

Fiscal Review Committee Redaction Cover Sheet

Contract Number: Mental Health (FEI.com - contract)

 X No redactions required
 Redactions applied

Contractor/Service Provider Identity *(this includes addresses, phone numbers, service provider contact or officer information, and other information that could be used to identify the contractor or service provider)*

 Federal Employee Identification Number (FEIN)
 Contractor/Vendor Name

Purpose for Contractor/Vendor Name Redaction (if applicable)

Technology Details *(this includes database, operating system, development code, and any other information that would identify an area of weakness or an attack vector)*

 Product Name
 Associated Technology
 Other

Other Description: _____

MEMORANDUM

TO: Fiscal Review Committee

DATE: March 14, 2019

SUBJECT: Contract with FEI.com

The Department of Mental Health and Substance Abuse Services (TDMHSAS) respectfully requests permission to enter into a contract with FEI.com on a non-competitive basis to provide system enhancement; user support and training; system support, maintenance and hosting for the Tennessee Web-based Information Technology System (TN-WITS). The proposed term of this contract is five years (July 1, 2019 – June 30, 2024), with a maximum liability estimated at six million dollars (\$6,000,000.00).

Since 2005, TDMHSAS has successfully used the TN-WITS system to meet federal data collection and reporting requirements. In 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 service providers and the State to track services and the individuals who receive services. The TN-WITS system collects and manages a wide range of data on provider agencies, their programs and staff, their clients, episodes of care, and programmatic services. It also provides TDMHSAS 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.

Department believes continued utilization of the web-based system developed by FEI.com is a cost effective option because the State benefits from lower development and enhancement costs by having access to other states' system modules as they become available. Vendor has current contracts with approximately 35 state, local and federal agencies throughout the country, in addition to entities abroad. TDMHSAS has 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 rather than starting over and potentially having to replace the existing system with a new one.

Converting to a web-based system that could accommodate programmatic functions of our services was initially recommended to the State by the federal Substance Abuse and Mental Health Services Administration (SAMHSA). The web-based application designed by FEI.com is a federally-approved, Meaningful Use Stage 1 Certified Electronic Health Record (EHR) system that meets the reporting requirements set forth by SAMHSA. To aide with the cost of this service, SAMHSA has previously provided technical assistance funds to the State for system enhancement 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:	Quinn Simpson	*Contact Phone:	615-253-7654		
*Presenter's name(s):	Gene Wood				
Edison Contract Number (if applicable)		RFS Number (if applicable)			
*Original or Proposed Contract Begin Date:	July 1, 2019	*Current or Proposed End Date:	June 30, 2024		
Current Request Amendment Number: (if applicable)	n/a				
Proposed Amendment Effective Date: (if applicable)	n/a				
*Department Submitting:	Mental Health and Substance Abuse Services				
*Division:	Substance Abuse Services				
*Date Submitted:	March 15, 2019				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	FEi.com				
*Current or Proposed Maximum Liability:	\$6,000,000.00				
*Estimated Total Spend for Commodities:	n/a				
*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY:2020	FY:2021	FY:2022	FY:2023	FY:2024	
\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000	\$1,200,000	
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)					
FY:2015	FY:2016	FY:2017	FY:2018	FY:2019	
\$482,300.00	\$333,000.00	\$461,400.50	\$366,788.00	\$472,713.69	
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			n/a		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			n/a		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			n/a		
*Contract Funding Source/Amount:					
State:	\$2,000,000	Federal:	\$4,000,000		
<i>Interdepartmental:</i>		<i>Other:</i>			
If "other" please define:					
If "interdepartmental" please define:					
Dates of All Previous Amendments			Brief Description of Actions in Previous		

Supplemental Documentation Required for
Fiscal Review Committee

or Revisions: <i>(if applicable)</i>	Amendments or Revisions: <i>(if applicable)</i>
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?	n/a
*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 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. Department has a significant investment in this system.

MHSAS - BUDGET, CONTRACTS, AND MONITORING SYSTEM (BCMS)

3/13/2019

PAYMENTS

FEI Inc.

Date of Service from: 7/1/2014 through 6/30/2015 Payment Status: Paid

Contract No.	Program Code & Description	CFDA	Voucher Number	Date of Service	Date Approved	Status	Payment Amount
AGENCY: FEI Inc.							
42625	310100 Beer Tax TNWITS		50937	01/31/15	c 11/17/15	Paid	\$5,813.00
42625	310100 Beer Tax TNWITS		52550	03/31/15	c 11/17/15	Paid	\$18,454.00
42625	310100 Beer Tax TNWITS		52845	04/30/15	c 11/17/15	Paid	\$25,000.00
42625	310100 Beer Tax TNWITS		54563	05/31/15	c 11/17/15	Paid	\$24,333.00
							<u>\$73,600.00</u>
42625	310202 TN Recovery Court		54563	05/31/15	c 11/17/15	Paid	\$25,000.00
							<u>\$25,000.00</u>
42625	320445 TN WITS Data Collection (State)		47724	08/31/14	c 11/17/15	Paid	\$5,813.00
42625	320445 TN WITS Data Collection (State)		48023	10/31/14	c 11/17/15	Paid	\$25,000.00
42625	320445 TN WITS Data Collection (State)		48678	11/30/14	c 11/17/15	Paid	\$25,000.00
42625	320445 TN WITS Data Collection (State)		50151	12/31/14	c 11/17/15	Paid	\$25,000.00
42625	320445 TN WITS Data Collection (State)		50937	01/31/15	c 11/17/15	Paid	\$19,187.00
							<u>\$100,000.00</u>
42625	340120 TN WITS Data Collection SOMMS		45972	07/31/14	c 11/17/15	Paid	\$25,000.00
42625	340120 TN WITS Data Collection SOMMS		47087	08/31/14	c 11/17/15	Paid	\$26,487.00
42625	340120 TN WITS Data Collection SOMMS		47725	09/30/14	c 11/17/15	Paid	\$25,000.00
							<u>\$76,487.00</u>
42625	341015 Partnerships for Success SFY15	93.243	54563	05/31/15	c 11/17/15	Paid	\$20,000.00
42625	341015 Partnerships for Success SFY15	93.243	54564	06/30/15	c 11/17/15	Paid	\$124,000.00
							<u>\$144,000.00</u>
42625	341040 Rx Drug PFS SFY15	93.243	52549	02/28/15	c 11/17/15	Paid	\$9,500.00
							<u>\$9,500.00</u>
42625	341332 Treatment and Recovery for Youth (TRY) FY2	93.243	52549	02/28/15	c 11/17/15	Paid	\$11,000.00
							<u>\$11,000.00</u>
42625	341410_SFY2015 Rural Drug Court (FEI contract)	16.585	52550	03/31/15	c 11/17/15	Paid	\$4,000.00
42625	341410_SFY2015 Rural Drug Court (FEI contract)	16.585	54563	05/31/15	c 11/17/15	Paid	\$2,667.00
42625	341410_SFY2015 Rural Drug Court (FEI contract)	16.585	54564	06/30/15	c 11/17/15	Paid	\$12,333.00
							<u>\$19,000.00</u>
42625	341421 Knoxville Early Diversion Program (KEDP) SF	93.243	52549	02/28/15	c 11/17/15	Paid	\$4,500.00

"c" preceding the Approved Date denotes the date the payment was created (Approved Date is N/A; payments from other systems such as TnWITS/BHSNT).

MHSAS - BUDGET, CONTRACTS, AND MONITORING SYSTEM (BCMS)

PAYMENTS

3/13/2019

FEL Inc.

