable to this Request

Documentation Attached to this Request

**18) Documentation of Department of Personnel Endorsement :**  
(required only if the subject service involves training for state employees)

select one:

Documentation Not Applicable to this Request

Documentation Attached to this Request

**19) Documentation of State Architect Endorsement :**  
(required only if the subject service involves construction or real property related services)

select one:

Documentation Not Applicable to this Request

Documentation Attached to this Request

**20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :**

The original contract was awarded through a Request for Proposals with the term extension clause that would allow the State to amend the contract up to five years.

**21) Justification for the Proposed Non-Competitive Amendment :**

The Department seeks permission to extend the contract with Optimum Technology, Inc. for an additional 1 year. The acquisition of this service has allowed the State to quickly and more correctly identify cases of illegal activity and to act upon them and by doing so better protect its citizens. The contract was awarded through the competitive process by Request for Proposals (RFP). The RFP outlines the contract for the quarterly system maintenance of the database and database software, and the quarterly collection of data from the dispenser, cleansing of data collected and transmission of that data to the State by the Contractor. Optimum Technology, Inc. has pioneered the process of data collection and database management for many states that have Prescription Monitoring Programs. This contract can be renewed by the State for a total of five years, and this will be the beginning of the fourth year. It is the intent of the Department to continue utilizing this process since there are approximately eighteen million prescriptions per year received in the database. The database has been a valuable tool to providers across the State as they treat and take care of citizens and visitors.

**REQUESTING AGENCY HEAD SIGNATURE & DATE :**

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)

*Juan R. Cooper, MSN RN/ly JCS*

*6/11/09*

Agency Head Signature

Date

**From:** Susan Cooper  
**To:** Neubert, Eugene, Shulman, Jim  
**Date:** 6/11/2009 7:33 AM  
**Subject:** Re: Optimum Technology - Non-Competitive Amendment Request

Approve to sign

-----Original Message-----

From: Eugene Neubert  
To: Cooper, Susan <Susan.Cooper@tn.gov>  
To: Shulman, Jim <Jim.Shulman@tn.gov>

Sent: 6/11/2009 6:52:23 AM  
Subject: Fw: Optimum Technology - Non-Competitive Amendment Request

Comm. Attached is a non-competitive amendment request for the controlled substance monitoring database contract. The amendment excercises our option to extend for another year for system maintenance and data collection and  
Adds some system upgrades to make system e-health compliant.

If you will give us your approval we will sign on your behalf and document to F&A that you are unavailable to sign the request.

This is the fourth of five requests we will have at FRC on the 22nd. The fifth will be sent to you shortly.

**CONTRACT SUMMARY SHEET**

021908

<b>RFS #</b>	<b>Contract #</b>
<b>343.10-127-07</b>	<b>FA-07-16959-03</b>
<b>State Agency</b>	<b>State Agency Division</b>
Department of Health	BHLR/Health Related Boards
<b>Contractor Name</b>	<b>Contractor ID # (FEIN or SSN)</b>
Optimum Technology, Inc.	<input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 311231081-00

**Service Description**

Amendment #3 – Increase in maximum liability and an additional 1 year in the term of the contract. Additional language to the Scope of Service for modifications to the network, firewalls and the PING Federated Identity Server to test and implement the changes to the application.

<b>Contract Begin Date</b>	<b>Contract End Date</b>	<b>SUBRECIPIENT or VENDOR?</b>	<b>CFDA #</b>
08/21/2006	08/20/2010	vendor	

**Mark Each TRUE Statement**

Contractor is on STARS  Contractor's Form W-9 is on file in Accounts

Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
343.10	46	08	11		
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2007		\$493,500			\$493,500
2008	\$356,500				\$356,500
2009	\$214,000				\$214,000
2010	\$218,500				\$218,500
<b>TOTAL:</b>	\$789,000	\$493,500			<b>1,282,500</b>

— COMPLETE FOR AMENDMENTS ONLY —		
FY	Base Contract & Prior Amendments	THIS Amendment ONLY
2007	\$493,500	
2008	\$356,500	
2009	\$214,000	
2010		\$218,500
<b>TOTAL:</b>	<b>\$1,064,000</b>	<b>+ \$218,500</b>
<b>End Date:</b>	<b>August 20, 2009</b>	<b>August 20, 2010</b>

**State Agency Fiscal Contact & Telephone #**

**Crystal Allen 741-1614**

**State Agency Budget Officer Approval**

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**Funding Certification** (certification, required by T.C.A., § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)

**Contractor Ownership** (complete for ALL base contracts— N/A to amendments or delegated authorities)

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

**Contractor Selection Method** (complete for ALL base contracts— N/A to amendments or delegated authorities)

RFP   
  Competitive Negotiation \*   
  Alternative Competitive Method \*  
 Non-Competitive Negotiation \*   
  Negotiation w/ Government (ID, GG, GU)   
  Other \*

\* Procurement Process Summary (complete for selection by Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)

**AMENDMENT THREE  
TO FA-07-16959**

This Contract Amendment is made and entered by and between the State of Tennessee, DEPARTMENT OF HEALTH, hereinafter referred to as the "State" and OPTIMUM TECHNOLOGY, INC., hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The text of Contract Section A.2.1.2, B.1, C.1 and C.3 is deleted in its entirety and replaced with the following:

A.2. Data Management

A.2.1.2. The Dispensing Prescription Data shall be collected by the Contractor in the format established by the American Society for Automation in ASAP Telecommunications Formal for Controlled Substances, May 1995 version, or as otherwise provided by applicable law. The data must be collected by telephone modem connection, diskette, CD-Rom, tape, secure FTP, Virtual Private Network (VPN), or other format or method approved by the State. The Contractor will modify the authentication process to support current user sign-on and to accept federated security Identity assertions for users of the Tennessee e-Health Network via the PING Federated Identity Management Server. The application will translate the network/network user identifier into the application user-id and continue processing as if the user had signed on to the application using the current sign-on process. The state may add authentication systems in addition to the e-Health network system at its discretion. The Contractor will modify the user provisioning process of the application to obtain and store the network/network user identifier for use in the alternative sign-on process for users with a Federated Identity network sign-on. The Contractor will coordinate with the state for the necessary modifications to the network, firewalls and the PING Federated Identity Server to test and implement the changes to the application. The Contractor will make necessary changes to enable the application to run on "Fire-fox" browser.

- B.1. Contract Term. This Contract shall be effective for the period commencing on August 21, 2006 and ending on August 20, 2010. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Million Two Hundred Eighty Two Thousand Five Hundred Dollars (\$1,282,500.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's 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.3. Payment Methodology. The Contractor shall be compensated based on the Service 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. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

<u>Milestone</u>	<u>Amount</u>
Initial Installation and Configuration of Database Software, Transmission Format, and Web Interface Complete (section A.1.1, A.1.2, A.1.8)	\$244,000.00
Final Customization and Configuration of Database Software, Transmission Format, and Web Interface Complete (section A.1.8, A.3.2)	\$40,000.00
Final Systems Testing complete (section A.1.4, A.1.8, A.5.4)	\$47,000.00
Final Implementation of Accepted Software and the Construction of Database Complete (section A.1.4, A.1.B, A.4, A.5.4)	\$49,000.00
Quarterly System Maintenance of the Database and Database Software (section A.1.5, A.1.7, A.6.3)	\$23,500.00
Quarterly Collection of Data from the Dispenser, Cleansing of Data collected & Transmission of that Data to the State by the Contractor (section A.1.3, A.2.1, A.2.2, A.2.3)	\$30,000.00
Single Sign-On Modifications (A.2.1.2)	\$ 4,500.00

The Contractor shall submit invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for project milestones for the amount stipulated.

