

CONTRACT #2
RFS # 339.01-12312
FA # Pending
Edison # 38065

Mental Health
Alcohol & Drug Abuse Services

VENDOR:
FEI.com



**STATE OF TENNESSEE
DEPARTMENT OF MENTAL HEALTH
CORDELL HULL BUILDING, 3RD FLOOR
425 FIFTH AVENUE, NORTH
NASHVILLE, TENNESSEE 37243-0675**

BILL HASLAM
GOVERNOR

E. DOUGLAS VARNEY
COMMISSIONER

MEMORANDUM

TO: Fiscal Review Committee

FROM: Rodney L. Bragg 
Assistant Commissioner
Division of Alcohol and Drug Abuse Services

DATE: July 18, 2011

SUBJECT: RFS #33901-12312 (Edison #38065)
FEI.com - Revisions to Previously Proposed Contract

At the June 22, 2011 meeting of the Fiscal Review Committee, the Department of Mental Health (DMH) requested approval for a non-competitive contract with FEI.com to provide further Design, Development, and Implementation of Enhancements for the existing Tennessee Web-based Information Technology System (TN-WITS) and user support, training maintenance and hosting of TN-WITS. Approval has been granted by both the Fiscal Review Committee and the Office of Contracts Review.

When the Contractor was sent the Contract for signature, the Department received a "Master Licensing Agreement" with a request to add it in its entirety to the Contract. Due to the fact that the "Master Licensing Agreement" contains many provisions to which the State cannot agree (limitations of warranty, limitations of Contractor liability, indemnification, mandatory arbitration, and being governed by the laws of another state), it was necessary to see if there were any provisions in that document that could be incorporated into the Contract. Provisions that could be incorporated related mostly to "ownership" and "use" of the software and necessitated the revisions that have been made in Section A. of the Contract. Minor changes have also been made to Section C.3. to more clearly express one of the Service Descriptions and to reflect the correct price for training, as well as correcting the Contractor's address.

The Department of Mental Health staff has negotiated the proposed language with FEI.com, and all are in agreement with the changes. Should you need additional information or clarification, please contact me at rodney.bragg@tn.gov or 615-532-7783.

Thank you for your consideration of these revisions.

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Taryn Sloss	*Contact Phone:	615.532.7793		
*Original Contract Number:		*Original RFS Number:	33901-12312		
Edison Contract Number: <i>(if applicable)</i>		Edison RFS Number: <i>(if applicable)</i>			
*Original Contract Begin Date:	July 1, 2011	*Current End Date:	June 30, 2014		
Current Request Amendment Number: <i>(if applicable)</i>					
Proposed Amendment Effective Date: <i>(if applicable)</i>					
*Department Submitting:	Department of Mental Health				
*Division:	Alcohol and Drug Abuse Services				
*Date Submitted:	June 7, 2011 <i>Resubmitted 7/15/11</i>				
*Submitted Within Sixty (60) days:	No				
<i>If not, explain:</i>	Justification letter has been submitted				
*Contract Vendor Name:	FEI.com				
*Current Maximum Liability:	\$2,198,354				
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2012	FY: 2013	FY: 2014	FY:	FY:	FY
\$1,106,380	\$594,609	\$497,365	\$	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			N/A		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			N/A		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			N/A		
*Contract Funding	State:	\$692,487	Federal:	\$1,505,867	

Supplemental Documentation Required for
Fiscal Review Committee

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

Supplemental Documentation Required for
Fiscal Review Committee

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

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

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

Deliverable description:	FY: 2012	FY: 2013	FY: 2014	FY:	FY:
Support and Hosting	\$371,880	\$374,609	\$337,365		
Training	\$20,000	\$20,000	\$20,000		
Development	\$714,500	\$200,000	\$100,000		

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

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

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

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

Non-Competitive Contract Request

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

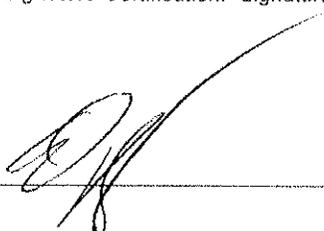
Route a completed request, as one file in PDF format, via e-mail attachment sent to: AgSprs.Agspr@sate.tn.us

