

**CONTRACT #1**  
**RFS # 339.01-04291400**  
**Edison # Pending**

**Department of Mental Health  
and Substance Abuse Services**

**VENDOR:**  
**FEI.com, Inc.**



STATE OF TENNESSEE  
DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

6th FLOOR, ANDREW JACKSON BUILDING  
500 DEADERICK STREET  
NASHVILLE, TENNESSEE 37243

**BILL HASLAM**  
GOVERNOR

**E. DOUGLAS VARNEY**  
COMMISSIONER

**MEMORANDUM**

TO: Fiscal Review Committee

FROM: E. Douglas Varney, Commissioner *EDV*  
Department of Mental Health and Substance Abuse Services

DATE: April 29, 2014

SUBJECT: FEI.com Contract Summary Letter

The Department of Mental Health and Substance Abuse Services respectfully requests a non-competitive contract with FEI.com to provide System Enhancement; User Support and Training; and System Support, Maintenance, and Hosting for the Tennessee Web-based Information Technology System (TN-WITS). The proposed contract's maximum liability will be Three Million Fifty Seven Thousand Six Hundred Ninety Dollars (\$3,057,690.00).

**Term of Contract:** This Contract will be effective beginning on July 1, 2014 and ending on June 30, 2019.

Since 2005, the Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS) has successfully used the TN-WITS system to meet the federal data collection and reporting requirements. In November 2008, TDMHSAS received approval to expand the web-based system to accommodate other federal- and state-funded programs. Enhancing the web-based system has enabled contract service providers and the State to track services and the individuals who receive those services. The WITS system collects and manages a wide range of data that contains information on provider agencies, their programs and staff, their clients, episodes of care, and programmatic services. For State Fiscal Year 2014 (July 1, 2013 to June 30, 2014), two hundred eighteen (218) service providers offering thirty-two (32) prevention, treatment, and recovery support programs are tracked and managed through the TN-WITS system. TDMHSAS has the capability of monitoring an agency's waiting list, tracking clients as they move through the continuum of services, financially processing and generating provider payments, and assisting with the programmatic accountability and review audit process.

Continuing to utilize the web-based system developed by FEI.com is more cost effective because the State benefits from lower development and enhancement costs through access to other states' system modules as they become available. There are thirty-five (35) implementations of the WITS system throughout the country and abroad. We have successfully utilized TN-WITS since 2005 and expanded the system to support the majority of our programmatic and financial functions. TDMHSAS believes it is in the best interest of the State to retain the vendor who originally developed and built the system, FEI.com, rather than starting over and potentially having to replace the existing system with a new one. A technical assistance site visit was provided by the federal Substance Abuse and Mental Health Services Administration (SAMHSA) and it was recommended that the State convert to a web-based system that could accommodate programmatic functions of our services. The web-based application designed by FEI.com is a federally-approved, Meaningful Use Stage 1 (2011) Certified Electronic Health Record (EHR) system that is capable of meeting the reporting requirements set forth by SAMHSA. To aide with the cost, SAMHSA provided One Hundred Thousand Dollars (\$100,000.00) in technical assistance funds to the State for the enhancement of this system; and has continued to allow the use of discretionary funds for any additional enhancements and support needed to meet federal grant requirements.

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Sandra Braber-Grove, Richard Zhu, or Taryn Sloss	*Contact Phone:	(615) 532-6524; (615) 532-8636; or (615) 532-7793		
*Presenter's name(s):	Gene Wood, Budget Director; Richard Zhu, IT Director; Sandra Braber-Grove, Director, Office of Contracts and Privacy / Asst. General Counsel				
Edison Contract Number: <i>(if applicable)</i>	N/A	RFS Number: <i>(if applicable)</i>	33901-04291400		
*Original or Proposed Contract Begin Date:	July 1, 2014	*Current or Proposed End Date:	June 30, 2019		
Current Request Amendment Number: <i>(if applicable)</i>	N/A				
Proposed Amendment Effective Date: <i>(if applicable)</i>	N/A				
*Department Submitting:	Mental Health and Substance Abuse Services				
*Division:	Substance Abuse Services				
*Date Submitted:	April 30, 2014				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	FEi.com				
*Current or Proposed Maximum Liability:	\$3,057,690.00				
*Estimated Total Spend for Commodities:	N/A				
<b>*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)</b>					
FY: 2015	FY: 2016	FY: 2017	FY: 2018	FY: 2019	FY
<b>\$620,000.00</b>	<b>\$585,000.00</b>	<b>\$600,750.00</b>	<b>\$617,288.00</b>	<b>\$634,652.00</b>	<b>\$</b>
<b>*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)</b>					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
<b>IF</b> Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:					
<b>IF</b> surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:					
<b>IF</b> Contract Expenditures exceeded Contract Allocation, please give the					