The revisions set forth herein shall be effective August 21, 2009. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,  
OPTIMUM TECHNOLOGY, INC.:

---

Josh M. Davda, President and CEO

DATE

---

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF HEALTH:

---

SUSAN R. COOPER, MSN, RN, COMMISSIONER

DATE

APPROVED:

---

COMMISSIONER OF FINANCE & ADMINISTRATION

DATE

---

COMPTROLLER OF THE TREASURY

DATE



# FAX/EMAIL TRANSMITTAL

## to Request OIR Procurement Endorsement

**TO :** Jane Chittenden, Director  
 OIR Procurement & Contract Management      **FAX # 741-6164**

**FROM :** Marilyn Brandon, Contract Coordinator      **FAX # 532-1886**

**DATE :** May 28, 2009

**RFS #** 343.10-127-07

**RE :** Procurement Endorsement — Optimum Technology

**INFORMATION SYSTEMS PLAN PROJECT: N/A**

**NUMBER OF FAX PAGES (including cover) : N/A**

The nature and scope of service detailed in the attached service procurement document(s) appears to require Office for Information Resources (OIR) review and support, because the procurement involves information technology or information systems services.

This communication seeks to ensure that OIR is aware of the procurement and has an opportunity to review the matter. Please determine whether OIR is supportive of the procurement. If you have any questions or concerns about this matter, please call Brenda Newsom at 741-8902.

**Please indicate below your response to this proposed procurement, and return this communication at your earliest convenience (note the return FAX number above).**

Thank you for your help.

Attachment(s)

Must include the entire contract or amendment document and where applicable, the non-competitive contract or amendment request form. The original contract and any prior amendments that were applied to the same section of the contract must be provided with an amendment. Electronic copies of the contract, amendments, and request form without signature are acceptable.

RFP documents must be provided in electronic form.

OIR Endorsement : *Approved for technical merit only*  
*[Signature]*  
 OIR Chief Information Officer      Date *5/29/09*



# TRANSMITTAL

## Request for Procurement Document Endorsement

**TO :** Melissa E. Hargiss, Assistant Director of the eHealth Initiative  
13th Floor Tennessee Tower  
312 Eight Avenue North  
Nashville, TN 37243  
(615) 532-1553  
**FAX #** 532-2849

**FROM :** Marilyn Brandon, Contract Coordinator  
**FAX #** 532-1886

**DATE :** May 28, 2009

**RFS #** 343.10-127-07

**RE :** Optimum Technology

The attached service procurement document involves the state of Tennessee buying medical/mental health-related professional, pharmaceutical, laboratory, or imaging type services. Accordingly, it requires the review and support of the eHealth Initiative staff. The purpose of this communication is to request said review and support.

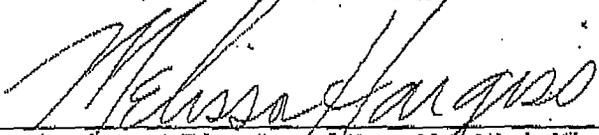
Please sign below to document the review and support of the subject procurement document by the eHealth Initiative, and return this communication at your earliest convenience.

If there are any questions or concerns about this matter, contact Brenda Newsom at 741-8902. Thank you for your help.

### Attachment(s)

(Note to Requesting Party: Attachment(s) must include the entire proposed RFP, non-competitive contract request, competitive negotiation request, alternative procurement process request, contract, or amendment)

eHealth Initiative Endorsement

  
Assistant Director of the eHealth Initiative

5-29-09

Date

CONTRACT SUMMARY SHEET

RFS# 343.10-127-07 Contract# FA-07-16959-02

State Agency: Department of Health  
 State Agency Division: BHLR/Health Related Boards

Contractor Name: Optimum Technology, Inc.  
 Contractor ID# (REIN/SSN): C- or V- 311231081-00

Service Description: Amendment # 2 - Increase in maximum liability and additional year in the term of the contract

Contract Begin Date: 08/21/2006  
 Contract End Date: 08/20/2009  
 Vendor: vendor

Mark Each TRUE Statement  
 Contractor is on STARS  
 Contractor's Form W-9 is on file in Accounts

Alignment Code: 343.10  
 Cost Center: 46  
 Object Code: 08  
 Fund: 11

FY: 2007 \$493,500  
 2008 \$356,500  
 2009 \$214,000

TOTAL Contract Amount: \$1,064,000

State Agency Fiscal Contact & Telephone: Crystal Allen 741-1614  
 State Agency Budget Officer Approval: Crystal Allen

COMPLETE FOR AMENDMENTS ONLY  
 Base Contract: THIS AMENDMENT ONLY  
 Prior Amendments: \$493,500

Funding Certification (entire amount) T.G.A. 19-45. The contractor is a balance in the application which obligated expenditure is required to be paid (that is not otherwise encumbered to pay obligations previously incurred)

End Date	TOTAL
2007	\$493,500
2008	\$356,500
2009	\$214,000
TOTAL	\$1,064,000

Contractor Ownership (complete for ALL base contracts - N/A to amendments or delegated authorities):  
 African American  
 Person w/ Disability  
 Hispanic  
 Small Business  
 Government

Contractor Selection Method (complete for ALL base contracts - N/A to amendments or delegated authorities):  
 RFP  
 Non-Competitive Negotiation \*  
 Competitive Negotiation \*  
 Alternative Competitive Method \*  
 Negotiation w/ Government (D, GC, GU)  
 Other \*

Procurement Process Summary (complete for selection by Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method)

AMENDMENT TWO  
TO FA-07-16959-00

This Contract Amendment is made and entered by and between the State of Tennessee, DEPARTMENT OF HEALTH, hereinafter referred to as the "State" and OPTIMUM TECHNOLOGY, INC., hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The text of Contract Section B.1 and C.1 is deleted in its entirety and replaced with the following:

B.1. Contract Term. This Contract shall be effective for the period commencing on August 21, 2006 and ending on August 20, 2009. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

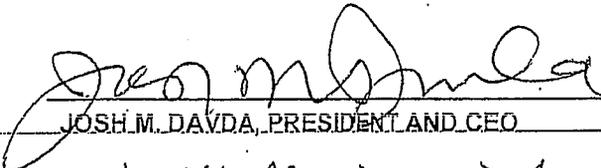
~~C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Million Sixty-Four Thousand Dollars (\$1,064,000.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's 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.