APPROVED

COMMISSIONER OF FINANCE & ADMINISTRATION

Request Tracking #	33901-12312	
Contracting Agency	Department of Mental Health (DMH)	
Proposed Contractor	FEI.com	
Proposed Contract Period – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	36 months	
Maximum Contract Cost – with ALL options to extend exercised	\$ 2,198,354.00	
Office for Information Resources Endorsement – information technology service (N/A to THDA)	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached	
eHealth initiative Support – health-related professional, pharmaceutical, laboratory, or imaging service	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached	
Human Resources Support – state employee training service	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
Has the contracting agency bought the subject service before? <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, it was procured by... <input type="checkbox"/> RFP <input type="checkbox"/> Another Competitive Method <input checked="" type="checkbox"/> Non-Competitive Negotiation		
Service Description – brief <u>summary</u> only – do NOT restate the proposed scope of service System development and enhancement services are needed to maintain the Tennessee Web based Information Technology System (TN-WITS). Services to be acquired include user support, training, maintenance and hosting support.		
Explanation of Need for or Requirement Placed on the State to Acquire the Service In 2008, DMH received approval to expand TN-WITS to improve the functions, operations and efficiency of the programs offered by DMH's Division of Alcohol and Drug Abuse Services (DADAS). Enhancing TN-WITS has enabled us to improve administrative data collection, state and federal contract management, reporting requirements, programmatic data and legal compliancy. As a recipient of the Substance Abuse Prevention and Treatment (SAPT) Block Grant, DMH is required to submit National Outcome Measures (NOMS) and Treatment Evaluation Data Set (TEDS) to the Substance Abuse and Mental Health Services Administration (SAMHSA). As a result of enhancing TN-WITS, Tennessee now has a data collection tool for contracted service		

Request Tracking #	33901-12312
<p>providers to submit client data and for us to financially process and generate provider payments based on client service encounter data; provide accurate and timely reporting information to all state and federal grantors; and gather administrative client data, financial data, provider profile data and indirect service data. In order to continue to meet federal NOMS and TEDS reporting requirements, DMH needs to procure the services of the Contractor for the purposes of providing further development and enhancements as needed, training, system maintenance, system hosting and support.</p>	
<p>Name & Address of the Contractor's Principal Owner(s) – <i>NOT required for a TN state education institution</i></p> <p>Jiaozhong Gu, CEO FEI.com, Inc. 7175 Columbia Gateway Drive, Suite A Columbia, MD 21046</p> <p>Phone: 443.270.5100 Fax: 410.715.6538 Email: jgu@feinfo.com</p>	
<p>Evidence Contractor's Experience & Length Of Experience Providing the Service</p> <p>The Contractor, FEI.com, incorporated in 1999, has provided information technology (IT) services to the United States Center for Substance Abuse Treatment (CSAT), the United States Center for Substance Abuse Prevention (CSAP), the United States Center for Mental Health Services (CMHS), and the States of Illinois, Alaska, Arizona, Wyoming, Hawaii, Indiana, Iowa, Maryland, and Tennessee in developing web-based systems. In response to CSAT's requirements of a voucher management system that tracks treatment and prevention services, FEI.com was the original developer of the WITS system and became the primary federally-approved contractor for states and a recognized leader in web-based systems. FEI.com has successfully been providing services for the web-based system in Tennessee since 2005 and has a very clear understanding of our data management needs.</p>	
<p>Efforts to Identify Reasonable, Competitive, Procurement Alternatives</p> <p>DMH used the competitive procurement process to initially purchase these services. The success of TN-WITS and the experience of the Contractor who built the system, coupled with the recommendation of SAMHSA to secure the services of the federally-approved Contractor in order to meet data collection and reporting requirements leads us to maintain the current relationship with the Contractor instead of seeking a new vendor to begin the process over again. DMH believes that it would be costly to entertain other procurement alternatives for the required services.</p>	
<p>Justification – specifically explain why non-competitive negotiation is in the best interest of the state</p> <p>DMH believes that it is in the best interest of the State to keep the company who originally developed and built the system (FEI.com) as the vendor through the non-competitive negotiation process rather than using the competitive process to find a new vendor who would have to build a brand new system. FEI.com is the federally-approved provider and has created similar web-based systems for other states. DMH uses the core system of the Web Infrastructure for Treatment Services (WITS) system and has customized it to meet Tennessee's needs. A financial benefit for retaining TN-WITS is cost sharing. If a system module has been developed by another state and Tennessee needs that module, or if there is a new federal requirement, DMH would share the cost of developing or enhancing WITS with other states instead of having the burden of paying for the total amount of the development or enhancement. Tennessee has successfully used TN-WITS since 2005 and the infrastructure is in place. DMH believes that it would not be in the best interest of the state to start this process over again.</p>	