Date of Service from: 7/1/2014 through 6/30/2015 Payment Status: Paid

Contract No.	Program Code & Description	CFDA	Voucher Number	Date of Service	Date Approved	Status	Payment Amount
AGENCY: FEL Inc.							
42625	341421 Knoxville Early Diversion Program (KEDP) SF	93.243	54564	06/30/15	c 11/17/15	Paid	\$12,667.00
							\$17,167.00
42625	460340 TN CABHI SFY15 (SA)	93.243	52550	03/31/15	c 11/17/15	Paid	\$6,546.00
							\$6,546.00
							\$482,300.00
							\$482,300.00

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MHSAS - BUDGET, CONTRACTS, AND MONITORING SYSTEM (BCMS)

3/13/2019

PAYMENTS

FEI Inc.

Date of Service from: 7/1/2015 through 6/30/2016

Payment Status: Paid

Contract No.	Program Code & Description	CFDA	Voucher Number	Date of Service	Date Approved	Status	Payment Amount
AGENCY: FEI Inc.							
42625	310100 Beer Tax TNWITS		56790	08/31/15	c 01/12/16	Paid	\$12,143.00
42625	310100 Beer Tax TNWITS		57557	09/30/15	c 12/10/15	Paid	\$26,250.00
42625	310100 Beer Tax TNWITS		62553	03/31/16	c 04/01/16	Paid	\$31,250.00
42625	310100 Beer Tax TNWITS		63415	04/30/16	c 05/24/16	Paid	\$3,957.00
							\$73,600.00
42625	310202 TN Recovery Court		64695	06/30/16	07/07/16	Paid	\$16,800.00
							\$16,800.00
42625	320445 TN WITS Data Collection (State)		58306	10/31/15	c 11/30/15	Paid	\$26,250.00
42625	320445 TN WITS Data Collection (State)		59005	11/30/15	c 12/16/15	Paid	\$10,863.00
42625	320445 TN WITS Data Collection (State)		60033	12/31/15	c 01/04/16	Paid	\$26,250.00
42625	320445 TN WITS Data Collection (State)		60855	01/31/16	c 02/01/16	Paid	\$26,250.00
42625	320445 TN WITS Data Collection (State)		61719	02/29/16	c 03/29/16	Paid	\$10,387.00
							\$100,000.00
42625	340120 TN WITS Data Collection SOMMS		61720	02/29/16	c 03/29/16	Paid	\$15,863.00
42625	340120 TN WITS Data Collection SOMMS		63414	04/30/16	c 05/24/16	Paid	\$29,293.00
42625	340120 TN WITS Data Collection SOMMS		64158	05/31/16	c 06/21/16	Paid	\$26,250.00
42625	340120 TN WITS Data Collection SOMMS		64696	06/30/16	07/07/16	Paid	\$5,081.00
							\$76,487.00
42625	341041 Rx Drug PFS SFY16 (BCMS GFY15)	93.243	55767	07/31/15	c 01/12/16	Paid	\$12,957.00
42625	341041 Rx Drug PFS SFY16 (BCMS GFY15)	93.243	56790	08/31/15	c 01/12/16	Paid	\$12,957.00
							\$25,914.00
42625	341042 Rx Drug PFS GFY16	93.243	64871	06/30/16	07/08/16	Paid	\$4,369.00
							\$4,369.00
42625	341333 Treatment and Recovery for Youth (TRY) FY2	93.243	55767	07/31/15	c 01/12/16	Paid	\$9,656.00
42625	341422 Knoxville Early Diversion Program (KEDP) SF	93.243	55767	07/31/15	c 01/12/16	Paid	\$9,656.00
							\$3,637.00
42625	341451 Transition Recovery Court - Morgan Cty SFY	93.243	56790	08/31/15	c 01/12/16	Paid	\$7,150.00
							\$7,150.00

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MHSAS - BUDGET, CONTRACTS, AND MONITORING SYSTEM (BCMS)

PAYMENTS

3/13/2019

FEL Inc.

Date of Service from: 7/1/2015 through 6/30/2016 Payment Status: Paid

Contract No.	Program Code & Description	CFDA	Voucher Number	Date of Service	Date Approved	Status	Payment Amount
AGENCY: FEL Inc.							
42625	460344 TN CABHI GFY16 (SA)	93.243	59003	11/30/15	c 12/16/15	Paid	\$7,343.00
42625	460345 TN CABHI GFY16 (MH)	93.243	59004	11/30/15	c 12/16/15	Paid	\$8,044.00
							\$8,044.00
							\$333,000.00
							\$333,000.00

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MHSAS - BUDGET, CONTRACTS, AND MONITORING SYSTEM (BCMS)

3/13/2019

PAYMENTS

FEI Inc.

Date of Service from: 7/1/2016 through 6/30/2017

Payment Status: Paid

Contract No.	Program Code & Description	CFDA	Voucher Number	Date of Service	Date Approved	Status	Payment Amount
AGENCY: FEI Inc.							
42625	310100 Beer Tax TNWITS		65762	07/28/16	08/22/16	Paid	\$475.50
42625	310100 Beer Tax TNWITS		66714	08/29/16	09/28/16	Paid	\$2,839.50
42625	310100 Beer Tax TNWITS		68731	10/31/16	12/07/16	Paid	\$9,272.50
42625	310100 Beer Tax TNWITS		69302	11/30/16	12/28/16	Paid	\$27,562.50
42625	310100 Beer Tax TNWITS		70214	12/31/16	02/01/17	Paid	\$27,562.50
42625	310100 Beer Tax TNWITS		71024	01/31/17	02/28/17	Paid	\$5,887.50
							\$73,600.00
42625	320445 TN WITS Data Collection (State)		73579	04/30/17	06/01/17	Paid	\$41,212.50
42625	320445 TN WITS Data Collection (State)		74407	05/31/17	06/29/17	Paid	\$58,787.50
							\$100,000.00
42625	340120 TN WITS Data Collection SOMMS		71025	01/31/17	02/28/17	Paid	\$21,675.00
42625	340120 TN WITS Data Collection SOMMS		72693	03/31/17	04/27/17	Paid	\$35,562.50
42625	340120 TN WITS Data Collection SOMMS		74406	05/31/17	06/29/17	Paid	\$127.50
							\$57,365.00
42625	341042 Rx Drug PFS GFY16	93.243	65760	07/30/16	08/22/16	Paid	\$5,131.00
							\$5,131.00
42625	341334 Treatment and Recovery for Youth (TRY) GFY	93.243	65759	07/31/16	08/22/16	Paid	\$16,956.00
42625	341334 Treatment and Recovery for Youth (TRY) GFY	93.243	66712	08/31/16	09/28/16	Paid	\$9,000.00
							\$25,956.00
42625	341336 Treatment and Recovery for Youth (TRY) GFY	93.243	71883	02/28/17	03/30/17	Paid	\$8,100.00
42625	341336 Treatment and Recovery for Youth (TRY) GFY	93.243	74408	05/31/17	06/29/17	Paid	\$25,717.50
42625	341336 Treatment and Recovery for Youth (TRY) GFY	93.243	74800	06/30/17	07/10/17	Paid	\$14,782.50
							\$48,600.00
42625	341423 Knoxville Early Diversion Program (KEDP) G	93.243	66713	08/30/16	09/28/16	Paid	\$24,723.00
							\$24,723.00
42625	341445 TN Vets Court Initiative GFY17	16.585	71884	02/28/17	03/30/17	Paid	\$19,462.50
42625	341445 TN Vets Court Initiative GFY17	16.585	74801	06/30/17	07/10/17	Paid	\$12,780.00
							\$32,242.50
42625	341452 Transition Recovery Court - Morgan Cty GFY	93.243	65761	07/29/16	08/22/16	Paid	\$5,000.00

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MHSAS - BUDGET, CONTRACTS, AND MONITORING SYSTEM (BCMS)

PAYMENTS

3/13/2019

FEL Inc.