The revisions set forth herein shall be effective August 21, 2008. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF:

OPTIMUM TECHNOLOGY, INC.:

  
\_\_\_\_\_  
JOSH M. DAVDA, PRESIDENT AND CEO

June 2, 2008  
\_\_\_\_\_  
DATE

JOSH M. DAVDA, President & CEO  
\_\_\_\_\_  
PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF HEALTH:

*Susan R. Cooper, MSN, RN, FAAN*  
SUSAN R. COOPER, MSN, RN, COMMISSIONER

*6/11/08*  
DATE

APPROVED:

*M.D. Goetz, Jr. JP*  
M. D. GOETZ, JR., COMMISSIONER  
DEPARTMENT OF FINANCE AND ADMINISTRATION

*6-20-08*  
DATE

*John G. Morgan*  
JOHN G. MORGAN, COMPTROLLER OF THE TREASURY

*6/23/08*  
DATE



**GENERAL ASSEMBLY OF THE STATE OF TENNESSEE  
FISCAL REVIEW COMMITTEE**

320 Sixth Avenue, North - 8<sup>th</sup> Floor  
NASHVILLE, TENNESSEE 37243-0057  
615-741-2564

**Rep. Charles Curtiss, Chairman**  
Representatives

Curt Cobb  
Curtis Johnson  
Gerald McCormick  
Mary Pruitt  
Craig Fitzhugh, *ex officio*  
Speaker Jimmy Naifeh, *ex officio*

Donna Rowland  
David Shepard  
Curry Todd  
Eddie Yokley

**Sen. Douglas Henry, Vice-Chairman**  
Senators

Doug Jackson  
Bill Ketron  
Paul Stanley  
Randy McNally, *ex officio*  
Lt. Governor Ron Ramsey, *ex officio*

Reginald Tate  
Jamie Woodson

**M E M O R A N D U M**

**TO:** The Honorable Dave Goetz, Commissioner  
Department of Finance and Administration

**FROM:** Charles Curtiss, Chairman, Fiscal Review Committee  
Bill Ketron, Chairman, Contract Services Subcommittee

*cc*  
*BK*

**DATE:** August 29, 2007

**SUBJECT:** **Contract Comments**  
(Contract Services Subcommittee Meeting 8/28/07)

~~RFS# 343.10-127~~

**Department:** Health

**Contractor:** Optimum Technology, Inc.

**Summary:** The vendor is currently responsible for creating, installing and implementing the Controlled Substance Monitoring Database system for the Board of Pharmacy. This system is used to track all Schedule II, III, IV and V controlled substance prescription data dispensed in the State. This amendment reflects the transfer of the Board of Pharmacy from the Department of Commerce and Insurance to the Department of Health. The term and the maximum liability remain the same.

**Maximum liability:** \$850,000

**Maximum liability with amendment:** \$850,000

After review, the Fiscal Review Committee voted to recommend approval of the contract amendment.

**cc:** The Honorable Susan Cooper, Commissioner  
Mr. Robert Barlow, Director, Office of Contracts Review



RECEIVED

AUG 21 2007

FISCAL REVIEW

**Tennessee Department of Health**  
Cordell Hull Building  
425 5<sup>th</sup> Avenue North  
Nashville, Tennessee 37243

Phil Bredesen  
Governor

Susan R. Cooper, MSN, RN  
Commissioner

TO: M. David Goetz, Jr., Commissioner, Dept. of Finance & Administration  
James W. White, Executive Director, Fiscal Review Committee

FROM: Susan R. Cooper, MSN, RN, Commissioner, Dept. of Health  
Bureau of Health Licensure and Regulation

DATE: August 21, 2007

SUBJECT: Non-Competitive Contract Amendment between Optimum Technology, Inc.  
and the Board of Pharmacy

Public Chapter 407 of the Acts of 2007 transferred the Board of Pharmacy from the Department of Commerce and Insurance to the Department of Health effective July 1, 2007.

The Board of Pharmacy has a contract with Optimum Technology, Inc. to implement a data repository capable of collecting, maintaining and reporting controlled substance prescription data dispensed in the State of Tennessee. The contract term is August 21, 2006 through August 20, 2008 and is funded with 100% federal funds. An amendment to this contract is necessary to reflect the Board of Pharmacy's transfer to the Department of Health.

We will provide any further information you may need upon your request.

SRC:BAR:br

*SRC / RAN*



**AMENDMENT ONE  
TO CONTRACT FA-07-16959-00**

This Contract, by and between the State of Tennessee, Department of Commerce and Insurance, hereinafter referred to as the State, and Optimum Technology, Inc., hereinafter referred to as the Contractor, is hereby amended as follows:

1. Add the following as Section E.17.:

State Agency Name. Effective July 1, 2007, all references to "the Department of Commerce and Insurance" shall be deleted and replaced with "the Department of Health."

2. Delete Section E.2. in its entirety and insert the following in its place:

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

The State:

Terry Grinder, Interim Pharmacy Board Director  
Department of Health  
Tennessee Board of Pharmacy  
220 Athens Way, Suite 104  
Plaza 1, MetroCenter  
Nashville, TN 37243  
[Terry.Grinder@state.tn.us](mailto:Terry.Grinder@state.tn.us)  
Telephone # (615) 741-2718  
FAX # (615) 741-2274

The Contractor:

Josh M. Davda, President  
Optimum Technology, Inc.  
100 E. Campus View Blvd., Suite 380  
Columbus, OH 43235  
[Josh.Davda@otech.com](mailto:Josh.Davda@otech.com)  
Telephone # (614) 785-1110 Ext 112  
FAX # (614) 785-1114

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

The other terms and conditions of this agreement not amended hereby shall remain in full force and effect.



# CONTRACT SUMMARY SHEET

021406

<b>RFPS#</b> 335.10-637	<b>Contract#</b> FA-07-16959-00
----------------------------	------------------------------------

<b>State Agency</b> Commerce and Insurance	<b>State Agency/Division</b> Regulatory Boards: Pharmacy
---	---

<b>Contractor Name</b> Optimum Technology, Inc.	<b>Contractor ID# (FEIN or SSN)</b> <input type="checkbox"/> C- or <input checked="" type="checkbox"/> X V- 31123108100
--	--

**Service Description**  
Design, construct and implement a data repository capable of collecting, maintaining and reporting controlled substance prescription data dispensed in the State of Tennessee.

<b>Contract Begin Date</b> August 21 2006	<b>Contract End Date</b> August 20 2008	<b>SUBRECIPIENT or VENDOR?</b> vendor	<b>CFDA#</b> 16.580
--	--	--	------------------------

**Mark Each TRUE Statement**  
 Contractor is on STARS       Contractor's Form W-9 is on file in Accounts

<b>Allotment Code</b> 33510	<b>Cost Center</b> 2201	<b>Object Code</b> 083	<b>Fund</b> 11	<b>Funding Grant Code</b> PDM	<b>Funding Subgrant Code</b>
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FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2007		850,000.00			850,000.00
2008		0.00			0.00
<b>TOTAL</b>		850,000.00			850,000.00

**OCH RELEASED**  
SEP 25 2006  
**TO ACCOUNTS**

**COMPLETE FOR AMENDMENTS ONLY**      **State Agency Fiscal Contact & Telephone**

<b>FY</b>	<b>Base Contract &amp; Prior Amendments</b>	<b>THIS Amendment ONLY</b>	Eugene Neubert, Chief Fiscal Services Officer 615-253-6846
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**State Agency Budget Officer Approval**

*[Signature]*      **SEP 28 2006**

Funding Certification (certification required by 28 C.F.R. § 92.251) If there is a balance in the appropriation for which the obligated expenditures are required to be paid that is not otherwise encumbered on a collection of previous work orders.

<b>TOTAL</b>	<b>End Date</b>	<b>Director of Administration</b>
--------------	-----------------	-----------------------------------

**Contractor Ownership** (complete only on base contracts with contract prefix N/A or CR)

<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	NOT minority/disadvantaged
<input checked="" type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged	

**Contractor Selection Method** (complete on ALL base contracts - N/A to amendments or delegated authorities)

<input checked="" type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method
<input type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government (sig. by GG, GU)	<input type="checkbox"/> Other

**Procurement Process Summary** (complete on selection by Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, or Other)

**RECEIVED**  
**SEP 28 2006**  
COMMERCIAL  
OFFICE

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF COMMERCE AND INSURANCE  
OPTIMUM TECHNOLOGY, INC.**

This Contract, by and between the State of Tennessee, Department of Commerce and Insurance, hereinafter referred to as the "State" and Optimum Technology, Inc., hereinafter referred to as the "Contractor," is for the provision of information technology consulting services, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit corporation.