Request Tracking #	33901-12312
Agency Head Signature and Date – <i>MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances</i>  	



CONTRACT

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

Begin Date July 1, 2011	End Date June 30, 2014	Agency Tracking # 33901-12312	Edison Record ID
Contractor Legal Entity Name FEI.COM, INC.			Edison Vendor ID 38065
Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor		CFDA #	FEIN or SSN (optional)

Service Caption (one line only)

System Enhancements and System Support, Training, Maintenance and Hosting for TN-WITS

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2012	\$323,000	\$783,380			\$1,106,380.00
2013	\$195,122	\$399,487			\$594,609.00
2014	\$174,365	\$323,000			\$497,365.00
TOTAL:	\$692,487.00	\$1,505,867.00			\$2,198,354.00

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

Ownership/Control

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

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

- RFP The procurement process was completed in accordance with the approved RFP document and associated regulations.
 Competitive Negotiation The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.
 Alternative Competitive Method The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.
 Non-Competitive Negotiation The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.
 Other The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with all interested parties or all parties in a predetermined "class."

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

OCR USE - FA

Speed Code

Account Code

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF MENTAL HEALTH
AND
FEI.COM, INC.**

This Contract, by and between the State of Tennessee, Department of Mental Health, hereinafter referred to as the "State" and FEI.COM, INC., hereinafter referred to as the "Contractor," is for the provision of development and implementation of enhancements to the existing Tennessee Web-based Information Technology System (TN-WITS) data system; and user support, training, maintenance, and hosting of the system, as further defined in the "SCOPE OF SERVICES."

The Contractor is a For-Profit Corporation.
Contractor Place of Incorporation or Organization: Maryland
Contractor Edison Registration ID # 38065

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all services and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Web-based Information Technology System (WITS) application platform uses a multi-tier architecture that optimizes performance and flexibility by separating data, business logic, and user interfaces. The platform is customized for use in Tennessee to support different functionalities, screens, business logic, and business process flows as needed in support of the State's programs. The WITS application platform contains modules to address Client Management, Alcohol and Drug Use and Abuse Treatment Services, Alcohol and Drug Use and Abuse Prevention Services, Alcohol and Drug Use and Abuse Recovery Services, Substance Abuse Prevention Coalition Services, Provider Management Functions, and System Administration. The WITS system collects and manages a wide range of data through the use of a relational database that contains information on provider agencies, their programs and staff, their clients, episodes of care, and programmatic services. The data is structured and recorded in such a way as to assist the State in meeting the federal reporting requirements of some of the State's funding source(s).
- A.3. Design, Development, and Implementation of Enhancements. The development of any enhancement, and the enhancement itself, must be fully defined and documented in consultation with the State, and only undertaken when agreed to in writing by the State. All development must be approved by the State in writing prior to the commencement of work. No payment for enhancements shall be made without State written acceptance from both the State's Assistant Commissioner of Alcohol and Drug Abuse Services and the State's Director of the Office of Information Technology. Possible enhancements include the following:
- a. An enhancement needed to support the functions of other State and Federal funding streams.
 - b. Any additional enhancements needed to continue to meet the audit trail requirements described in Section A.5., including but not limited to changes in user screens.
 - c. Any enhancements needed to the current TN-WITS Structured Query Language (SQL) reporting system to incorporate the additional programs.
 - d. A Screen Configuration wherein the Contractor shall enable or remove each screen according to State business rules. The Contractor shall perform a thorough impact analysis before enabling and removing screens.
 - e. A Workflow Customization wherein the Contractor shall analyze WITS workflow in comparison to State workflow. The Contractor may modify WITS workflow to accommodate State requirements.