Date of Service from: 7/1/2016 through 6/30/2017

Payment Status: Paid

Contract No.	Program Code & Description	CFDA	Voucher Number	Date of Service	Date Approved	Status	Payment Amount
AGENCY: FEL Inc.							
42625	341452 Transition Recovery Court - Morgan Cty GFY	93.243	67809	09/30/16	11/07/16	Paid	\$70,493.00
42625	460346 TN CABHI GFY17 (SA)	93.243	68729	10/31/16	12/07/16	Paid	\$8,728.00
42625	460347 TN CABHI GFY17 (MH)	93.243	68730	10/31/16	12/07/16	Paid	\$9,562.00
							\$9,562.00
							\$461,400.50
							\$461,400.50

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MHSAS - BUDGET, CONTRACTS, AND MONITORING SYSTEM (BCMS)

3/13/2019

PAYMENTS

FEI Inc.

Date of Service from: 7/1/2017 through 6/30/2018

Payment Status: Paid

Contract No.	Program Code & Description	CFDA	Voucher Number	Date of Service	Date Approved	Status	Payment Amount
AGENCY: FEI Inc.							
42625	310100 Beer Tax TNWITS		78079	09/30/17	11/01/17	Paid	\$28,940.67
42625	310100 Beer Tax TNWITS		80231	11/30/17	01/09/18	Paid	\$28,940.67
42625	310100 Beer Tax TNWITS		81544	12/31/17	02/13/18	Paid	\$15,718.66
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42625	320445 TN WITS Data Collection (State)		85878	05/31/18	06/25/18	Paid	\$73,600.00
42625	320445 TN WITS Data Collection (State)		86287	06/30/18	07/06/18	Paid	\$28,940.67
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42625	340120 TN WITS Data Collection SOMMS		76172	07/31/17	09/01/17	Paid	\$57,881.30
42625	340120 TN WITS Data Collection SOMMS		79045	10/30/17	12/04/17	Paid	\$35,969.17
42625	340120 TN WITS Data Collection SOMMS		n/a	10/31/17	12/04/17	Paid	\$28,940.67
42625	340120 TN WITS Data Collection SOMMS		81543	12/31/17	02/13/18	Paid	\$0.00
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42625	341043 Rx Drug PFS GFY17	93.243	76167	07/31/17	09/01/17	Paid	\$11,577.16
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42625	341044 Rx Drug PFS GFY18	93.243	81545	12/31/17	02/13/18	Paid	\$76,487.00
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42625	341060 Strategic Prevention Framework (SPF) Rx G	93.243	77019	08/31/17	09/29/17	Paid	\$9,714.00
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42625	341445 TN Vets Court Initiative GFY17	16.585	76166	07/31/17	09/01/17	Paid	\$1,644.85
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42625	341501 Opioid STR Community Outreach	93.788	82408	01/31/18	03/12/18	Paid	\$28,940.67
42625	341501 Opioid STR Community Outreach	93.788	82409	02/28/18	03/12/18	Paid	\$28,940.67
42625	341501 Opioid STR Community Outreach	93.788	83837	03/31/18	04/24/18	Paid	\$28,940.67
42625	341501 Opioid STR Community Outreach	93.788	84752	04/30/18	05/17/18	Paid	\$28,940.67
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							\$115,762.68
							\$366,788.00
							\$366,788.00

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MHSAS - BUDGET, CONTRACTS, AND MONITORING SYSTEM (BCMS)

3/13/2019

PAYMENTS

FEI Inc.

Date of Service from: 7/1/2018 through 6/30/2019

Payment Status: Paid

Contract No.	Program Code & Description	CFDA	Voucher Number	Date of Service	Date Approved	Status	Payment Amount
AGENCY: FEI Inc.							
42625	310100 Beer Tax TNWITS		Blank	09/29/18	c 11/06/18	Paid	\$0.00
42625	310100 Beer Tax TNWITS		90504	09/30/18	11/06/18	Paid	\$40,387.67
42625	310100 Beer Tax TNWITS		91361	10/31/18	12/05/18	Paid	\$30,387.67
42625	310100 Beer Tax TNWITS		94681	01/30/19	03/08/19	Paid	\$2,824.66
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							\$73,600.00
42625	340120 TN WITS Data Collection SOMMS		92596	11/30/18	01/10/19	Paid	\$30,387.67
42625	340120 TN WITS Data Collection SOMMS		93452	12/30/18	02/05/19	Paid	\$30,387.67
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42625	341044 Rx Drug PFS GFY18	93.243	88384	07/31/18	09/11/18	Paid	\$60,775.34
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							\$8,069.15
42625	341061 Strategic Prevention Framework (SPF) Rx G	93.243	88387	07/28/18	09/11/18	Paid	\$7,318.52
42625	341061 Strategic Prevention Framework (SPF) Rx G	93.243	89342	08/31/18	10/05/18	Paid	\$1,148.48
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42625	341461 Frontline for Recovery GFY18	93.243	88388	07/27/18	09/11/18	Paid	\$8,467.00
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							\$10,000.00
42625	341464 Evaluation (Frontline for Recovery) GFY19	93.243	Blank	09/30/18	c 11/06/18	Paid	\$0.00
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							\$0.00
42625	341470 TN Vets Court Initiative 2 GFY18	16.585	88385	07/30/18	09/11/18	Paid	\$2,500.00
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42625	341474 Evaluation (TN Vets Court 2) GFY19	16.585	94682	01/29/19	03/08/19	Paid	\$276.20
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							\$276.20
42625	341514 Opioid STR Community Outreach 19	93.788	89344	08/31/18	10/05/18	Paid	\$29,239.19
42625	341514 Opioid STR Community Outreach 19	93.788	94680	01/31/19	03/08/19	Paid	\$27,286.81
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42625	341551 Evaluation (Cherished HEARTS) GFY18	16.825	88386	07/29/18	09/11/18	Paid	\$56,526.00
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							\$2,500.00
42625	341601 TECBOT - TN Treatment GFY18	93.243	89343	09/29/18	10/05/18	Paid	\$100,000.00
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							\$100,000.00

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MHSAS - BUDGET, CONTRACTS, AND MONITORING SYSTEM (BCMS)

PAYMENTS

3/13/2019

FEL Inc.

Date of Service from: 7/1/2018 through 6/30/2019 Payment Status: Paid

Contract No.	Program Code & Description	CFDA	Voucher Number	Date of Service	Date Approved	Status	Payment Amount
42625	342001 TN State Opioid Response (SOR) - Hub GFY	93.788	93451	12/31/18	02/05/19	Paid	\$150,000.00
							\$150,000.00
							\$472,713.69
							<u>\$472,713.69</u>

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TO: Director of Sourcing
Staff Attorney - Sourcing

FROM: Nancy Ternes, Sourcing Account Specialist *NT*

DATE: March 1, 2019

SUBJECT: Recommendation of Sole Source Approval
Contractor: FEI.com, Inc.
Tracking #: 33901 / cy19-12804
Term: 60-months
FRC: Yes
COT: Yes

The Tennessee Department of Mental Health Substance Abuse Services (TDMHSAS) is requesting a 60-month sole source approval to contract with, FEI.com, Inc. This contract is to upgrade and maintain the Tennessee Web-based Information Technology System (TN-WITS). Since the Tennessee Web-based Information Technology System was customized for Tennessee and it is already in place, building upon it rather than paying to have a new system developed and implemented is a cost savings to the State.

Sourcing Specialist recommends the approval of this request.

Director of Sourcing

Date

Staff Attorney - Sourcing

Date

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.