The Contractor's address is:

---

100 E. Campus View Boulevard  
Suite 380  
Columbus, OH 43235

The Contractor's place of incorporation or organization is Ohio.

A. SCOPE OF SERVICES:

A.1 General Scope.

A.1.1 The Contractor shall design, construct and implement a data repository capable of collecting, maintaining and reporting Schedule II, III, IV and V controlled substance prescription data dispensed in the state of Tennessee.

A.1.2 One (1) member of the State's staff will have access to the data by viewing and manipulating the data. Approximately three (3) other members of the State's staff will have access by viewing the data only. Certain other authorized persons or entities as enumerated in Tenn. Code Ann. § 53-10-306 can extract information from the database by making a query through a search engine.

A.1.3 The Contractor will customize and implement a commercial off the shelf (COTS) software package to permit the use of web-based technologies for the reporting of dispensing data by dispensers. The software must track the use of such a system and provide the dispenser with notification that a file has been received or rejected.

A.1.4 The Contractor will collect, cleanse and transmit prescription data submitted to the Contractor by the dispenser reported in accordance with the rules of the Controlled Substance Monitoring Act Advisory Committee (see attachment A).

A.1.5 The Contractor will conduct a Final Systems Test, then develop a training plan and provide training to appropriate State personnel.

A.1.6 The Contractor will provide system maintenance and support to include new version software updates, help desk, and software patches.

A.1.7 The Contractor will assume all project responsibilities and will develop and maintain the project plan throughout this project. The State shall provide oversight of the Contractor and the project plan.

A.1.8 The Contractor will provide quarterly system maintenance. Maintenance will include patches, bug fixes, application updates, application upgrades, customization updates, software troubleshooting and support.

A.1.9 The Contractor will deliver services in the following timeframe:

- Week one (1) – Project planning meeting in which the State reviews and approves project plan.
- Week three (3) – Initial installation and configure database, transmission format and web interface.
- Week four (4) – Conduct administrator and train-the-trainer training.
- Week eight (8) – Customization, configuration and testing of web interface.
- Week eight (8) – Customization, configuration and testing of the Controlled Substance Monitoring Database.
- Week eleven (11) – Conduct final systems testing, conduct user acceptance, and user training.
- Week twelve (12) – Finalize and sign-off of project

A.1.10 The State shall administer and direct the functioning of the Controlled Substance Monitoring Database.

A.2 Data Management.

A.2.1 Data Collection.

A.2.1.1 The State will provide the Contractor with a list of dispensers required to report to the database. The State will provide an updated list of dispensers as requested by the Contractor.

A.2.1.2 The Dispenser Prescription Data shall be collected by the Contractor in the format established by the American Society for Automation in ASAP Telecommunications Format for Controlled Substances, May 1995 version, or as otherwise provided by applicable law. The data must be collected by telephone modem connection, diskette, CD-ROM, tape, secure FTP, Virtual Private Network (VPN), or other format or method approved by the State.

A.2.1.3 The Contractor shall collect dispenser prescription data twice a month or as directed by the State from dispensers established by the State and shall review the data to determine conformity with thresholds, established by the State, for accuracy and completeness. If any data submitted does not meet the threshold, the Contractor shall be responsible for returning the data file to the dispenser for corrections and resubmission. If the returned data file is not corrected and resubmitted to the Contractor by the deadline established by the State, the Contractor shall report the lack of correction to the State within 14 calendar days of date the Contractor contacted the dispenser. Any change in the procedure for correcting or editing data shall be submitted to the State for approval and approved by the State prior to being implemented. This data collection, cleansing and transmission fee will be billed on a quarterly basis in accordance with C.3.

A.2.1.4 The Contractor shall also accept written paper reports such as the universal claim form, provided the dispenser has been granted a waiver from electronic submission by the Controlled Substance Database Advisory Committee (CSDAC). The

Contractor shall enter data submitted on paper into the data file within 2 days of receipt

- A.2.1.5 The Dispenser Prescription Data collected from dispensers shall include controlled substances listed in Schedule II, III, IV, and/or V prescriptions and any other data specified by State law as it may be amended from time to time.
  - A.2.1.6 The Contractor shall allow dispensers under common ownership to submit a single transmission provided each dispensing practice site is clearly identified in the data for each prescription dispensed.
  - A.2.1.7 The Contractor shall record and provide documentation to the State of receipt of each data transmission event from a dispenser. All documentation shall be retained by the Contractor until such time as the State provides written authorization for its destruction.
- 
- A.2.2 Data Cleansing. The Contractor shall be responsible for converting Licensing Identifier numbers, Drug Enforcement Agency (DEA) numbers and National Drug Code (NDC) numbers to data fields. The software must provide the State with notification that a DEA number has been entered incorrectly if the entries do not meet requirements. The State will provide the Contractor with the Health Related Boards Licensing database and the Pharmacy Board's Licensing Database to enable the Contractor to submit a report of dispenser information discrepancies.
  - A.2.3 Data Transmission. The Dispenser Prescription Data gathered by the Contractor shall be transmitted to the State twice a month or as otherwise directed by the State and shall be in the agreed upon PC compatible text format, formatted for importation to a relational database. All plans and procedures for reporting data shall be made in consultation with and subject to approval of the State. The data shall be transmitted by secure FTP or by other mutually agreeable method.
  - A.2.4 Ownership of Data. The State will own all data collected, cleansed and transmitted by the Contractor including any data transmitted from the dispensers to the Contractor.
  - A.2.5 Contractor Reporting. The Contractor shall submit an electronic report to the State at the end of each reporting period identifying those dispensers that have not submitted the required Dispenser Prescription Data and those submissions that were rejected, including rejection reason.
  - A.2.6 Any data submitted to the Contractor/Subcontractor by the dispenser may not be sold, disclosed or given away by the Contractor/Subcontractor except where it is required by law.
  - A.3 Information Technology Requirements.
    - A.3.1 Hardware Requirements. All hardware will be provided by the State and located within the State data center. The State's hardware standards are attached hereto and incorporated herein as Attachment B.
      - A.3.1.1 The system must be able to accept faxes from dispensers using a standardized form that will be processed using an API or service. The system is required to automatically respond to the dispenser with a fax-based response using the processes and policies set forth by the State.

A.3.2 Software Requirements. All customized software provided in the Controlled Substance Monitoring Database project will be owned by the State. The application requires comprehensive tools for Data Cleansing and Loading, Batch Request for Information Fulfillment, Web Center and Investigation Management.

A.3.2.1 The software must be able to interface with the following systems through real-time, batch, or web-services interface in Health Level Seven version 3 (HL7) or GJXDM standard interface.

- a. DEA
- b. NDC
- c. Tennessee Board of Pharmacy licensing database
- d. Department of Health, Division of Health Related Boards licensing database
- e. Other databases required by applicable law.