- f. An Alcohol and Drug Use and Abuse Prevention and Alcohol and Drug Use and Abuse Treatment National Outcomes Measures (NOMS) Module:
 - (1) The Contractor shall analyze the business rules and data fields required for a federally-compliant Alcohol and Drug Use and Abuse Prevention NOMS data collection and reporting system; and
 - (2) The Contractor shall make the necessary additions and enhancements to the existing TN-WITS system in order to comply with all State and Federal reporting requirements.

- g. Data Collection and Uploads for NOMS, Alcohol and Drug Use and Abuse Treatment Episode Data Sets (TEDS), and Government Performance Results Act (GPRA):
 - (1) The Contractor shall analyze the business rules and data fields required for a federally compliant NOMS, TEDS, and GPRA data collection and reporting system; and
 - (2) The Contractor shall make the necessary additions and enhancements to the existing TN-WITS system in order to comply with Federal NOMS, TEDS, and GPRA reporting requirements, including building an upload module that will electronically send all NOMS, TEDS, and GPRA data to the appropriate Federal entity who requires the data.

- h. Any additional enhancements needed for billing with the Contract Management and Payor System:
 - (1) The current TN-WITS system contains a billing system which has been modified to support the State's needs and a limited number of the State's programs and funding sources. The Contractor shall analyze and implement the required business rules and data fields for additional State and Federal funding sources to bring the existing TN-WITS system up to the full capabilities of the original WITS billing module;
 - (2) Develop the capability for electronic claims submission and response using the Health Insurance Portability and Accountability Act (HIPAA) electronic billing transaction formats, including the processing of 837 claims from providers and providing an 835 electronic response back to provider systems;
 - (3) The Contract management module will allow the State to specify subcontracts to providers, including the ability to set facility or agency-specific rates; start and end dates; allowable services; and funding caps. The Payor system will provide for the ability for each funding source to have its own set of vendor payment rules; and
 - (4) Develop the capability for providers to submit data electronically into the TN-WITS system, and provide ongoing support for this live data feed, including system maintenance and on-going active communications with necessary parties. Specifications will be developed in conjunction with the State.

- i. Any additional enhancements agreed to by the State and the Contractor in response to user recommendations and using the hourly rate included in the payment schedule.

- j. The Contractor shall, in consultation with and approval of the State, provide user documentation and an operations manual for technical personnel separate from any regular documentation that would be included with an enhancement in an editable electronic format with the capability for printing in hard copy when required for the following:

- (1) The TN-WITS system;
- (2) Structured Query Language (SQL) Server Reporting Services (SSRS); and
- (3) Technical Operations, to include complete information and instructions in the technical operation, maintenance, and administration of the TN-WITS system.

A.4. Health Insurance Portability and Accountability Act (HIPAA) Data Security and Privacy Compliance:

a. To ensure continual awareness of any information system activity; and to enable the State to record and examine system activity to (1) identify suspect data activity, (2) see if high-risk patterns are present, and (3) to assess the security program and respond to potential weaknesses; and pursuant to the privacy and security regulations of HIPAA governing information system activity review and audit controls, particularly Title 45 Code of Federal Regulations §§ 164.308(a)(1)(ii)(D) and 164.312, the State requires that any software deliverable provided and/or developed under the terms of this Contract which will collect and/or house protected health information (PHI) as defined under the privacy and security provisions of HIPAA shall provide for a system-generated and system-maintained audit trail which identifies, at a minimum, the following:

- (1) A system stamp of date and time of any transaction (add, change, delete, view) which initially records or updates any information in the record, file, and/or database;
- (2) The user account of the person originating the transaction;
- (3) The internet protocol (IP) address from where the transaction originated;
- (4) Any data entered, if added type transaction;
- (5) Any data changed, if changed type transaction; and
- (6) Any data deleted, if deleted type transaction.

b. Each audit trail shall be maintained for a minimum of three (3) years from time of creation.

A.5. Training. The Contractor shall provide user training in the operation of the TN-WITS system as follows:

- a. Two (2) onsite full day sessions for the operation of the TN-WITS system.
- b. Five (5) virtual meetings for the operation of the TN-WITS system.