Supplemental Documentation Required for  
Fiscal Review Committee

reasons and explain how funding was acquired to pay the overage:			
*Contract Funding Source/Amount:			
State:	\$983,000.00	Federal:	\$2,074,690.00
<i>Interdepartmental:</i>		<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
N/A		N/A	
Method of Original Award: <i>(if applicable)</i>		N/A	
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?			
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.		FEI.com is the federally-approved contractor for this system. The success of TN-WITS and the experience of the company who built the system, coupled with the recommendation of SAMHSA to secure the services of this Contractor in order to meet data collection and reporting requirements leads us to maintain the current relationship with this Contractor. The Department has had a significant investment in this system and the current state fiscal year (July 1, 2013 to June 30, 2014) shows 218 service providers offering 32 prevention, treatment, and recovery support programs that are tracked and managed through this system.	



May 7, 2014

Ms. Taryn Harrison Sloss  
Department of Mental Health and Substance Abuse Services  
Division of Substance Abuse Services  
5th Floor, Andrew Jackson Tower  
500 Deaderick Street  
Nashville, TN 37243

Dear Ms. Sloss:

FEI Systems, Inc., "FEI," is the sole source provider for the TN-WITS (Tennessee web-based Information Technology System) software, all associated modules, and Maintenance and Support Services.

The State of Tennessee request for the above products and services requires FEI to provide a combination of licensed software, professional services, and professional support services for use with the existing installed proprietary and unique software provided exclusively by FEI.

FEI is the sole provider of TN-WITS software and is the only custodian of the WITS source code. The TN-WITS software currently licensed by Tennessee Department of Mental Health and Substance Abuse Services is provided to the State in object code.

If you have any further questions, please do not hesitate to contact us. We look forward to a continued successful partnership with the State of Tennessee to provide behavioral health information technology solutions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jiao Gu".

Jiao Gu, Ph.D.  
President



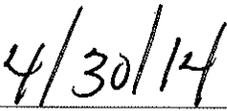
## OIR Pre-Approval Endorsement Request E-Mail Transmittal

**TO :** Jane Chittenden, OIR Procurement & Contract Management Director  
Department of Finance & Administration  
E-mail : [Jane.Chittenden@tn.gov](mailto:Jane.Chittenden@tn.gov)

**FROM :** Richard Zhu  
E-mail : [Richard.zhu@tn.gov](mailto:Richard.zhu@tn.gov)

**DATE :** 04/30/2014

**RE :** Request for OIR Pre-Approval Endorsement

<b>Applicable RFS #</b>	<b>33901-04291400</b>
<b>OIR Endorsement Signature &amp; Date:</b>	
 	
<b>Chief Information Officer</b>	
<small>NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.</small>	

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

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

<b>Contracting Agency</b>	<b>Mental Health and Substance Abuse Services</b>
<b>Agency Contact</b> (name, phone, e-mail)	<b>Taryn Sloss, 615-532-7793, <a href="mailto:taryn.sloss@tn.gov">taryn.sloss@tn.gov</a></b>
<b>Subject Procurement Document</b> (mark one)	
<input type="checkbox"/> RFP	<input type="checkbox"/> Contract
<input type="checkbox"/> Competitive Negotiation Request	<input type="checkbox"/> Contract Amendment
<input type="checkbox"/> Alternative Procurement Method Request	<input type="checkbox"/> Grant
<input checked="" type="checkbox"/> Non-Competitive Contract Request	<input type="checkbox"/> Grant Amendment
<input type="checkbox"/> Non-Competitive Amendment Request	
<b>Information Systems Plan (ISP) Project Applicability</b>	
<input type="checkbox"/> Not Applicable to this Request	
<input checked="" type="checkbox"/> Applicable– ISP Project# CI97O101	
<b>Response Confirmed by IT Director/Staff</b> (name):	<b>Richard Zhu</b>