A.3.2.2 The software must include all of the following functions:

A.3.2.2.1 Rule definition engine to define exception reporting rules based on predefined thresholds, modify rules for automatic notification based on the presence of new data in the repository, define threshold criteria for notification and reporting of drug diversion or abuse;

A.3.2.2.2 Data loading with error reporting, reload, mapping of data from data collection vendor, NDC database fields to the installed database repository;

A.3.2.2.3 Registration of users of the application must include a self service registration including email support for password maintenance and ability for account modification. The account security will include checks and balances to verify the user is authorized to access and input data;

A.3.2.2.4 Query and reporting engine to provide extensive search facilities that are user friendly and use any word or phrase, wildcard, soundex, and name thesaurus features using name and/or address fields, search capabilities using a form displaying all searchable fields, query building capabilities using any combination of fields and operators, and broad reporting capabilities oriented toward administrator, user and management needs and that can be easily interfaced with web, fax and office products like Crystal Reports, Adobe Acrobat and the Microsoft Office Suite of products;

A.3.2.2.5 Data cleansing with global search on different data fields with replace/add functionality, access standardized address information using U.S. Postal Service rules with replace/add capability on a global basis, and capability to standardize drug name information using NDC drug names on a global basis;

A.3.2.2.6 Batch fulfillment of requests for information to record user requests for information, facilitate the search process and create a result set that fulfills that request that can be viewed and modified before preparing an audit copy and final document to be faxed or mailed to the requestor;

- A.3.2.2.7 Reference Center to allow prescribers, dispensers, and other authorized users to update their own contact information, to post and maintain a set of answers for frequently asked questions (FAQ) including training program and materials, to provide links to related sites and online reference material published by the CSDAC, the State, and other government agencies;
- A.3.2.2.8 Data security engine controlling, tracking and reporting all access to data in the repository. Audit engine will automatically record to the audit log the data related to who accessed, modified, updated, queried or reported what information to whom, when and for what purpose;
- A.3.2.2.9 Notification engine to automatically notify administrators of exception occurrences via email or web, allow notified users to easily query the database and create result sets or create Word or Excel result sets using the exception rule;
- A.3.2.2.10 Backup and archiving engine to perform full or selective backups of data, programs and system files, transfer data from active to archived file mediums, full or selective restore capabilities from backup or archived files;
- A.3.2.2.11 Search requests with administrator and system access for secured areas of the site to control group-level and individual access and privilege levels, web forms for authorized users to request a repository search, receipt confirmation and notification of search requests, allow administrators to send search results to authorized electronic users, allow authorized individuals to download search results easily into other files;
- A.3.2.2.12 Alerts to automatically alert user defined agencies and personnel of Irregularities, provide web forms for users to enter notes in response to alerts or activities, and allow authorized users to search the alerts database;
- A.3.2.2.13 Investigation management to perform intelligence management, case management, diversion analysis and management reporting; and
- A.3.2.2.14 News to allow the administrator to post or broadcast announcements, memos and news articles over the web.
- A.4 Database. The Controlled Substance Monitoring Database will be owned and operated by the State. The Controlled Substance Monitoring Data base will be comprised of the data obtained from the dispenser by the Contractor then submitted to the State to be compiled in the Controlled Substance Monitoring Database. The information submitted to the Contractor by the dispenser will be cleansed and submitted to the State. All data will be owned by the State (section A.2.4). The State will then use this data acquired to assist in research, statistical analysis and the education of health care practitioners concerning patients who, by virtue of their conduct in acquiring controlled substances, may require counseling or intervention for substance abuse.
- A.5 Training. All training material and plans are subject to the approval of the State. The Contractor shall provide training in the operation of the Controlled Substance Monitoring Database system.
- A.5.1 The Contractor shall deliver to the State twenty (20) complete hard copies and electronic media of documentation (.PDF format). The documentation will be required to include user manuals, operational manuals and procedural manuals. The State shall have the right, as part of the license granted herein, to make as many

additional copies of the documentation, in whole or in part, for its own use as required. The State shall have the right, as part of the license granted herein, at its own discretion, to take all or portions of the documentation, modify or completely customize it in support of the authorized use of the software and may duplicate such documentation and include it in a State document or platform. The State shall include Contractor's copyright notice in any duplicated document.

- A.5.2 The Contractor shall provide a train the trainer approach to training program personnel.
- A.5.3 The Contractor shall develop a training plan that will offer the following three (3) levels of training: State Information Systems staff - - On-site training and "Train the Trainer" training; Board/Investigative staff: On-site staff training; and Requestor/Submitter (Dispensers and Prescribers) - On-line Web based as part of the self registration process, CD or training manual.
- 
- A.5.4 The Contractor shall also train the State Acceptance Test team by conducting a pilot training class for up to twenty (20) staff members for the State in preparation for the Final Systems Test Phase of the project.
- A.6 Maintenance and Support. The Contractor will provide system maintenance and support for the duration of the contract.
- A.6.1 The Contractor shall provide a toll-free number and email address to dispensers by which dispensers may contact the Contractor to resolve problems and receive information concerning data transmission. The toll-free number shall be staffed Monday through Friday, 9:00 a.m. to 5:00 p.m., Central Time. Voice mail access shall be available at all other times.
- A.6.2 The Contractor shall provide notice to all dispensers subject to the reporting requirements of any expansion of the database after its implementation and any instructions needed to report. The State will provide a cover letter for this notification.
- A.6.3 Software Maintenance. The Contractor shall perform the following software maintenance for the Controlled Substance Monitoring Database system:
- A.6.3.1 Make necessary adjustments and repairs to keep the software operating without abnormal interruptions and to correct latent deficiencies with respect to the software specifications;
- A.6.3.2 Make all necessary modifications, adjustments and repairs to keep the software operating in compliance with applicable federal laws and regulations;
- A.6.3.3 Provide new versions of the software to keep the State abreast of the Contractor's current software product. Complete documentation of all system enhancements or revisions will be provided with new releases of software;
- A.6.3.4 At no additional cost to the State, ensure that any new version of the software provided to the State shall contain any and all modifications and enhancements that were developed for the State; and
- A.6.3.5 Respond to problems, requests for technical support, or requests for information within three (3) business days, by either correcting the problem, providing technical support or information requested, or providing a plan, including a delivery date, for

the problem correction, technical support or information requested. Responses to the problems identified by the State as urgent will be made within one (1) day.

A.6.3.6 The State:

A.6.3.6.1 May request modifications or enhancements to the software at any time throughout the term of this Contract;

A.6.3.6.2 Reserves the right, if it is deemed to be the State's best interest, not to install the most recent, new versions of the Contractor's software;

A.6.3.6.3 Shall provide the Contractor necessary access, with appropriate security restrictions, to the software and equipment on which it runs in order to effect necessary adjustments and repairs.

A.7 ~~Project Timeline.~~ The Contractor shall install and implement the Controlled Substance monitoring Database system within 90 calendar days after the commencement date of this Contract.

B. CONTRACT TERM:

B.1 Contract Term. This Contract shall be effective for the period commencing on August 21, 2006 and ending on August 20, 2008. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

B.2 Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that the State notifies the Contractor in writing of its intention to do so at least thirty (30) days prior to the contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original contract.

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 Thousand (\$850,000.00). The Service Rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, 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 Service 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 Service Rates and the Maximum Liability of the State under this Contract is 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 Service 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. The Contractor's compensation shall be contingent upon the satisfactory completion of units of service or project milestones defined in Section A. The Contractor shall be compensated based upon the following Service Rates:

<u>Milestones</u>	<u>Amount</u>	
Initial Installation and Configuration of Database Software, Transmission Format, and Web Interface Complete (section A.1.1, A.1.2, A.1.8)	\$244,000.00 ✓	50,000.00 194,000.00
Final Customization and Configuration of Database Software, Transmission Format, and Web Interface Complete (section A.1.8, A.3.2)	\$40,000.00 ✓	40,000.00
Final Systems Testing Complete (section A.1.4, A.1.8, A.5.4)	✓ \$47,000.00	47,000.00
Final Implementation of Accepted Software and the Construction of Database Complete (section A.1.4, A.1.8, A.4, A.5.4)	\$49,000.00	
Quarterly System Maintenance of the Database and Database Software (section A.1.5, A.1.7, A.6.3)	\$23,500.00	
Quarterly Collection of Data from the Dispenser, Cleansing of Data collected & Transmission of that Data to the State by the Contractor (section A.1.3, A.2.1, A.2.2, A.2.3)	\$30,000.00 ✓	Deal - Feb 278

The Contractor shall submit invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for project milestones for the amount stipulated.