A.6. User Support, System Maintenance, and System Support. The Contractor shall provide Tier 3 User Support for the TN-WITS system to include interfacing with State support staff on all user and technical issues. Additionally, the Contractor shall provide ongoing maintenance and application support of the enhanced TN-WITS system.

A.7. Hosting of the TN-WITS System. The Contractor shall host the TN-WITS system with all of the following services:

- a. Highly Secure Hosting Environment.
- b. Biometric Access Required.
- c. Monitored twenty-four hours per day/seven days per week (24/7).

- d. Fully redundant Uninterruptible Power Supplies, guaranteeing a ninety-nine and nine-tenths percent (99.9%) 'up time' during prime time as defined as 8:00 am – 5:00 pm Central time, Monday through Friday.
- e. Network redundancy.
- f. Cages and racks that require access codes and biometrics to access.
- g. Multiple Inline Firewalls.
- h. Internet Connectivity at ten (10) megabits per second (mbps).
- i. Database Backup (Nightly).

A.8. SSRS Updates, Support, and Hosting. The Contractor shall provide any necessary updates to the SSRS application, typical user support for report creation, and hosting of the SSRS application. If intensive user support for on-demand reports is needed, an additional charge would be incurred in accordance with the per hour charge indicated in Section C.3.

A.9. Contractor Licensing Provisions.

- a. The Contractor, a software developer with expertise in developing computer software and systems to be used by governmental agencies for purposes of interfacing with the federal government's data collection and reporting systems, is a co-author; co-developer; and co-owner, along with the University of Maryland Bureau of Governmental Research, of the software being used under this Contract. A "Developed Module" is one or more pieces of software created by the Contractor at the request of one or more of the participants of a group known as the WITS Users Group, including the State. A 'Developed Module' adds functionality and utility to the WITS system. The WITS system consists of the 'Licensed Software' which is the executable software application known as WITS; 'Developed Module(s)'; and 'Future Developed Module(s)' which are currently not in existence but may come into existence at a future date, and that are not related to the repair of bugs or errors in the software.
- b. The State recognizes that the Contractor may require the State to agree to certain Contractor licensing provisions for the proposed software. If this is the case, any and all Contractor licensing provisions are included (in original or modified form) as follows in this Section. The State's signature on this Contract shall constitute the State's written agreement to the provisions so included. The State shall not sign separate Contractor licensing agreements.
- c. The Contractor hereby grants the State a non-exclusive, perpetual (except as otherwise specified herein) license to use the Licensed Software in executable form, together with any and all related documentation, manuals, systems diagrams, or instructions, either in hard copy or electronic form, for the State's business purposes and while the State is not otherwise in default under this Contract. The State shall have access to and use of the Licensed Software source code for maintenance, upkeep, and continued development purposes. The Contractor shall furnish to the State no later than thirty (30) days after execution of this Contract all source code and documentation, not already in the possession of the State, necessary to maintain the system. Such source code and documentation shall be updated no more than thirty (30) days after any enhancements. If this Contract is terminated, the State shall have use of, in perpetuity, the Licensed Software source code which was available up to the time of termination. The State agrees to take reasonable efforts to protect the secrecy and confidentiality of the source code and shall not disclose the source code to anyone without permission of the Contractor.
- d. No copies of the Licensed Software may be made by the State without the prior written consent of the Contractor except for backup purposes in accordance with normal data

processing practices. The State agrees to reproduce any copyright notices and/or other proprietary legends, regardless of form, contained in, affixed to, or appearing on the Licensed Software. The State shall not disassemble, reverse compile, or reverse engineer any of the Licensed Software.

- e. Any Third Party Software and any drivers necessary to run, use, and access Licensed Software shall be licensed subject to the same restrictions as are set forth herein.
- f. The Contractor shall provide, at no additional charge, all upgrades and revisions to the software as necessary for the repair of errors or omissions, including but not limited to software bugs.
- g. While the State remains a participant in the WITS Users Group as described herein, the State agrees to permit Custom Developed Module(s) created for the State to be offered for use or to be used by other WITS Users Group participants, together with any related documentation, manuals, or instructions either in hard copy or electronic form. Any derivative software created by the Contractor from and using the source code of the Custom Developed Module(s) shall be owned by the State, but also be available to other participants of the WITS Users Group and be modified by the Contractor as needed for use by others.
- h. While the State remains a participant in the WITS Users Group as described herein, the Contractor shall inform the State of the existence of Future Developed Module(s) and the State, at its discretion, may incorporate such Future Developed Module(s) into the Licensed Software at no additional charge for the Future Developed Module(s) so incorporated. Any configuration, customization, or installation that may be required or requested for these Future Developed Modules(s) will incur an additional charge.