APPROVED	APPROVED
CHIEF PROCUREMENT OFFICER DATE	COMPTROLLER OF THE TREASURY DATE

Request Tracking #	
1. Contracting Agency	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	quinn.simpson@tn.gov 615-253-7654
4. Brief Goods or Services Caption	System Enhancement, User Support, 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, maintenance and hosting, and system enhancement if requested.
6. Proposed Contractor	FEI.com, Inc.
7. Name & Address of the Contractor's principal owner(s) – NOT required for a TN state education institution	Jiao Z. Gu, President & CEO, FEISystems.com 9755 Patuxent Woods Drive, Suite 300 Columbia, Maryland 21046
8. Proposed Contract Period – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	60 months
9. Strategic Technology Solutions (“STS”) Pre-Approval Endorsement Request – information technology (N/A to THDA)	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached
10. eHealth Pre-Approval Endorsement Request – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. Human Resources Pre-Approval Endorsement Request – contracts with an individual, state employee training, or services related to the employment of current or prospective state employees	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached

Request Tracking #	
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.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
13. Maximum Contract Cost – with ALL options to extend exercised	\$ 6,000,000.00 (estimate)
14. Was there an initial government estimate? If so, what amount?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, \$
15. Cost Determination Used- How did agency arrive at the estimate of expected costs?	Estimates based on current and planned functionality of TN-WITS, the level of hosting necessary to accommodate the amount of data usage and number of users within the system. Estimates also based on the scope of functionality and configuration modifications necessary to accommodate our business needs.
16. Explanation of Fair and Reasonable Price- Explain how agency determined that price is fair and reasonable	Labor rates based on Government Services Administration (GSA) contractor rates (IT Schedule 70 Labor Category for Sr Information Technology Specialist). Other costs are in line with previous years and comparable to maintenance and support costs for similar systems.
17. Documentation of Discussions with Contractor- How did agency document discussions with Contractor? Attach documentation as applicable.	Discussion occurred via telephone/e-mail
18. Explanation of Need for or requirement placed on the State to acquire the goods or services	In 2008, TDMHSAS received approval to expand TN-WITS to improve the function, operation and efficiency of programs offered by the Division 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 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, TN 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 state and federal grantors; and gather administrative client data, financial data, provider profile data and indirect service data. To continue meeting federal NOMS and TEDS reporting requirements, we seek these services for development/ enhancements; training; system maintenance, hosting and support.

Request Tracking #	
19. Proposed contract impact on current State operations	The TN-WITS system is already in place, so there will be no impact on current State operations.
20. Justification – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	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 TN 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 to pay for the total amount of development or enhancement. We have successfully used the TN-WITS system since 2005 and the infrastructure is in place. To keep the current vendor through the sole source process is in the best interest of the state rather than starting over and having to replace the existing system with a new one.
For No Cost and Revenue Contracts Only	
21. What costs will the State incur as a result of this contract? If any, please explain.	
22. What is the total estimated revenue that the State would receive as a result of this contract?	
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	<input type="checkbox"/> NO <input type="checkbox"/> YES
24. Summary of State responsibilities under proposed contract	
For Sole Source and Proprietary Procurements Only	

Request Tracking #	
<p>25. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.</p>	<p>Contractor, FEI.com, incorporated in 1999, has provided information technology services to the U.S. Center for Substance Abuse Treatment (CSAT), U.S. Center for Substance Abuse Prevention (CSAP), U.S. 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 TN in developing web-based systems. In response to CSAT's requirements of a voucher management system that tracks treatment and prevention services, FEI.com was the original developer of the WITS system and became the primary federally-approved contractor for states and a recognized leader in web-based systems. FEI.com has successfully provided services for TN 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>
<p>26. 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>	<p><input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, Method: Sole Source Name/Address: FEI Systems.com 9755 Patuxent Woods Drive, Suite 300 Columbia, Maryland 21046</p>
<p>27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives</p>	<p>The success of the TN-WITS system and 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 relationship with current Contractor.</p>
Signature Required for all Special Contract Requests	
<p>Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)</p>	
 	
Signature:	Date:
<p>MARIE WILLIAMS, COMMISSIONER</p>	



STS Pre-Approval Endorsement Request E-Mail Transmittal

Received by STS on Monday, January 28, 2019

TO : STS Contracts
Department of Finance & Administration
E-mail : it.abc@tn.gov

FROM : Quinn Simpson
E-mail : quinn.simpson@tn.gov

DATE : 1/25/19

RE : Request for STS Pre-Approval Endorsement

Applicable RFS

State Security Confidential Information Applicability

Under Tenn. Code Ann. §10-7-504(i) vendor identity or a description of the goods or services provided by the vendor shall be confidential.

- Applicable
 Not Applicable

Additional language is attached and endorsement is contingent upon inclusion of this additional language:

- Applicable
 Not Applicable

STS Endorsement Signature & Date:

Stephanie Dedmon,
CIO (WMH)

Digitally signed by Stephanie Dedmon, CIO (WMH)
DN: cn=Stephanie Dedmon, CIO (WMH), o=Tennessee
Department of Finance and Admin, ou=Strategic
Technology Solutions, email=william.hafley@tn.gov, c=US
Date: 2019.02.08 15:03:53 -06'00'

Chief Information Officer

NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.

Strategic Technology Solutions (STS) pre-approval endorsement is required pursuant to procurement regulations pertaining to contracts with information technology as a component of the scope of service. This request seeks to ensure that STS is aware of and has an opportunity to review the procurement detailed below and in the attached document(s). This requirement applies to any procurement method regardless of dollar amount.

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

Applicable RFS #	
Contracting Agency	Department of Mental Health and Substance Abuse Services
Agency Contact (name, phone, e-mail)	Quinn Simpson 615-253-7654 Quinn.simpson@tn.gov
<p>Attachments Supporting Request (mark all applicable)</p> <p>Note: The complete draft procurement document and the applicable documents listed below must accompany this request when submitted to STS. Special Contract Requests and Amendment Requests without Agency Head signature are acceptable. STS is aware that these documents will not have CPO signature when submitted with this request.</p> <p> <input type="checkbox"/> Solicitation Document <input checked="" type="checkbox"/> Special Contract Request <input type="checkbox"/> Amendment Request <input checked="" type="checkbox"/> Proposed Contract/Grant or Amendment <input type="checkbox"/> Original Contract/Grant and Previous Amendments (if any) </p>	
<p>Information Systems Plan (ISP) Project Applicability</p> <p>To avoid delay of STS pre-approval, the applicability of an ISP project to the procurement must be confirmed with agency IT staff prior to submitting this request to STS. If necessary, agency IT staff should contact STS Planning with questions concerning the need for an ISP project.</p> <p>IT Director/Staff Name Confirming (required): Richard Zhu</p> <p> <input checked="" type="checkbox"/> Applicable – Approved ISP Project# CI97O101 <input type="checkbox"/> Not Applicable </p>	
<p>Subject Information Technology Service Description</p> <p>Provide a brief summary of the information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, <i>etc.</i> As applicable, identify the contract or solicitation sections related to the IT services.</p> <p>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 and requires no STS resources for configuration and maintenance. CPO template language for software contracts and security has been incorporated into this 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.</p>	

Attachment: STS Endorsement Conditions

This STS endorsement is contingent upon modification of the procurement documents as described below.

STS grants this endorsement with the understanding that the Department will identify the required Recovery Point Objective (RPO) and Recovery Time Objective (RTO) values in Sections E.6.d(1)i and E.6.d(1)ii respectively.