C.4 Travel Compensation. During the course of the contract Contractor will be required to travel beyond the Nashville, Tennessee, area. Such travel will be scheduled in consultation with the State and approved in advance by the State. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time. When a Contractor employee whose home is not Nashville, Tennessee travels beyond the Nashville, Tennessee area, travel compensation will be based on travel from Nashville, Tennessee, or travel from their home, whichever is less costly to the State.

C.5 Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such

payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

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

C.7 Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

C.8 Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

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

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

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 receive 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, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.).

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.
- 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 Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.9 Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10 Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11 Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.12 Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venture's, 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.13 State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14 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, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15 State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16 Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.17 Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.18 Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.19 Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- E. SPECIAL TERMS AND CONDITIONS:
- 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 facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:  
Terry Grinder  
Tennessee Board of Pharmacy  
500 James Robertson Parkway  
Nashville, TN 37243  
Phone: (615) 741-2718  
Fax: (615) 741-2722

The Contractor:

Ronald L. Hatfield, J.D., Director of Business Development  
Optimum Technology, Inc.  
100 E. Campus View Boulevard, Suite 380  
Columbus, OH 43235  
Phone: (614) 785-1110  
Fax: (614) 785-1114

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the telefax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

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 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.5 Incorporation of Additional Documents. Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. All Clarifications and addenda made to the Contractor's Proposal
- c. The Request for Proposals and its associated amendments
- d. Technical Specifications provided to the Contractor
- e. The Contractor's Proposal, including the Contractor's Project Plan

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

E.6 Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the

Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, 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, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

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.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

E.7 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.

E.8 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.9 Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the

Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.

E.10 Date/Time Hold Harmless. As required by *Tennessee Code Annotated*, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.

E.11 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.12 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, provides that if a retired member returns to 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 may be required to repay to the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.

E.13 Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its 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 for 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.

E.14 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 Contractor 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.15 Warranty Periods. The warranty period shall be two (2) years and shall apply to the entire system and to products or services resulting from change orders and enhancements to the system, and shall begin on the following dates:

The two (2) year warranty period on the entire Controlled Substance Monitoring Database begins at the conclusion of the contract.

The warranty shall be applicable when State staff performs any function under direction of the Contractor during any turnover, training or maintenance periods required in the Contract.

E.15.1 Warranty Coverage. The warranty encompasses any errors, defects, deficiencies or deviations discovered by the Contractor or the State in any products or services.

The warranty requires the correction by the Contractor of all products or services containing any errors, defects, deficiencies or deviations and any necessary modifications or revisions to products or services, including, by example, and not by limitation, the design, coding, and operation of the system's software to perform any function required by the Contract, whether occurring in the original contract or whether resulting from a change order or enhancement requested by the State, or which is procured in any amendment to the Contract, in any interfaces that are

created, and in any training manuals and all system documentation provided by the Contractor.

- E.15.2 Time Frames for Warranty Services. The Contractor must promptly, at the direction of, and within the time specified by, the State, correct any errors, defects, deficiencies or deviations from specifications and all the Controlled Substance Monitoring Database -related performance or operational delays.

The Contractor shall provide emergency maintenance services to correct code problems or any performance or operational problems related to the design or coding of the system software, its functioning or interfaces on a twenty-four (24) hour, seven (7) days a week basis.

Products and services shall be either replaced, revised, repaired or corrected within twenty-one (21) calendar days of written notification by the State of the errors, defects, deficiencies or deviations; provided, however, that if the continued use of a defective or deficient product or service would cause damage to the State system(s) or associated data, or would otherwise seriously impair, as determined by the State, the ability of users of the system(s) to do their jobs or the functions for which the system was established, then Contractor shall act to repair the deficiencies immediately, unless an extension is otherwise granted in writing by the State.

The State will determine when any errors, defects, deficiencies or deviations have been resolved.

- E.15.2.1 Resources Required for Warranty Service. The Contractor shall apply all necessary resources to correct the errors, defects, deficiencies or deviations without cost or expense to the State and shall make these corrections within the time-frame specified by the State.

- E.15.2.2 Failure to Provide Effective Warranty Services. If the Contractor fails to repair an error, defect, deficiency or deviation for products or services covered by the warranty, the State may, at its option, act to correct or repair the error, defect, deficiency or deviation, and the Contractor shall be required to reimburse the State for all costs incurred to conduct the repair.

- E.15.2.3 Subcontract for Warranty Services. 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 (reference D.5). The Contractor will be the initial contact point for all warranty notifications and support requests, regardless of the perceived source of the problem.

The Contractor may elect to have telephone or on-site warranty repair or support services performed by subcontracted personnel; however, if this is the case, the Contractor shall be subject to the provision in Section D.5.

The State reserves the right to approve Subcontractors for warranty service, and such Subcontractors shall be approved in writing by the State.

- E.15.2.4 Maintenance of Operations and Services During Warranty Work. The correction of errors, defects, deficiencies or deviations in work products/services shall not detract from or interfere with software maintenance or operational tasks.

- E.15.2.5 Problems Not Caused by Contractor Fault. If Contractor personnel determine that the problem is not the fault of Contractor provided software or hardware, then the

Contractor shall notify State support personnel immediately. If the State agrees that the problem is due to software or hardware provided by the State, the State shall resolve the problem.

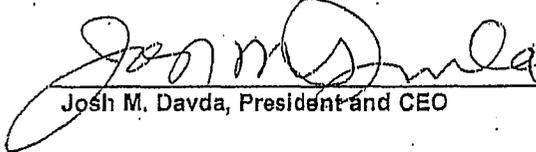
E.16

State Ownership of Deliverables. The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products created, designed, developed, derived, documented, and required to be delivered ("Deliverables") to the State under this Contract subject to the next subsection and full and final payment for each such Deliverable. The State shall have unlimited, royalty-free, non-exclusive license and right to use, copy, disclose, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Deliverables.

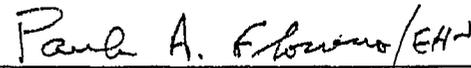
- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT for the license expressly granted in this section. The Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Deliverables provided under the Contract.
- b. Upon request of the State, the Contractor shall furnish such information and data, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Deliverables and Contractor Materials reasonably associated with any Deliverables in accordance with this Contract and applicable state law.
- c. The Contractor retains the right to use the general ideas, concepts and know-how of Contractor developed during performance of this Contract, without obligation of notice or accounting to the State. This Contract shall not preclude Contractor from (1) independently developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State hereunder; or (2) providing consulting or other services of any kind or nature whatsoever to any individual or entity as Contractor in its sole discretion deems appropriate.