A.10. Software Maintenance and Support - Contractor Responsibilities. The Contractor shall:

- a. Make all necessary adjustments and repairs, at no additional cost to the State, to keep the software operating without abnormal interruptions and to correct latent deficiencies with respect to the software specifications.
- b. Maintain the current version of the Licensed Software in substantial conformance with its specifications as amended from time to time by the Contractor, and with applicable Federal regulatory requirements and laws. The Contractor shall assign priority support resources to either:
 - (1) Correct any reproducible errors or malfunctions in the Licensed Software by the Contractor which prevent it from operating in substantial conformance with said specifications and applicable Federal regulatory requirements. The Contractor shall assign support resources to address errors and malfunctions; or
 - (2) Provide a commercially reasonable alternative that shall substantially conform to the specifications and applicable Federal regulatory requirements and laws.
- c. On a timely basis, the Contractor shall also provide the State with:
 - (1) Such updates as are distributed without charge to other licensees which reflect modifications and incremental improvements made to the Licensed Software by the Contractor; and
 - (2) An opportunity to obtain enhancements to the Licensed Software for which charges are imposed on the same terms as such enhancements are generally made available to other Licensees.
- d. 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 shall be provided with new system enhancements. Documentation must describe, in a manner understandable to the average user, what the user needs to know to understand each level on which the software operates.

- e. Continue to support the version that the State has implemented if a new version of the Contractor's software should become available and the State is not able to upgrade due to costs, compatibility with the technical environment, or any other reason.
- f. Provide new versions of the software if needed to support critical systems software upgrades by the systems software providers (e.g., Microsoft Windows Operating System (OS), Sun Unix OS, Intersystems Caché) to ensure that security of the State's information is maintained.
- g. If reasonable analysis by the Contractor indicates that a reported error or malfunction is caused by either: (1) a problem related to hardware used by the State; (2) system software or applicable software other than the licensed programs; or (3) the State's misuse or modification of the licensed programs, then the Contractor's responsibility shall be limited to the correction of the portion, if any, of the problem caused by the licensed programs.

A.11. Software Maintenance and Support - State's Responsibilities. The State shall:

- a. Make requests for support services by giving the Contractor a written notice specifying a problem caused by a defect in the Licensed Software. In making a verbal request for support services, the State shall provide the Contractor within twenty-four (24) hours after such verbal notice with such written information and documentation as may be reasonably prescribed by the Contractor.
- b. Request modifications and enhancements to the software using a six step process used to define, specify, develop, test, and implement changes to the software. These six steps are:
 - (1) State prepares specifications for a modification or enhancement;
 - (2) Contractor prepares an estimate of hours required and the delivery date and cost of the change order, for the development/change of the software;
 - (3) State accepts the estimate and authorizes the work or rejects the estimate and disapproves the work;
 - (4) Contractor delivers the software product or change as defined below;
 - (5) State Accepts, as defined below, the software product or change; and
 - (6) State shall pay Contractor's invoice for the work authorized, up to the amount of the estimate.
- c. Accept software modifications, adjustments, repairs, new versions, and enhancements by this process: (1) On notice from Contractor that software is delivered, the State shall review, validate the delivery of the software, and test the software, (2) within thirty (30) business days, notify Contractor of acceptance or the specific shortcomings with respect to specifications of the software, documentation, efficiency or performance. Failure of the State to provide such notification within the thirty (30) days shall constitute State's acceptance.
- d. Have the option to choose to purchase additional software modules within the general scope of the Contract. If the State so chooses, maintenance for the additional software modules shall be included in the acquisition cost in the Contract fiscal year in which it was purchased; in subsequent years the costs shall be added to Software

Licensure/System Support fees. This action shall be accomplished through an amendment to the current Contract.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning July 1, 2011 and ending on June 30, 2014. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Two Million One Hundred Ninety Eight Thousand Three Hundred Fifty Four Dollars (\$2,198,354.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