**Applicable RFS #**      **33901-04291400**

**Required Attachments** (as applicable – copies without signatures acceptable)

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

**Subject Information Technology Service Description**

The contract is an extension of a current contract we have in place with the vendor, and will provide for the ongoing maintenance of an existing system used to manage service recipient administrative records and provider payments for our alcohol and drug abuse services providers. The system is vendor hosted and supported. OIR suggested language for security and service level agreements has been incorporated in the contract. The vendor has been performing the ongoing support/maintenance for the system since 2009, and this request is to enter into a contract to continue the same ongoing support/services with the vendor. The ISP# for the original contract is CI97O101.

cy14-3517

# Special Contract Request

This form should be utilized to facilitate contract and procurement requests that require the Chief Procurement Officer's prior approval and that of the Comptroller of the Treasury, as applicable.

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.agsprs@tn.gov.

<p><b>APPROVED</b></p>	<p><b>APPROVED</b></p>
 CHIEF PROCUREMENT OFFICER	 COMPTROLLER OF THE TREASURY
DATE 05/12/14	DATE 05/12/14

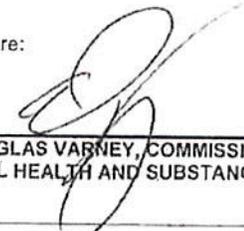
Request Tracking #	33901-04291400
1. Contracting Agency	Department of Mental Health and Substance Abuse Services
2. Type of Contract or Procurement Method	<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
3. Requestor Contact Information	Sandra Braber-Grove; (615) 532-6520 or sandra.braber-grove@tn.gov
4. Brief Goods or Services Caption	System Enhancement, User Support and Training, Maintenance and Hosting
5. Description of the Goods or Services to be Acquired	System enhancement and other services are needed to maintain the Tennessee Web-based Information Technology System (TN-WITS). Services include user support and training, maintenance and hosting, and system enhancement if requested.
6. Proposed Contractor	FEI.com
7. Name & Address of the Contractor's principal owner(s) <i>- NOT required for a TN state education institution</i>	Jiao Gu, Ph.D., President 7175 Gateway Drive, Suite A Columbia, MD 21046

<b>Request Tracking #</b>	33901-04291400
<b>8. Proposed Contract Period</b> – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	60 months
<b>9. Office for Information Resources Pre-Approval Endorsement Request</b> <i>– information technology (N/A to THDA)</i>	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached
<b>10. eHealth Pre-Approval Endorsement Request</b> <i>– health-related professional, pharmaceutical, laboratory, or imaging</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
<b>11. Human Resources Pre-Approval Endorsement Request</b> <i>– state employee training</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
<b>12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.</b>	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
<b>13. Maximum Contract Cost</b> – with ALL options to extend exercised	\$ 3,057.690.00
<b>14. Was there an initial government estimate? If so, what amount?</b>	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
<b>15. Cost Determination Used-</b> How did agency arrive at the estimate of expected costs?	The cost estimates are based on current and planned functionality of TN-WITS, the level of hosting necessary to accommodate the amount of data usage, and the general number of users within the system. Development estimates are based on the scope of the functionality and configuration modifications necessary to accommodate our business needs.
<b>16. Explanation of Fair and Reasonable Price-</b> Explain how agency determined that price is fair and reasonable	Labor rates are based on the Government Services Administration (GSA) contractor rates (IT Schedule 70 Labor Category for Senior Information Technology Specialist). Other costs are in line with previous years and comparable to maintenance and support costs for similar systems.
<b>17. Documentation of Discussions with Contractor-</b> How did agency document discussions with Contractor? Attach documentation to this request as applicable.	Discussions with Contractor took place via telephone and electronic mail (e-mail).

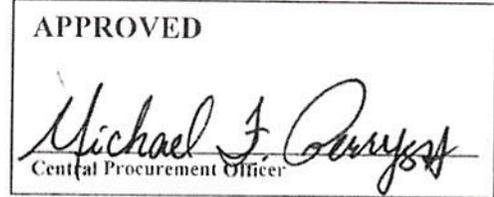
Request Tracking #	33901-04291400
18. Explanation of Need for or requirement placed on the State to acquire the goods or services	<p>In 2008, TDMHSAS received approval to expand TN-WITS to improve the functions, operations, and efficiency of the programs offered by our Divisions of Substance Abuse Services. 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 federal Substance Abuse Prevention and Treatment Block Grant (SAPT-BG) funds, we are required to submit National Outcome Measures (NOMS) and Treatment Evaluation Data Set (TEDS) data to the Substance Abuse and Mental Health Services Administration (SAMHSA). As a result of enhancing TN-WITS, Tennessee is now able to provide a certified Electronic Health Record data collection tool to contracted service providers to submit client data; 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. To continue to meet federal NOMS and TEDS reporting requirements, we need to procure these services for the purposes of providing development and enhancements as needed; training; and system maintenance, hosting, and support.</p>
19. Proposed contract impact on current State operations	<p>The TN-WITS system is already in place, so there will be no change in impact on current State operations with this Contract.</p>