IN WITNESS WHEREOF:

OPTIMUM TECHNOLOGY, INC.:

 08/23/06  
\_\_\_\_\_  
Josh M. Davda, President and CEO Date

DEPARTMENT OF COMMERCE AND INSURANCE:

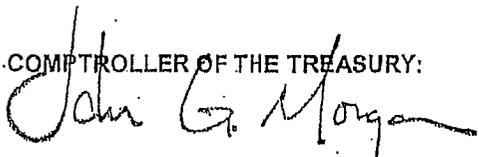
 9/6/2006  
\_\_\_\_\_  
Paula A. Flowers, Commissioner Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

 SEP 20 2006  
\_\_\_\_\_  
M. D. Goetz, Jr., Commissioner Date

COMPTROLLER OF THE TREASURY:

 9/21/06  
\_\_\_\_\_  
John G. Morgan, Comptroller of the Treasury Date

# **Attachment A**

Tennessee Rule 1140-11-.01  
Effective on March 7, 2006

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RULES  
OF  
THE TENNESSEE BOARD OF PHARMACY

CHAPTER 1140-11  
CONTROLLED SUBSTANCE MONITORING DATABASE

TABLE OF CONTENTS

1140-11-.01 Definitions  
1140-11-.02 Access to Database

1140-11-.03 Alternative Identification of Patients  
1140-11-.04 Submission of Information

1140-11-.01 DEFINITIONS.

(1) The following definitions shall be applicable to this chapter:

- (a) "Board" means the Board of Pharmacy created by Tenn. Code Ann., Title 63, Chapter 10;
- (b) "Commissioner" means the Commissioner of Commerce and Insurance;
- (c) "Committee" means the controlled substance monitoring database advisory committee created by Tenn. Code Ann. § 53-10-303;
- (d) "Controlled substance dispensed identifier" means the National Drug Code Number of the controlled substance;
- (e) "Database" means the controlled substance database created by Tenn. Code Ann., Title 53, Chapter 10, Part 3;
- (f) "Department" means the Department of Commerce and Insurance;
- (g) "Dispense" means to physically deliver a controlled substance covered by this chapter to any person, institution or entity with the intent that it be consumed away from the premises in which it is dispensed. "Dispense" does not include the act of writing a prescription by a practitioner to be filled at a pharmacy licensed by the Board;
- (h) "Dispenser" means any health care practitioner who has authority to dispense controlled substances, pharmacists, and pharmacies that dispense to any address within this state;
- (i) "Dispenser identifier" means the Drug Enforcement Administration Registration Number of the dispenser as defined in Tenn. Code Ann. §53-10-302(7);
- (j) "Patient" means a person, animal or owner of an animal who is receiving medical treatment from a prescriber;
- (k) "Patient identifier" means the patient's full name; address; including zip code; date of birth; and social security number or an alternative identification number as defined by this rule;
- (l) "Person" means any individual, partnership, association, corporation and the state of Tennessee, its departments, agencies and employees, and the political subdivisions of Tennessee and their departments, agencies and employees;
- (m) "Prescriber" means any health care practitioner who has the authority to issue prescriptions for controlled substances;

- (n) "Prescriber identifier" means the Drug Enforcement Administration Registration Number of the prescriber as defined by this rule.

*Authority: T.C.A. §§53-10-302 and 53-10-303(f). Administrative History: Original rule filed December 22, 2005; effective March 7, 2006.*

**1140-11-.02 ACCESS TO DATABASE.**

- (1) The following persons shall have access to the controlled substance database with regard to a patient:
- (a) the prescriber who is currently issuing the patient a controlled substance or controlled substances or who anticipates issuing the patient a controlled substance or controlled substances;
  - (b) the dispenser who is currently dispensing a controlled substance or controlled substances to the patient or who anticipates issuing the patient a controlled substance or controlled substances;
  - (c) a person who has the patient's written permission to have access to the patient's records in the database;
  - (d) the manager of any investigations or prosecution unit of a health-related board, committee or other governing body that licenses practitioners who has access to the database with the committee's permission pursuant to Tenn. Code Ann. §53-10-308, may release the database information that that such manager receives to the state of Tennessee health-related boards, health-related committees, the department, the department of health and representatives of health-related professional recovery programs; or
  - (e) a district attorney who obtains an order from circuit or criminal court ordering the release of the information contained in the database, in compliance with Tenn. Code Ann. §53-10-306.
- (2) The persons listed in paragraph (1) of this rule shall have access to the information contained in the database by submitting a request for information in writing or by electronic means to the Committee on a form developed by the Committee and in compliance with the procedures developed by the Committee. The Committee shall not disseminate any information from the database without the submission of this written request, unless the dissemination of the information is directed by Court Order.

*Authority: T.C.A. §§53-10-303(f), 53-10-304(b), 53-10-305(e), 53-10-306, and 53-10-308.  
Administrative History: Original rule filed December 22, 2005; effective March 7, 2006.*

**1140-11-.03 ALTERNATIVE IDENTIFICATION OF PATIENTS.**

- (1) If a patient does not have a social security number or refuses to provide his or her social security number to be used as a patient identifier, then the board shall use the patient's driver's license number or telephone number as the patient identifier in the database.
- (2) If a patient does not have a social security number, a driver's license number or a telephone number, then the board shall use the number "000-00-0000" as the patient identifier in the database.

- (3) If a patient or a patient's agent refuses to provide his or her social security number, driver's license number or telephone number to his or her prescriber or dispenser, then the board shall use the number "999-99-9999" as the patient identifier in the database.
- (4) If a patient's social security number is not available, then the board shall use the social security number, driver's license number or telephone number of the person obtaining the controlled substance on behalf of the patient as the patient identifier in the database or the numbers "000-00-0000" (does not have the data) or "999-99-9999" (refusal to provide data), as applicable.
- (5) If a patient is a child who does not have a social security number, then the board shall use the parent's or guardian's social security number, driver's license number, telephone number, or number "000-00-0000" (does not have data) or number "999-99-9999" (refusal to provide data) as the patient identifier in the database.
- (6) If a patient is an animal, then the board shall use the owner's social security, driver's license number, telephone number, or number "000-00-0000" (does not have data) or number "999-99-9999" (refusal to provide data) as the patient identifier in the database.

*Authority: T.C.A. §§53-10-303(f) and 53-10-305. Administrative History: Original rule filed December 22, 2005; effective March 7, 2006.*

#### **1140-11-.04 SUBMISSION OF INFORMATION.**

- (1) A dispenser who is licensed in the State of Tennessee, who is dispensing controlled substances within or from outside of the State of Tennessee and who is treating patients in the State of Tennessee with controlled substances shall submit the required information to the Committee pursuant to Tenn. Code Ann. §53-10-305(a).
- (2) The dispenser shall submit the data that is required by Tenn. Code Ann. §53-10-305 in one of the following forms:
  - (a) an electronic device compatible with the Committee's receiving device or the receiving device of the Committee's agent;
  - (b) double-sided, high density micro floppy disk;
  - (c) one-half (1/2) inch, nine (9) track sixteen hundred (1,600) or six thousand two hundred and fifty (6,250) BPI magnetic tape; or
  - (d) other electronic or data format approved by the Committee.
- (2) The dispenser shall transmit the data that is required pursuant to Tenn. Code Ann. §53-10-305(a) in the May, 1995 version of the Telecommunications Format for Controlled Substances established by the American Society for Automation in Pharmacy (ASAP).
- (3) If the dispenser does not have an automated recordkeeping system capable of producing an electronic report of the required data in the format established by the ASAP, then the dispenser may request a waiver from the electronic reporting requirement from the Committee.
- (4) If the Committee grants the dispenser a waiver from the electronic reporting requirement, then the dispenser shall comply with an alternative method of reporting the data as

determined by the Committee, such as submitting the required data in writing on a form approved by the Committee.