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

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

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)		
	7/01/2011 to 6/30/2012	7/01/2012 to 6/30/2013	7/01/2013 to 6/30/2014
Design, Development, and Implementation of Enhancements as outlined in Section A.3. and any needed intensive user support for on-demand reports as noted in Section A.8. at a rate of \$110 per hour.	\$714,500.00	\$200,000.00	\$100,000.00

Service Description	Amount (per compensable increment)		
	7/01/2011 to 6/30/2012	7/01/2012 to 6/30/2013	7/01/2013 to 6/30/2014
Training per Section A.5. and at a time agreed upon by the State and the Contractor: Two (2) on-site full day training sessions at a cost of \$5,000.00 per day and five (5) Virtual Training sessions at a cost of \$2,000.00 per session.	\$20,000.00	\$20,000.00	\$20,000.00
Support and hosting for the live data feed as noted in Section A.3.h.(4)	\$99,000.00	\$99,005.00	\$99,001.00
Monthly Tier 3 user support, system maintenance, and system support as described in Section A.6. and Monthly System Hosting as described in Section A.7. at the following rates: \$22,740.00 per month for the period July 1, 2011 to June 30, 2012; \$22,967.00 per month for the period July 1, 2012 to June 30, 2013; and \$23,197.00 per month for the period July 1, 2013 to June 30, 2014.	\$272,880.00	\$275,604.00	\$278,364.00
TOTALS:	\$1,106,380.00	\$594,609.00	\$497,365.00

- c. Payment for training sessions or days shall be made after each session or day.
- d. All design, development, and implementation of any enhancements shall only be conducted in accordance with Section A.3. No payment for any enhancement shall be made without State written acceptance from both the State's Assistant Commissioner of Alcohol and Drug Abuse Services and the State's Director of the Office of Information Technology.
- e. No maintenance fee detailed above shall be effective or applicable prior to State written acceptance of the associated enhancement to which the maintenance fee applies.

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

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

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

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).

- (1) Invoice Number (assigned by the Contractor)
- (2) Invoice Date
- (3) Contract Number (assigned by the State)
- (4) Customer Account Name: Department of Mental Health
- (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
- (6) Contractor Name
- (7) Contractor Federal Employer Identification, Social Security, or Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
- (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
- (9) Contractor Remittance Address
- (10) Description of Delivered Service
- (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name & title as applicable) of each service invoiced
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
 - iv. Amount Due by Service
 - v. Total Amount Due for the invoice period

b. The Contractor understands and agrees that an invoice under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) only be submitted for completed service and shall not include any charge for future work;
- (3) not include sales tax or shipping charges; and
- (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.

- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).

- b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

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

- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The

Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1 hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401, *et seq.*

- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. 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.19. 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.20. 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.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

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

The State:

Rodney Bragg, Assistant Commissioner
Division of Alcohol and Drug Abuse Services
Tennessee Department of Mental Health
425 5th Avenue North, 5th Floor Cordell Hull Building
Nashville, Tennessee 37243
E-mail: Rodney.Bragg@tn.gov
Telephone # 615-532-7783
FAX # 615-532-2419

Heather Gundersen, Director
Office of Information Technology
Tennessee Department of Mental Health
12th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, Tennessee 37243
E-mail: Heather.Gundersen@tn.gov
Telephone # 615-532-6603
FAX # 615-253-5717

The Contractor:

Jiao Zhong Gu, CEO
FEI.COM, Inc.
7175 Columbia Gateway Drive, Suite A
Columbia, Maryland 21045
EMAIL: Jiao.Gu@feinfo.com
Telephone # 443-270-5101
FAX# 410-715-6538

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

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

E.5. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.

a. The Contractor shall maintain, at minimum, the following insurance coverage:

- (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
- (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
- (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.
- (4) Professional Malpractice Liability with a limit of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.

b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

E.6. 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.7 HIPAA Compliance. The State and the Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. The 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. The 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 the Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.8 Rule 2 Compliance. The State and the Contractor shall comply with obligations under Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations as codified at 42 CFR § 2.1 et seq.
- a. The Contractor warrants to the State that it is familiar with the requirements of Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations, and will comply with all applicable requirements in the course of this Contract.
 - b. The Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its regulations, in the course of performance of the Contract so that both parties will be in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and that are reasonably necessary to keep the State and the Contractor in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, or if Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.9 State Ownership of Work Products. The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." The State shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.