Request Tracking #	33901-04291400
<p><b>20. Justification</b> – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.</p>	<p>The selected Contractor (FEI.com) is the federally-approved provider of these services and has created similar web-based systems for other states. Any other provider would have to build a brand new system. We use the core system of the Web-based Infrastructure for Treatment Services (WITS) system and have customized it to meet Tennessee's needs. A financial benefit for retaining the system 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, we 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. We have successfully used the TN-WITS system since 2005 and the infrastructure is already in place. To keep the current vendor through the non-competitive process is in the best interest of the state rather than starting over and potentially having to replace the existing system with a new one.</p>
<b>For No Cost and Revenue Contracts Only</b>	
<p><b>21. What costs will the State incur as a result of this contract? If any, please explain.</b></p>	
<p><b>22. What is the total estimated revenue that the State would receive as a result of this contract?</b></p>	
<p><b>23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.</b></p>	<p><input type="checkbox"/> NO      <input type="checkbox"/> YES</p>
<p><b>24. Summary of State responsibilities under proposed contract</b></p>	
<b>For Sole Source and Proprietary Procurements Only</b>	
<p><b>25. Explanation of Need for or requirement placed on the State to acquire the goods or services</b></p>	<p>See response to Question 18.</p>

Request Tracking #	33901-04291400
26. Evidence of Contractor's experience and length of experience providing the goods or services to be procured.	<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, New York, Hawaii, Indiana, Iowa, Maryland, Connecticut, Idaho, Oregon, New Hampshire, Florida, Massachusetts, and Tennessee in developing web-based systems. In response to CSAT's requirements of a voucher management system that racks 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. In 2011, their system became a Certified Electronic Health Record system within the standards and criteria for Meaningful Use Stage 1.</p>
27. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the Contractor.	<p><input type="checkbox"/> NO      <input checked="" type="checkbox"/> YES,  Method: Non-Competitive Procurement  Name/Address: Jiao Gu, Ph.D.,  President; 7175 Gateway Drive,  Suite A; Columbia, MD 21046</p>
28. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	<p>The success of the TN-WITS system and the experience of the Contractor who built the system, coupled with the recommendation of SAMHSA to secure the services of the federally-approved vendor in order to meet data collection and reporting requirements leads us to maintain the current relationship with the current Contractor.</p>
Signature Required for all Special Contract Requests	

<b>Request Tracking #</b>	<b>33901-04291400</b>
<b>Agency Head Signature and Date</b> – <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 circumstances</i>	
<b>Signature:</b> 	<b>Date:</b> 4/30/14
<b>E. DOUGLAS VARNEY, COMMISSIONER MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES</b>	

## Sourcing Analyst Recommendation



**DATE:** Monday, May 12, 2014

**SUBJECT:** Special Contract Request 33901-04291400

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### **RECOMMENDATION:**

Approve Special Contract Request 33901-04291400

### **ANALYSIS:**

Special Contract Request 33901-04291400 is a sole source contract to upgrade and maintain the Tennessee Web-based Information Technology System (TN-WITS). Services include user support and training, maintenance and hosting, and system enhancement. Because the Tennessee Web-based Information Technology System is already in place, building upon it rather than paying to have a new system developed and implemented would come at a cost savings to the state. (TN-WITS) is covered by patents and copyrights to a sole provider.

The continuity of results is dependent upon the upgrade as TDMHSAS is required to produce accurate and timely reports which are submitted to the Substance Abuse and Mental Health Services Administration (SAMHSA) in order to stay in compliance with its Federal Substance Abuse Prevention and Treatment Block Grant (SAPT-BG). To procure a new system we result in a negative impact on current State operations as the system would be temporarily down.

Finally, State users have extensive training and experience with (TN-WITS) and the use of similar goods or services would require significant reorientation and training.