*Authority: T.C.A. §§53-10-303(f) and 53-10-305. Administrative History: Original rule filed December 22, 2005; effective March 7, 2006.*

# Attachment B

## Infrastructure and Standards Requirements

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## A. Infrastructure and Standards

### A.1 Introduction

The Controlled Substance Monitoring Database (CSMD) shall operate in one of several computing environments supported by the State. This document identifies the standards that the Contractor will follow in the selection of system components, design, construction, and implementation of the System.

[Note at the RFP Stage: This document identifies several computing platforms that are supported and therefore can be proposed by the Proposer; only the ones necessary for the successful Proposer's proposal will be retained in the Contract.]

### A.2 General Comments on Development Standards

- A.2.1 The system must be designed and constructed with either Microsoft .NET or J2EE architecture.
- A.2.2 The system must be designed using component based technology. (i.e., Allowing stand alone components, designed based on widely accepted software standards for the component model, to be easily integrated into the application)
- A.2.3 The system must be developed using ORACLE Server as the database standard.
- A.2.4 Client presentation must be thin-client presented in a browser by means of JSP, ASPX, or HTML. No downloads to the client will be accepted. (Servlets and applets are not considered as downloads.)
- A.2.5 The system should be designed using well-developed design patterns such as the Model View Controller (MVC) model/pattern/technology/architecture. (e.g. <http://java.sun.com/blueprints/patterns/MVC.html>).

### A.3 Standards common to all environments

- A.3.1 The system must contain an XML-based interface that is interoperable with the State's portal environment, currently contracted through National Information Consortium (NIC).
- A.3.2 The system must allow any Microsoft .NET (ODBC, OLEDB, SQL Client, Oracle Client) or J2EE data provider compliant software, to make calls to the CONTROLLED SUBSTANCE MONITORING DATABASE database. Access controls must be in place to assure that connectivity to the data through any of these database service providers is managed based on the appropriate authenticated role of the user. All standard Microsoft .NET or J2EE database provider functions must be supported in this interface including, but not limited to; select, create, insert, update, and delete.
- A.3.3 The system must include a letter producing system that utilizes MS Word document (.doc) format.
- A.3.4 The system must include an ad-hoc reporting feature. The approved State standard reporting tools are: Crystal Reports, Crystal Enterprise; Oracle Reports, and Oracle Discoverer.
- A.3.5 The system must use State standard TCP/IP communication protocols.
- A.3.6 The system must be 128 bit or stronger SSL encryption for all communications with the client's browser.
- A.3.7 The system must be able to integrate with Microsoft Office 2000 or greater.
- A.3.8 The system must be fully functional for users via Microsoft Internet Explorer 6.0 or greater on the State's network. (The system must produce/emit valid XHTML 1.0 Transitional or HTML 4.01 Strict as specified in W3C specifications.)
- A.3.9 The system must be able to accommodate deployment of the database on a physically separate database server behind the State's firewall accessible only via the application or XML. (No direct web access to the database will be allowed.)

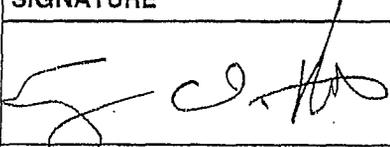
- A.3.10 The system will not require or allow database administrative rights.
- A.3.11 All transactions that transmit passwords or user account names must be encrypted.
- A.3.12 The system must restrict technical administrative functions to a non-root user level or administrator-equivalent level.
- A.3.13 The system must use DNS entries for access and not contain any hard coded IP addresses.
- A.3.14 The system must be able to integrate with FileNet Image Services and Content Manager, version 5.x or higher.
- A.3.15 The system must be able to send email through the State of Tennessee's existing SMTP email gateway. If the application uses the SENDMAIL function, then the application must be configured not to be able to accept mail.
- A.3.16 The system must be compatible with GroupWise 6.5 or later for external email. Post Office Protocol version 3 (POP3) or Internet Message Access Protocol version 4 (IMAP4) is allowed as long as the application is behind the firewall and uses a Secure Sockets Layer (SSL) scheme.

**A.4 Workstation Standards**

- A.4.1 The hardware must be Intel based.
- A.4.2 The operating system must be Windows 2000 or XP Professional or higher.
- A.4.3 The successful vendor's application must be in compliance with State Standard workstations.
- A.4.4 The application must be functional with a minimum screen resolution of 800 x 600 pixels.

**A.5 Performance Standards**

- A.5.1 A performance standard of less than 1.5 second transaction response time from screen to screen for 95% of all transactions and less than .5 seconds from field to field is required during User Acceptance Testing and during the first month of each implementation of a production version.
- A.5.2 The contractor will specify the minimum bandwidth, latency or other network assumptions for each end-user location over both LAN and WAN networks to achieve user-defined 1.5 second acceptable response time 95% of the time when moving from screen to screen. Contractor will detail recommended desktop configuration required to meet system requirements of performance, security, peripherals, and screen resolution. Unless otherwise specified, the State's standard configuration will be assumed. **Furthermore, the contractor is responsible to specify the recommended application server, database server, network architecture, or client hardware and software required to achieve the minimum acceptable response time as detailed in the RFP.** As part of this, the contractor must review State's network schema to determine if its system can meet the response time requirements. If it cannot, then the contractor must document any changes that the contractor believes to be necessary to change the schema and State's environment to meet the response times. During the life of the contract, the State will work with the selected contractor on the network schema as new software production versions are required.
- A.5.3 After the first month of production for each implementation, if the response time degrades to a level of non-compliance with the user-defined standard (See H.7.1 above), then the contractor will have one month from the date of notice by the State to resolve the performance back to the required response times. Failure to meet the standard can effect the continuation of the contract and the State will not pay annual maintenance and support fees until such time as the standard is met.

FA CONTRACT INFORMATION SUPPLEMENT	
FOR ALL FA-TYPE CONTRACTS — COMPLETE <u>EITHER</u> SECTION A <u>OR</u> SECTION B	
Contract RFS #	335.10-637
Contractor:	Optimum Technology, Inc.
<b>SECTION A— CONTRACTOR IS AN INDIVIDUAL</b>	<b>SECTION B— CONTRACTOR IS A COMPANY</b> <i>(e.g., sole proprietorship, partnership, or corporation)</i>
Is or has the contractor been a state employee?  <input type="checkbox"/> NO <i>(no additional information required)</i> <input type="checkbox"/> YES	Does an individual, who is or has been a state employee, own controlling interest in (or own) the contractor company?  <input checked="" type="checkbox"/> NO <i>(no additional information required)</i> <input type="checkbox"/> YES
Was such employment within the past six months?  <input type="checkbox"/> NO <input type="checkbox"/> YES <i>(an approved rule exception permitting a contract within six months of employment is also required)</i>	Was such employment within the past six months?  <input type="checkbox"/> NO <input type="checkbox"/> YES <i>(an approved rule exception permitting a contract within six months of employment is also required)</i>
Does the contractor receive Tennessee Consolidated Retirement System (TCRS) retirement benefits?  <input type="checkbox"/> NO <input type="checkbox"/> YES <i>(the procuring agency general counsel MUST sign an analysis of this procurement using the TCRS analysis guidelines)</i>	Does the individual who owns controlling interest in the contractor company receive Tennessee Consolidated Retirement System (TCRS) retirement benefits?  <input type="checkbox"/> NO <input type="checkbox"/> YES <i>(the procuring agency general counsel MUST sign an analysis of this procurement using the TCRS analysis guidelines)</i>
<b>SIGNATURE</b>	
	
SERVICE CONTRACTS COORDINATOR	DATE