- 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 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 Work Product provided under the Contract.
- b. The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.
- c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
- d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

E.10. Ownership of Software and Work Products.

- a. Definitions:
 - (1) "Contractor-Owned Software," which shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
 - (2) "Custom-Developed Application Software," which shall mean customized application software developed by Contractor solely for State.
 - (3) "Rights Transfer Application Software," which shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.
 - (4) "Third-Party Software," which shall mean software not owned by the State or the Contractor.
 - (5) "Work Product," which shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the system solution includes Rights Transfer Application Software, the definition of Work Product shall also include such software.
- b. Rights and Title to the Software:
 - (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted herein.
 - (2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights

do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer and/or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties, and Contractor shall cooperate fully in the foregoing endeavors.

- (3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted thereby.
 - c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
 - d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.
- E.11. 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.12. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.
- E.13. Public Accountability. If the Contractor is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor shall display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this Contract, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

- E.14. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

E.15. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

E.16. 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.17. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, 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.18. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

a. Reporting of Total Compensation of the Contractor's Executives.

- (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
- i. 80 percent or more of the Contractor's annual gross revenues from Federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
- Executive means officers, managing partners, or any other employees in management positions.
- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
- i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans

that do not discriminate in favor of executives, and are available generally to all salaried employees.

- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
 - c. If this Contract is amended to extend its term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the amendment to this Contract becomes effective.
 - d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

- E.19. Drug-Free Workplace. The Contractor agrees that it shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, Title 41 of the United States Code (41 USC) §§ 701 et seq., and the regulations in Title 45 of the Code of Federal Regulations (45 CFR) Part 82.
- E.20. Additional Subcontracting Requirements. If subcontracts are approved by the State, they shall contain, in addition to those sections identified in D.5., sections on "Confidentiality of Records", "HIPAA Compliance", and "Rule 2 Compliance" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

IN WITNESS WHEREOF,

FEI.COM, INC.:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF MENTAL HEALTH:

E. DOUGLAS VARNEY, COMMISSIONER

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

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

CONTRACTOR SIGNATURE

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

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION



GENERAL ASSEMBLY OF THE STATE OF TENNESSEE
FISCAL REVIEW COMMITTEE

320 Sixth Avenue, North – 8th Floor
NASHVILLE, TENNESSEE 37243-0057
615-741-2564

Sen. Bill Ketron, Chairman

Senators

Douglas Henry Reginald Tate
Brian Kelsey Ken Yager
Eric Stewart
Randy McNally, *ex officio*
Lt. Governor Ron Ramsey, *ex officio*

Rep. Curtis Johnson, Vice-Chairman

Representatives

Tommie Brown David Shepard
Jim Coley Tony Shipley
Charles Curtiss Curry Todd
Johnny Shaw Mark White
Charles Sargent, *ex officio*
Speaker Beth Harwell, *ex officio*

M E M O R A N D U M

TO: The Honorable Mark Emkes, Commissioner
 Department of Finance and Administration

FROM: Bill Ketron, Chairman, Fiscal Review Committee *BK*
 Curtis Johnson, Vice-Chairman, Fiscal Review Committee *CJ*

DATE: June 22, 2011

SUBJECT: **Contract Comments**
 (Fiscal Review Committee Meeting 6/21/11)

RFS# 339.01-12312 (Edison # 38065)

Department: Mental Health

Vendor: FEI.Com, Inc.

Summary: The proposed three-year contract is for the implementation of enhancements for the existing Tennessee Web-based Information Technology System (TN-WITS), user support, training, maintenance, and hosting of TN-WITS. The contract has a term beginning July 1, 2011, and ending June 30, 2014, with a maximum liability of \$2,198,354. Proposed maximum liability: \$2,198,354

After review, the Fiscal Review Committee voted to approve the contract.

cc: The Honorable Doug Varney, Commissioner
 Mr. Robert Barlow, Director, Office of Contracts Review