**CONTRACT**

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

Begin Date July 1, 2019	End Date June 30, 2024	Agency Tracking #	Edison Record ID		
Contractor Legal Entity Name FEI.com, Inc.			Edison Vendor ID 38065		
Goods or Services Caption (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).					
Contractor <input checked="" type="checkbox"/> Contractor		CFDA #			
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2020	\$400,000.00	\$800,000.00			\$1,200,000.00
2021	\$400,000.00	\$800,000.00			\$1,200,000.00
2022	\$400,000.00	\$800,000.00			\$1,200,000.00
2023	\$400,000.00	\$800,000.00			\$1,200,000.00
2024	\$400,000.00	\$800,000.00			\$1,200,000.00
TOTAL:	\$2,000,000.00	\$4,000,000.00			\$6,000,000.00
Contractor Ownership Characteristics:					
<input type="checkbox"/> Minority Business Enterprise (MBE): <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American					
<input type="checkbox"/> Woman Business Enterprise (WBE)					
<input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE)					
<input type="checkbox"/> Disabled Owned Business (DSBE)					
<input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.					
<input type="checkbox"/> Government <input type="checkbox"/> Non-Minority/Disadvantaged <input type="checkbox"/> Other:					
Selection Method & Process Summary (mark the correct response to confirm the associated summary)					
<input type="checkbox"/> Competitive Selection					
<input checked="" type="checkbox"/> Other Non-competitive negotiation.					
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.					
Speed Chart (optional)			Account Code (optional)		

**CONTRACT**

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

Begin Date July 1, 2019	End Date June 30, 2024	Agency Tracking #	Edison Record ID		
Contractor Legal Entity Name FEI.com, Inc.			Edison Vendor ID 38065		
Goods or Services Caption (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).					
Contractor <input checked="" type="checkbox"/> Contractor		CFDA #			
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2020	\$400,000.00	\$800,000.00			\$1,200,000.00
2021	\$400,000.00	\$800,000.00			\$1,200,000.00
2022	\$400,000.00	\$800,000.00			\$1,200,000.00
2023	\$400,000.00	\$800,000.00			\$1,200,000.00
2024	\$400,000.00	\$800,000.00			\$1,200,000.00
TOTAL:	\$2,000,000.00	\$4,000,000.00			\$6,000,000.00
Contractor Ownership Characteristics:					
<input type="checkbox"/> Minority Business Enterprise (MBE): <input type="checkbox"/> African American <input type="checkbox"/> Asian American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American					
<input type="checkbox"/> Woman Business Enterprise (WBE)					
<input type="checkbox"/> Tennessee Service Disabled Veteran Enterprise (SDVBE)					
<input type="checkbox"/> Disabled Owned Business (DSBE)					
<input type="checkbox"/> Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.					
<input type="checkbox"/> Government <input type="checkbox"/> Non-Minority/Disadvantaged <input type="checkbox"/> Other:					
Selection Method & Process Summary (mark the correct response to confirm the associated summary)					
<input type="checkbox"/> Competitive Selection					
<input checked="" type="checkbox"/> Other Non-competitive negotiation.					
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.					
Speed Chart (optional)			Account Code (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 ("State") and FEI.com, Inc. ("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." State and Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

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

A. SCOPE:

- A.1. The Contractor shall provide all goods or services and deliverables as required, described, and detailed below 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 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. 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
Urgent: A problem that severely impacts	The State will receive immediate e-mail

<p>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.</p>	<p>acknowledgement following report of the issue, and an initial response from staff within 30 minutes of submitting a ticket to the Help Desk. The Support Team will make reasonable efforts to provide a fix or procedural workaround within two (2) hours once the issue has been replicated and confirmed as a problem by The Contractor.</p>
<p>High: 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.</p>	<p>The State will receive immediate e-mail acknowledgement following report of the issue, and an initial response from staff within 30 minutes of submitting a ticket to the Help Desk. The Support Team will make reasonable efforts to provide a fix or procedural workaround within four (4) hours once the issue has been replicated and confirmed as a problem by the Contractor.</p>
<p>Medium: 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.</p>	<p>Upon submitting a ticket to Help Desk, the State will receive immediate e-mail acknowledgement. A member of the Support Team will respond to the State within 2 business days of submitting a ticket to the Help Desk.</p>
<p>Low: 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.</p>	<p>The State will be contacted by a member of the Support Team within 2 business days 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.</p>

- 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 affecting 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.5. 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.6. 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.7. 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.8. Business Associate Agreement. If required under relevant law or regulation regarding privacy, Contractor shall enter into a Business Associate Agreement (BAA) with the State (**Attachment Two**) or provide a copy of Business Associate Agreement previously entered into by the parties.
- A.9. Warranty. Contractor represents and warrants that the term of the warranty (“Warranty Period”) shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a “Defect” and shall be considered “Defective.” If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor’s industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State’s rights under this Section shall not prejudice the State’s rights to seek any other remedies available under this Contract or applicable law.

- A.10. Inspection and Acceptance. The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

B. TERM OF CONTRACT:

This Contract shall be effective for the period beginning on July 1, 2019 (“Effective Date”) and ending on June 30, 2024, (“Term”). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed **Written Dollar Amount (\$Number)** (“Maximum Liability”). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
- b. The Contractor shall be compensated based upon the following payment methodology:

Goods or Services Description	Amount (per compensable increment)
Milestone	\$ Number
Unit	\$ Number each
Job Title /Activity	\$ Number per Hour /Day /etc.
Use & Repeat Rows Above as Necessary	

- c. All design, development and implementation of modules or other enhancements shall only be conducted in accordance with Section A.3.
- d. 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 time, travel expenses, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

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, on Contractor's letterhead, shall clearly and accurately detail all of the following 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, Division of 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;
 - (8) Contractor contact for invoice questions (name, phone, or email);
 - (9) Contractor remittance address;
 - (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
 - (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;

- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that 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 other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services 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 that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

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 that 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, properly completed documentation.

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

- D.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. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Taryn Sloss, Assistant Commissioner
 Division of Substance Abuse Services
 Department of Mental Health and Substance Abuse Services
 Andrew Jackson Building, 5th Floor
 500 Deaderick Street
 Nashville, TN 37243
 taryn.sloss@tn.gov
 Telephone: 615-532-7793

The Contractor:

Jiao Z. Gu, President & CEO
 FEI.COM, INC.
 9755 Patuxent Woods Dr., Ste 300
 Columbia, Maryland 21046
Jiao.gu@feisystems.com
 Telephone: 443-270-5101

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. 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 materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract

and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation 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 under 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 (6) 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 (6) months has been, an employee of the State of Tennessee.

D.9. 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, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 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 agrees 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 One, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor 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 Term, 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 under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from 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. Contractor's 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 Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) 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.12. 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.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, 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 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.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party 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 are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended,

PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

- D.19. 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' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 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 under Tenn. Code Ann. §§ 8-35-101, *et seq.*, 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 Term.

- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. 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, disqualified, or presently fall under any of the prohibitions of sections a-d.

- D.24. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor’s representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor’s performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, 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, whether written or oral.
- D.28. 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 of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachments One and Two;
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention ("SIR") over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the

Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as "ISO") "Noncontributory—Other Insurance Condition" endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The Parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses. The State reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability ("CGL") Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and

shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a state or local government; or
 - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than ten million dollars (\$10,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.
- 2) Such coverage shall include data breach response expenses, in an amount not less than ten million dollars (\$10,000,000) and payable whether incurred by the

State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

D.34. Equal Opportunity. The Contractor agrees as follows:

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
 - (1) Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising;
 - (2) Layoff or termination;
 - (3) Rates of pay or other forms of compensation; and
 - (4) Selection for training, including apprenticeship.

The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

- b. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. If the State approves any subcontract, the subcontract shall include paragraphs (a) and (b) above.
- d. In addition, to the extent applicable the Contractor agrees to comply with 41 C.F. R. § 60-1.4, as that section is amended from time to time during the term.

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, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. 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 that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, 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. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

- E.3. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- E.4. Software License Warranty. Contractor grants a license to the State to use all software provided under this Contract in the course of the State's business and purposes.
- E.5. Software Support and Maintenance Warranty. Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.
- E.6. Contractor Hosted Services Confidential Data, Audit, and Other Requirements
- a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:
- (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
 - (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
 - (3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.
- If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

- (4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform Penetration Tests and Vulnerability Assessments on the Processing Environment.
- (5) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State
- (6) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL: <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.
- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor's and Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

Each party shall bear its own expenses incurred while conducting the information technology controls audit.