### **Options/Alternatives:**

Accept: Approve Special Contract Request  
Reject: Competitively bid Special Contract Request

A handwritten signature in cursive that reads "Douglas Whitcomb".

**Douglas Whitcomb**  
Sourcing Analyst

**CONTRACT**

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

<b>Begin Date</b> July 1, 2014	<b>End Date</b> June 30, 2019	<b>Agency Tracking #</b> 33901-04291400	<b>Edison Record ID</b>		
<b>Contractor Legal Entity Name</b> FEI.com, Inc.			<b>Edison Vendor ID</b> 38065		
<b>Service Caption</b> (one line only) System Enhancement; User Support and Training; and System Support, Maintenance, and Hosting for the Tennessee Web-based Information Technology System (TN-WITS)					
<b>Subrecipient or Vendor</b> <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor		<b>CFDA #</b> 93.959 Federal Block Grants for Prevention and Treatment of Substance Abuse			
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
2015	\$213,600.00	\$406,400.00			\$620,000.00
2016	\$192,350.00	\$392,650.00			\$585,000.00
2017	\$192,350.00	\$408,400.00			\$600,750.00
2018	\$192,350.00	\$424,938.00			\$617,288.00
2019	\$192,350.00	\$442,302.00			\$634,652.00
<b>TOTAL:</b>	<b>\$983,000.00</b>	<b>\$2,074,690.00</b>			<b>\$3,057,690.00</b>
<b>American Recovery and Reinvestment Act (ARRA) Funding:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
<b>Ownership/Control</b>					
<input type="checkbox"/> African American <input checked="" type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Female <input type="checkbox"/> Person w/Disability <input type="checkbox"/> Small Business <input type="checkbox"/> Government <input type="checkbox"/> NOT Minority/Disadvantaged <input type="checkbox"/> Other:					
<b>Selection Method &amp; Process Summary</b> (mark the correct response to confirm the associated summary)					
<input type="checkbox"/> RFP		The procurement process was completed in accordance with the approved RFP document and associated regulations.			
<input type="checkbox"/> Competitive Negotiation		The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.			
<input type="checkbox"/> Alternative Competitive Method		The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.			
<input checked="" type="checkbox"/> Non-Competitive Negotiation		The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms and price.			
<input type="checkbox"/> Other		The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."			
<b>Budget Officer Confirmation:</b> 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.			<i>OCR USE - FA</i>		
<b>Speed Chart</b> (optional)		<b>Account Code</b> (optional)			

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

This Contract, by and between the State of Tennessee, Department of Mental Health and Substance Abuse Services, hereinafter referred to as the "State" and FEI.com, Inc., hereinafter referred to as the "Contractor," is for the provision of System Enhancement; User Support and Training; and System Support, Maintenance, and Hosting for the Tennessee Web-based Information Technology System (TN-WITS), 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 service 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 is a Meaningful Use Stage 1 (2011) Certified Electronic Health Record (EHR) system which 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, Criminal Justice Liaison Services, Recovery (Drug) Court 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 Modules or Other Enhancements. The development of any module or enhancement, and the module or 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 modules or enhancements shall be made without State written acceptance from both the State's Assistant Commissioner of the Division of Substance Abuse Services and the State's Director of the Office of Information Technology. Additional approved modifications and enhancements shall be provided at a cost based on the Change Order Rate defined in section C.3., and a schedule proposed by the Contractor and agreed upon, in writing, by the State.
- A.4. Federal and Tennessee Data Security and Privacy Compliance:
- a. Any and all methods of data transmission, use, disclosure, and storage must conform to current State of Tennessee and federal privacy laws including but not limited to Title 33 of the Tennessee Code Annotated; Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its regulations at 45 Code of Federal Regulations (CFR) Parts 160 and 164; and the Confidentiality of Alcohol and Substance Abuse Patient Records as regulated at 42 CFR Part 2; and state and federal privacy and security standards to ensure that data is secure at all times, including but not limited to, at rest; during transmission; and while stored.
  - b. The Contractor agrees to comply with the following privacy and security provisions:

- (1) The Contractor shall use appropriate procedural, physical, and electronic safeguards to prevent use or disclosure of Protected Health Information (PHI) or other data it receives and hosts for the purposes of a Central Registry system. Said safeguards shall include, but are not limited to, requiring employees to agree to use or disclose PHI or other data only as permitted or required by state and federal law and taking related disciplinary actions for inappropriate use or disclosure as necessary.
- (2) The Contractor shall require its employees, agents, and subcontractors to immediately report any suspected unauthorized use or disclosure of PHI or other data.
- (3) The Contractor may be an "information holder" under the terms of Tennessee Code Annotated (TCA) § 47-18-2107, and as such, in the event of a breach of the Contractor's security system, as herein defined, the Contractor shall indemnify and hold the State harmless for expenses and/or damages related to the breach.
- (4) The Contractor shall track all security incidents and shall report such security incidents immediately, with the following understandings:
  - i. The State shall not consider as security incidents, for the purpose of reporting, external activities (port enumeration) typically associated with the "footprinting" of a computing environment so long as such activities have only identified but have not compromised the logical network perimeter, including but not limited to externally facing firewalls and web servers;
  - ii. The Contractor shall reasonably use its own vulnerability assessment of damage potential and monitoring to define levels of security incidents and responses for the Contractor's operations. However, the Contractor shall immediately notify the State of any security incident which would constitute a security event including any "breach of the security of the system" under TCA § 47-18-2107, in a preliminary report within one (1) business day with a full report within five (5) business days of the time the Contractor became aware of the incident; and
  - iii. The Contractor shall likewise notify the State in a preliminary report within one (1) business day of any unauthorized acquisition including but not limited to internal user access to non-test records reported to the Contractor's privacy manager or other appropriate personnel; and any use, disclosure, modification or destruction of PHI by an employee or otherwise authorized user of its system of which the Contractor becomes aware with a full report of the incident not less than five (5) business days of the time it became aware of the incident.
- (5) A breach of the security of the Contractor's system shall mean the unauthorized acquisition, including, but not limited to, access to, use, disclosure, modification or destruction, of unencrypted computerized data that materially compromises the security, confidentiality or integrity of personal information maintained by or on behalf of the State. If data acquired (including but not limited to access to or use, disclosure, modification or destruction of such data ) is in encrypted format, but the decryption key which would allow decoding of the data is also taken, the parties shall treat the acquisition as a breach for the purpose of determining the appropriate response.
- (6) The term "encryption" shall mean the process of using publicly known algorithms to convert plain text and other data into a form intended to protect the data from

being able to be converted back to the original plain text by known technological means.

- (7) The term “security incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.
- (8) The term “security event” shall mean an immediately reportable subset of security incidents, which would include:
- i. A suspected penetration of the Contractor’s information system of which the Contractor becomes aware but for which it is not able to verify within twenty-four (24) hours (of the time of becoming aware of the suspected incident) that PHI or other confidential data was not accessed, stolen, used, disclosed, modified or destroyed;
  - ii. Any indication, evidence or other security documentation that the Contractor’s network resources, including, but not limited to, software, network routers, firewalls, database and application servers, intrusion detection systems or other security appliances may have been damaged, modified, taken over by proxy or otherwise compromised, for which the Contractor cannot refute the indication within forty-eight (48) hours of the time the Contractor became aware of such indication;
  - iii. A breach of the security of the Contractor’s information system(s) by unauthorized acquisition, including, but not limited to, access to or use, disclosure, modification or destruction of unencrypted computerized data, and which incident materially compromises the security, confidentiality or integrity of PHI; and/or
  - iv. The unauthorized acquisition, including but not limited to access to or use, disclosure, modification or destruction of unencrypted electronic PHI or other confidential information of the State by an employee or authorized user of the Contractor’s system(s) which materially compromises the security, confidentiality or integrity of PHI or other confidential information of the State.
- c. 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 §§ 164.312, 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.

d. 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, as requested by the State, 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. Support Services.

a. The Contractor shall provide support services to the State for the hosted services covered by this Contract. The State will request support services primarily through the dedicated Help Desk center, or secondarily by phone or email. The Contractor's help desk will be staffed during core business hours and will make every effort to achieve the prompt resolution of support requests and defect reports based on the assigned level of severity. Support services will be delivered according to the following tier structure:

Severity Level	Response
<b>Urgent:</b> A problem that severely impacts the State's use of the hosted service, such as: loss of data or system is unable to function. The situation halts State's business operations and no procedural workarounds exist.	The State will receive <b>immediate e-mail acknowledgement</b> following report of the issue, and an initial response from staff within <b>30 minutes</b> of submitting a ticket to the Help Desk. The Support Team will make reasonable efforts to provide a fix or procedural workaround within <b>two (2) hours</b> once the issue has been replicated and confirmed as a problem by The Contractor.
<b>High:</b> A problem where the State's hosted service is functioning, but its use is severely reduced. The situation is causing a high impact to portions of the State's business operations and no procedural workarounds exist.	The State will receive <b>immediate e-mail acknowledgement</b> following report of the issue, and an initial response from staff within <b>30 minutes</b> of submitting a ticket to the Help Desk. The Support Team will make reasonable efforts to provide a fix or procedural workaround within <b>four (4) hours</b> once the issue has been replicated and confirmed as a problem by the Contractor.
<b>Medium:</b> A problem that involves partial, non-critical loss of use of the State's hosted service. The situation is causing a medium-to-low impact on the State's business operations, but users can continue to function, including by using a procedural workaround.	Upon submitting a ticket to Help Desk, the State will receive <b>immediate e-mail acknowledgement</b> . A member of the Support Team will respond to the State within <b>2 business days</b> of submitting a ticket to the Help Desk.
<b>Low:</b> A general usage question, reporting of a documentation error, or recommendation for a future product enhancement or modification. The situation is causing low-to-no impact on the State's business operations or the performance or functionality of the hosted service.	The State will be contacted by a member of the Support Team within <b>2 business days</b> with a response to their support question or receive email notification that their comment or recommendation for feature enhancement has been logged in our software products tracking database or posted to a Help Desk forum.

b. The response times listed above that require direct action by support staff apply during core business hours. For issues reported outside core business hours, response times begin at the start of the next business day. Automated email response times apply at all times. In the event of widespread outages effecting the Contractor's Help Desk, the

State will receive notification of an alternate site where status information will be posted until normal service resumes.

- c. 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.
- d. Software Maintenance and Support - Contractor Responsibilities. The Contractor shall:
- (1) 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.
  - (2) 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:
    - i. 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
    - ii. Provide a commercially reasonable alternative that shall substantially conform to the specifications and applicable Federal regulatory requirements and laws.
  - (3) On a timely basis, the Contractor shall also provide the State with:
    - i. 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
    - ii. 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.
  - (4) 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.
  - (5) 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.
  - (6) 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.
  - (7) 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.

- e. Software Maintenance and Support - State's Responsibilities. The State shall:
- (1) 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.
  - (2) 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:
    - i. State prepares specifications for a modification or enhancement;
    - ii. Contractor prepares an estimate of hours required and the delivery date and cost of the change order, for the development/change of the software;
    - iii. State accepts the estimate and authorizes the work or rejects the estimate and disapproves the work;
    - iv. Contractor delivers the software product or change as defined below;
    - v. State Accepts, as defined below, the software product or change; and
    - vi. State shall pay Contractor's invoice for the work authorized, up to the amount of the estimate.
  - (3) 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.
  - (4) 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.
- 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. Source Code in Escrow:
- a. The Contractor represents that it maintains, in a secure environment, a current copy of the software source code in escrow with its escrow agent. The Contractor acknowledges that throughout the term of the Contract, the source code in escrow shall be kept current with the most current version of the Source Code periodically escrowed by the Contractor.
  - b. The Contractor shall ensure that a copy of the up-to-date Source code shall be deposited with the Escrow Company at the time of the execution of this Contract. The State may demand confirmation at any time during the course of the Contract from the Contractor or Escrow Company that the Source Code in escrow is up to date and the Contractor or Escrow Company will provide confirmation of such within thirty (30) calendar days of such request.
  - c. If the Contractor goes out of business, the State shall be able to obtain the Source Code from the Escrow Company.
- A.10. 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.11. Data Ownership and Data Security. Data created and managed by the State within the Contractor-hosted environment remain the sole property of the State. The Contractor will not review, share, distribute, print, or reference any Client's data except as expressly defined by the terms of a Contract between the Contractor and the State. The Contractor may at times view or access individual records and State configuration details for the purpose of preventive maintenance or diagnosis and resolution of system problems or user support issues.

The Contractor will implement reasonable and appropriate measures to secure the State's data against accidental or unlawful access or disclosure. Security measures are in place at multiple levels to protect against the loss, misuse, and alteration of the data managed within the Contractor hosted services.