- d. **Business Continuity Requirements.** The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:
- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
 - i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: **[NUMBER OF HOURS/MINUTES]**
 - ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: **[NUMBER OF HOURS/MINUTES]**
 - (2) The Contractor shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recover Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.
- E.7. **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 use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less

ordinary wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.

E.8. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

E.9. Public Accountability. If the Contractor is subject to Tenn. Code Ann. §§ 8-4-401, *et seq.*, 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 Contractor's operation of the service program. The Contractor shall also display in a prominent place, located near the passageway through which the public enters in order to receive contract-supported services, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating the following:

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

The sign shall be of the form prescribed by the Comptroller of the Treasury. The contracting state agency shall request copies of the sign from the Comptroller of the Treasury and provide signs to contractors.

E.10. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any 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 31 U.S.C. § 1352.

E.11. Clean Air Act and Federal Water Pollution Control Act. As a condition for receipt of federal awards, the Contractor agrees to comply with the Clean Air Act, 42 U.S.C. § 7401 *et seq.* and the Federal Water Pollution Control Act, 33 U.S.C § 1251 *et seq.*, as those sections are amended from time to time during the term. Violations must be reported to the Department of Health and Human Services and the Region 4 Office of the Environmental Protection Agency.

- E.12. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.
- E.13. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within twenty-four (24) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

- E.14. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies 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. Securities and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

As defined in 2 C.F.R. § 170.315, "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 C.F.R. § 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 the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension 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.15. Drug-Free Workplace. The Contractor shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, Title 41 U.S.C. §§ 701, *et seq.*, and the regulations in Title 41 U.S.C.A. §§ 8101 through 8106.
- E.16. Code of Conduct. The Contractor shall ensure that there is a code of conduct applicable to all Contractor employees that covers, at minimum, business practices, clinical practices, and workplace interaction. Contractor employees shall conduct their practice in conformity with all applicable statutes, rules and regulations, and recognized ethical standards pertaining to Contractor's profession. Contractor shall develop procedures for reporting violations of the ethical standards, which shall be communicated to Contractor's employees, including new hires, on at least an annual basis. Contractor's code of conduct shall prohibit Contractor, its officers, directors, and employees from retaliating against any Contractor employee who reports any violations or acts or omissions that appear to be violations. Contractor's non-retaliation policy shall prescribe discipline for violating the Contractor's code of conduct. Failure to implement a code of conduct in accordance with this section and to adequately address suspected violations of the code of conduct shall entitle the State to exercise any right it has at law or in equity, including, but not limited to termination of this Contract.
- E.17. Additional Subcontracting Requirements. Contractor shall ensure in all subcontracts between it and Contractor's State approved subcontractors that each subcontract shall contain the sections of "Confidentiality of Records", "HIPAA Compliance", and "Rule 2 Compliance" (as identified by the section headings) as these may be modified from time to time. Notwithstanding any use of State approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed by its subcontractors or other providers of goods or services.
- E.18. Rule 2 Compliance. The State and the Contractor shall comply with the 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.* ("Rule 2").
- a. The Contractor warrants to the State that it is familiar with the requirements of Rule 2 and its accompanying regulations, and that it will comply with all requirements imposed by Rule 2 during the Term 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 during the Term of this Contract.
- c. The State and the Contractor will execute such documents, including but not limited to business associate agreements, as required by Rule 2 that are reasonably necessary for the State and the Contractor to comply with Rule 2. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by Rule 2 or if Rule 2 permits the State to receive such information without entering into a business associate agreement or other agreement.
- E.19. Prohibitions on Use of Federal Substance Abuse Block Grant Funds. Pursuant to federal law, Contractor shall not use any funds paid or services rendered under the federal Substance Abuse Prevention and Treatment Block Grant to supplant any other funds available for the goods or

services provided under this Contract. Contractor shall not use any federal Substance Abuse Prevention and Treatment Block Grant funds under this Contract for any of the following purposes:

- a. to provide inpatient hospital or inpatient community mental health services;
- b. to make cash payments to intended recipients of health services;
- c. to purchase or improve land; purchase, construct, or permanently improve (other than minor remodeling) any building or facility; or purchase major medical equipment;
- d. to satisfy any requirement for the expenditure of non-federal funds as a condition for the receipt of federal funds;
- e. to provide financial assistance to any entity other than a public or non-profit entity;
- f. to carry out any program of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of cleansing needles for such hypodermic injection; or
- g. to carry out any testing for the etiologic agent for acquired immune deficiency syndrome unless such testing is accompanied by the appropriate pre-test and post-test counseling.

IN WITNESS WHEREOF,

FEI.COM:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES:

MARIE WILLIAMS, COMMISSIONER

DATE

ATTACHMENT ONE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	FEI.com, Inc.
EDISON VENDOR IDENTIFICATION NUMBER:	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. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

ATTACHMENT TWO**HIPAA BUSINESS ASSOCIATE AGREEMENT
COMPLIANCE WITH PRIVACY AND SECURITY RULES**

THIS BUSINESS ASSOCIATE AGREEMENT (hereinafter "Agreement") is between **The State of Tennessee, Department of Mental Health and Substance Abuse Services** (hereinafter "Covered Entity") and **FEI.COM, INC.** (hereinafter "Business Associate"). Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

BACKGROUND

Parties acknowledges that they are subject to the Privacy and Security Rules (45 CFR Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 as amended by Public Law 111-5, Division A, Title XIII (the HITECH Act), in certain aspects of its operations.

In the course of executing Service Contracts, Business Associate may come into contact with, use, or disclose Protected Health Information ("PHI"). Said Service Contract(s) are hereby incorporated by reference and shall be taken and considered as a part of this document the same as if fully set out herein.

In accordance with the federal privacy and security regulations set forth at 45 C.F.R. Part 160 and Part 164, Subparts A, C, D and E, which require Covered Entity to have a written memorandum with each of its Business Associates, the Parties wish to establish satisfactory assurances that Business Associate will appropriately safeguard PHI and, therefore, make this Agreement.

DEFINITIONS

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103, 164.103, 164.304, 164.501 and 164.504.

- 1.1 "Breach of the Security of the [Business Associate's Information] System" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.2 "Business Associate" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.3 "Covered Entity" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.4 "Designated Record Set" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.5 "Electronic Protected Health Care Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.6 "Genetic Information" shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.7 "Health Care Operations" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.8 "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 1.9 "Information Holder" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.10 "Marketing" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.

- 1.11 "Personal information" shall have the meaning set out in its definition at T.C.A. § 47-18-2107
- 1.12 "Privacy Official" shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a)(1).
- 1.13 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A, and E.
- 1.14 "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- 1.15 "Required by Law" shall have the meaning set forth in 45 CFR § 164.512.
- 1.16 "Security Incident" shall have the meaning set out in its definition at 45 C.F.R. § 160.304.
- 1.17 "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and C.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Privacy Rule)

- 2.1 Business Associate is authorized to use PHI for the purposes of carrying out its duties under the Services Contract. In the course of carrying out these duties, including but not limited to carrying out the Covered Entity's duties under HIPAA, Business Associate shall fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule and not use or further disclose PHI other than as permitted or required by this Agreement, the Service Contracts, or as Required By Law. Business Associate is subject to requirements of the Privacy Rule as required by Public Law 111-5, Section 13404 [designated as 42 U.S.C. 17934] In case of any conflict between this Agreement and the Service Contracts, this Agreement shall govern.
- 2.2 The Health Information Technology for Economic and Clinical Health Act (HITECH) was adopted as part of the American Recovery and Reinvestment Act of 2009. HITECH and its implementing regulations impose new requirements on Business Associates with respect to privacy, security, and breach notification. Business Associate hereby acknowledges and agrees that to the extent it is functioning as a Business Associate of Covered Entity, Business Associate shall comply with HITECH. Business Associate and the Covered Entity further agree that the provisions of HIPAA and HITECH that apply to business associates and that are required to be incorporated by reference in a business associate agreement have been incorporated into this Agreement between Business Associate and Covered Entity. Should any provision not be set forth specifically, it is as if set forth in this Agreement in its entirety and is effective as of the Applicable Effective Date, and as amended.
- 2.3 Business Associate shall use appropriate administrative, physical, and technical safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement, Services Contract(s), or as Required By Law. This includes the implementation of Administrative, Physical, and Technical Safeguards to reasonably and appropriately protect the Covered Entity's PHI against any reasonably anticipated threats or hazards, utilizing the technology commercially available to the Business Associate. The Business Associate shall maintain appropriate documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, procedures, records of training and sanctions of members of its Workforce.
- 2.4 Business Associate shall require any agent, including a subcontractor, to whom it provides PHI received from, maintained, created or received by Business Associate on behalf of Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI or other confidential information, to agree, by written

contract with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

- 2.5 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- 2.6 Business Associate shall require its employees, agents, and subcontractors to promptly report, to Business Associate, immediately upon becoming aware of any use or disclosure of PHI in violation of this Agreement. Business Associate shall report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement. Business Associate will also provide additional information reasonably requested by the Covered Entity related to the breach.
- 2.7 As required by the Breach Notification Rule, Business Associate shall, and shall require its subcontractor(s) to, maintain systems to monitor and detect a Breach of Unsecured PHI, whether in paper or electronic form.
 - 2.7.1 Business Associate shall provide to Covered Entity notice of a Provisional or Actual Breach of Unsecured PHI immediately upon becoming aware of the Breach.
 - 2.7.2 Business Associate shall cooperate with Covered Entity in timely providing the appropriate and necessary information to Covered Entity.
 - 2.7.3 Covered Entity shall make the final determination whether the Breach requires notification and whether the notification shall be made by Covered Entity or Business Associate.
- 2.8 If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate shall provide access, at the request of Covered Entity, to PHI in a Designated Record Set to Covered Entity, in order to meet the requirements under 45 CFR § 164.524, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information.
- 2.9 If Business Associate receives PHI from Covered Entity in a Designated Record Set, then Business Associate shall make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to the 45 CFR § 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity, provided that Business Associate shall have at least 30 business days from Covered Entity notice to make an amendment.
- 2.10 Business Associate shall make its internal practices, books, and records including policies and procedures and PHI, relating to the use and disclosure of PHI received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.
- 2.11 Business Associate shall document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosure of PHI in accordance with 45 CFR § 164.528.
- 2.12 Business Associate shall provide Covered Entity or an Individual, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for and accounting of disclosures of PHI in accordance with 45 CFR § 164.528, provided that Business Associate shall have at least 30 business days from Covered Entity notice to provide access to, or deliver such information which

shall include, at minimum, (a) date of the disclosure; (b) name of the third party to whom the PHI was disclosed and, if known, the address of the third party; (c) brief description of the disclosed information; and (d) brief explanation of the purpose and basis for such disclosure. Business Associate shall provide an accounting of disclosures directly to an individual when required by section 13405(c) of Public Law 111-5 [designated as 42 U.S.C. 17935(c)].

- 2.13 Business Associate agrees it must limit any use, disclosure, or request for use or disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule.
- 2.13.1 Business Associate represents to Covered Entity that all its uses and disclosures of, or requests for, PHI shall be the minimum necessary in accordance with the Privacy Rule requirements.
- 2.13.2 Covered Entity may, pursuant to the Privacy Rule, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.
- 2.13.3 Business Associate acknowledges that if Business Associate is also a covered entity, as defined by the Privacy Rule, Business Associate is required, independent of Business Associate's obligations under this Memorandum, to comply with the Privacy Rule's minimum necessary requirements when making any request for PHI from Covered Entity.
- 2.14 Business Associate shall adequately and properly maintain all PHI received from, or created or received on behalf of, Covered Entity
- 2.15 If Business Associate receives a request from an Individual for a copy of the individual's PHI, and the PHI is in the sole possession of the Business Associate, Business Associate will provide the requested copies to the individual and notify the Covered Entity of such action. If Business Associate receives a request for PHI in the possession of the Covered Entity, or receives a request to exercise other individual rights as set forth in the Privacy Rule, Business Associate shall notify Covered Entity of such request and forward the request to Covered Entity. Business Associate shall then assist Covered Entity in responding to the request.
- 2.16 Business Associate shall fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Privacy Rule.

3 OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Security Rule)

- 3.1 Business Associate shall fully comply with the requirements under the Security Rule applicable to "business associates," as that term is defined in the Security Rule. In case of any conflict between this Agreement and Service Agreements, this Agreement shall govern.
- 3.2 Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the covered entity as required by the Security Rule and Public Law 111-5. This includes specifically, but is not limited to, the utilization of technology commercially available at the time to the Business Associate to protect the Covered Entity's PHI against any reasonably anticipated threats or hazards. The Business Associate understands that it has an affirmative duty to perform a regular review or assessment of security risks, conduct active risk management and supply best efforts to assure that only authorized persons and devices access its computing systems and information storage, and that only authorized transactions are allowed. The Business Associate will maintain appropriate documentation to certify its compliance with the Security Rule.

- 3.3 Business Associate shall ensure that any agent, including a subcontractor, to whom it provides electronic PHI received from or created for Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, to agree, by written contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 3.4 Business Associate shall require its employees, agents, and subcontractors to report to Business Associate within five (5) business days, any Security Incident (as that term is defined in 45 CFR § 164.304) of which it becomes aware. Business Associate shall promptly report any Security Incident of which it becomes aware to Covered Entity.
- 3.5 Business Associate shall make its internal practices, books, and records including policies and procedures relating to the security of electronic PHI received from, created by or received by Business Associate on behalf of, Covered Entity available to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the Secretary, for purposes of determining Covered Entity's or Business Associate's compliance with the Security Rule.
- 3.6 Business Associate shall fully cooperate in good faith with and to assist Covered Entity in complying with the requirements of the Security Rule.
- 3.7 Notification for the purposes of Sections 2.8 and 3.4 shall be in writing made by email/fax, certified mail or overnight parcel immediately upon becoming aware of the event, with supplemental notification by facsimile and/or telephone as soon as practicable, to:

State of Tennessee
 Department of Mental Health and Substance Abuse Services
 Division of General Counsel
 Leandra Mitchell, Special Counsel
 Email: Leandra.Mitchell@tn.gov
 Telephone: 615-532-0992

Division of Substance Abuse Services
 Taryn Sloss, Assistant Commissioner
 Email: Taryn.Sloss@tn.gov
 Telephone: 615-532-7793

- 3.8 Business Associate identifies the following key contact persons for all matters relating to this Agreement:

FEI.COM, INC.
 Jiao Z. Gu, President & CEO
 9755 Patuxent Woods Dr., Ste 300
 Columbia, Maryland 21046

Business Associate shall notify Covered Entity of any change in the key contact during the term of this Agreement in writing within ten (10) business days.

4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 4.1 Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in Service Contract(s), provided that such use or disclosure would not violate the Privacy and Security Rule, if done by Covered Entity. Business Associate's disclosure of PHI shall be subject

to the limited data set and minimum necessary requirements of Section 13405(b) of Public Law 111-5, [designated as 42 U.S.C. 13735(b)]

- 4.2 Except as otherwise limited in this Agreement, Business Associate may use PHI as required for Business Associate's proper management and administration or to carry out the legal responsibilities of the Business Associate.
- 4.3 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or provided that, if Business Associate discloses any PHI to a third party for such a purpose, Business Associate shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality, integrity, and availability of PHI and not to use or further disclose such information except as Required By Law or for the purpose for which it was disclosed, and (b) notify Business Associate of any instances in which it becomes aware in which the confidentiality, integrity, and/or availability of the PHI is breached immediately upon becoming aware.
- 4.4 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(i)(B).
- 4.5 Business Associate may use PHI to report violations of law to appropriate Federal and State Authorities consistent with 45 CFR 164.502(j)(1).
- 4.6 Business Associate shall not use or disclose PHI that is Genetic Information for underwriting purposes. Moreover, the sale, marketing or the sharing for commercial use or any purpose construed by Covered Entity as the sale, marketing or commercial use of member's personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws, is prohibited.
- 4.7 Business Associate shall enter into written agreements that are substantially similar to this Business Associate Agreements with any Subcontractor or agent which Business Associate provides access to Protected Health Information.
- 4.8 Business Associates shall implement and maintain information security policies that comply with the HIPAA Security Rule.