- a. **Physical Security** – Physical access to the Contractor's hosting environment is limited to only authorized personnel and secured by multi-level access authorization with biometric verification and comprehensive video surveillance throughout the facility.

- b. **Network Security** – The Contractor employs intrusion detection and prevention systems to protect and monitor all hosted services running in our hosting environment. The Contractor and approved third-party vendors may conduct security vulnerability testing as warranted and within the Maintenance Window.
  - c. **Data Security** – All Client data resident on the hosted services are backed up regularly and stored at a secure secondary location.
  - d. **Browser-level Security** – Secure Socket Layer (SSL) encryption protects server authentication information and data transferred between the State’s browser and the hosted service.
- A.12. Return of Data Upon Termination of Contract. Upon termination of this Contract all data created and managed by the State within the Contractor’s hosted environment shall be removed and returned to the State in a usable format acceptable to the State, unless the parties enter into a similar, successive Contract.

**B. CONTRACT PERIOD:**

This Contract shall be effective for the period beginning July 1, 2014, and ending on June 30, 2019. 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 Three Million Fifty-Seven Thousand Six Hundred Ninety Dollars (\$3,057,690.00). 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)				
	7/01/2014 to 6/30/2015	7/01/2015 to 6/30/2016	7/01/2016 to 6/30/2017	7/01/2017 to 6/30/2018	7/01/2018 to 6/30/2019
Design, Development, and Implementation of Modules or Other 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 Change Order Rate of \$125.00 per hour.	\$300,000.00	\$250,000.00	\$250,000.00	\$250,000.00	\$250,000.00
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	\$20,000.00	\$20,000.00
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., including Hosting described in Section A.8., at the following rates: \$25,000.00 per month for the period July 1, 2014 to June 30, 2015; \$26,250.00 per month for the period July 1, 2015 to June 30, 2016; \$27,563.00 per month for the period July 1, 2016 to June 30, 2017; \$28,941.00 per month for the period July 1, 2017 to June 30, 2018; and \$30,388.00 per month for the period July 1, 2018 to June 30, 2019.	\$300,000.00	\$315,000.00	\$330,750.00	\$347,288.00	\$364,652.00
<b>TOTALS:</b>	<b>\$620,000.00</b>	<b>\$585,000.00</b>	<b>\$600,750.00</b>	<b>\$617,288.00</b>	<b>\$634,652.00</b>

- c. Payment for training sessions or days shall be made after each session or day.
- d. All design, development, and implementation of modules or other enhancements shall only be conducted in accordance with Section A.3.
- 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:

Tennessee Department of Mental Health and Substance Abuse Services  
 ATTN: Fiscal Services  
 Andrew Jackson Building, 6th Floor  
 500 Deaderick Street  
 Nashville, TN 37243

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice Number (assigned by the Contractor)
  - (2) Invoice Date
  - (3) Contract Number (assigned by the State)
  - (4) Customer Account Name: Department of Mental Health and Substance Abuse Services
  - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
  - (6) Contractor Name
  - (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
  - (8) Contractor Contact for Invoice Questions (name, phone, e-mail, 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 and 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 01, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *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 Substance Abuse Services  
 Tennessee Department of Mental Health and Substance Abuse Services  
 Andrew Jackson Building, 5th Floor  
 500 Deaderick Street  
 Nashville, TN 37243  
 E-mail: Rodney.Bragg@tn.gov  
 Telephone #: (615) 532-7783  
 FAX #: (615) 532-2419

Richard Zhu, Director  
 Office of Information Technology  
 Division of Administrative Services  
 Tennessee Department of Mental Health and Substance Abuse Services  
 Andrew Jackson Building, 6th Floor  
 500 Deaderick Street  
 Nashville, Tennessee 37243  
 E-mail: richard.zhu@tn.gov  
 Telephone #: (615) 532-6603  
 FAX #: (615) 253-5717

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. Tennessee Department of Revenue Registration. The Contractor shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement 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 and 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 and 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 offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

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.:**

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**CONTRACTOR SIGNATURE**

**DATE**

---

**PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)**

**DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES:**

---

**E. DOUGLAS VARNEY, COMMISSIONER**

**DATE**

## ATTACHMENT 01

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER (Edison Record ID):</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	FEI.com, Inc.
<b>FEDERAL EMPLOYER IDENTIFICATION NUMBER:</b> (or Social Security Number or Edison Vendor ID)	38065

**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.

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**