5. OBLIGATIONS OF COVERED ENTITY

- 5.1 Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice. Covered Entity shall notify Business Associate of any limitations in its notice that affect Business Associate's use or disclosure of PHI.
- 5.2 Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses.
- 5.3 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use of PHI.

6. PERMISSIBLE REQUESTS BY COVERED ENTITY

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy or Security Rule, if done by Covered Entity.

7. TERM AND TERMINATION

7.1 Term. This Agreement shall be effective as of the date on which it is signed by both parties and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, Section 7.3. below shall apply.

7.2 Termination for Cause.

7.2.1 This Agreement authorizes and Business Associate acknowledges and agrees Covered Entity shall have the right to immediately terminate this Agreement and Service Contracts in the event Business Associate fails to comply with, or violates a material provision of, requirements of the Privacy and/or Security Rule or this Memorandum.

7.2.2 Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

7.2.2.1 Provide a reasonable opportunity for Business Associate to cure the breach or end the violation, or

7.2.2.2 If Business Associate has breached a material term of this Agreement and cure is not possible or if Business Associate does not cure a curable breach or end the violation within a reasonable time as specified by, and at the sole discretion of, Covered Entity, Covered Entity may immediately terminate this Agreement and the Service Agreement.

7.2.2.3 If neither cure nor termination is feasible, Covered Entity shall report the violation to the Secretary of the United States Department of Health in Human Services or the Secretary's designee.

7.3 Effect of Termination.

7.3.1 Except as provided in Section 7.3.2. below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of, Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

7.3.2 In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon mutual agreement of the Parties that return or destruction of PHI is unfeasible; Business Associate shall extend the protections of this Memorandum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

8. MISCELLANEOUS

8.1 Regulatory Reference. A reference in this Agreement to a section in the Privacy and or Security Rule means the section as in effect or as amended.

8.2 Indemnity. The Business Associate shall indemnify the Covered Entity and hold it harmless for any claims, losses or other damages arising from or associated with any act or omission of Business Associate under this Agreement. This includes the costs of responding to a breach of the Agreement or the release of PHI contrary to the terms and conditions of this Agreement, the

costs of responding to a government enforcement action related to the breach, and any resultant fines, penalties, or damages paid by the Covered Entity.

- 8.3 Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191, including any amendments required by the United States Department of Health and Human Services to implement the Health Information Technology for Economic and Clinical Health and related regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended, including, but not limited to changes required by the American Recovery and Reinvestment Act of 2009, Public Law 111-5.
- 8.4 Survival. The respective rights and obligations of Business Associate under Section 7.3. of this Memorandum shall survive the termination of this Agreement.
- 8.5 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and the Business Associate to comply with the Privacy and Security Rules.
- 8.6 Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice.

COVERED ENTITY:
 State of Tennessee
 Department of Mental Health and Substance
 Abuse Services
 500 Deaderick Street
 Andrew Jackson Building
 Nashville, TN 37243

BUSINESS ASSOCIATE:
 FEI.COM, INC.
 Jiao Z. Gu, President & CEO
 9755 Patuxent Woods Dr., Ste 300
 Columbia, Maryland 21046

Division of General Counsel
 Leandra Mitchell, Special Counsel
 Email: Leandra.Mitchell@tn.gov
 Telephone: 615-532-0992

Division of Substance Abuse Services
 Taryn Sloss, Assistant Commissioner
 Email: Taryn.Sloss@tn.gov
 Telephone: 615-532-7793

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the date of hand delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the facsimile machine at the receiving location and receipt is verbally confirmed by the sender.

- 8.7 Strict Compliance. No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist

upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement

- 8.8 Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.
- 8.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee except to the extent that Tennessee law has been pre-empted by HIPAA.
- 8.10 Compensation. There shall be **no** remuneration for performance under this Agreement except as specifically provided by, in, and through, existing administrative requirements of Tennessee State government and services contracts referenced herein.
- 8.11 Security Breach. A violation of HIPAA or the Privacy or Security Rules constitutes a breach of this Business Associate Agreement and a breach of the Service Contract(s) listed on page one of this agreement, and shall be subject to all available remedies for such breach.

IN WITNESS WHEREOF,

FEI.COM, INC.:

CONTRACTOR SIGNATURE **DATE**

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES:

MARIE WILLIAMS, COMMISSIONER **DATE**

**CONTRACT**

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

Begin Date July 1, 2014	End Date June 30, 2019	Agency Tracking # 33901-04291400	Edison Record ID 42625		
Contractor Legal Entity Name FEI.com, Inc.			Edison Vendor ID 38065		
Service Caption (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)					
Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor		CFDA # 93.959 Federal Block Grants for Prevention and Treatment of Substance Abuse			
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
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
TOTAL:	\$983,000.00	\$2,074,690.00			\$3,057,690.00
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
Ownership/Control					
<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:					
Selection Method & Process Summary (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."			
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations. <i>Gene Wood</i>			CPO USE - FA		
Speed Chart (optional)		Account Code (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 promptly, 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 promptly 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 a promptly 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
Urgent: 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 immediate e-mail acknowledgement following report of the issue, and an initial response from staff within two (2) business hours of submitting a ticket to the Help Desk. The Support Team will make reasonable efforts to provide a fix or procedural workaround within four (4) business hours once the issue has been replicated and confirmed as a problem by The Contractor.
High: 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 immediate e-mail acknowledgement following report of the issue, and an initial response from staff within four (4) business hours of submitting a ticket to the Help Desk. The Support Team will make reasonable efforts to provide a fix or procedural workaround within eight (8) business hours once the issue has been replicated and confirmed as a problem by the Contractor.
Medium: 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 immediate e-mail acknowledgement . A member of the Support Team will respond to the State within 2 business days of submitting a ticket to the Help Desk.
Low: 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 2 business days 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:
- a. The Contractor represents that it maintains, in a secure environment, a current copy of the software Source Code.
 - b. The State may demand confirmation at any time during the course of the Contract from the Contractor that the Source Code is up to date and the Contractor will provide confirmation of such within thirty (30) calendar days of such request.
 - c. If the Contractor goes out of business, the Contractor shall provide the Source Code to the State at no additional cost.
- 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
TOTALS:	\$620,000.00	\$585,000.00	\$600,750.00	\$617,288.00	\$634,652.00

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



- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401, *et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings,



representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

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

The State:

Rodney Bragg, Assistant Commissioner
 Division of 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

The Contractor:

Jiao Zhong Gu, Ph.D., President and Chief Executive Officer (CEO)
 FEI.com, Inc.
 7175 Columbia Gateway Drive, Suite A
 Columbia, MD 21046
 E-mail Address: jiao.gu@feisystems.com
 Telephone #: (443) 270-5101
 FAX #: (410) 715-6538



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

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. 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 offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

E.16. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities,



losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

- E.17. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.18. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

- a. Reporting of Total Compensation of the Contractor's Executives.
- (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
 - i. 80 percent or more of the Contractor's annual gross revenues from Federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.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.
- E.21. Prohibitions on Use of Federal Substance Abuse Block Grant (SABG) Funds Requirements. Pursuant to federal laws and regulations, the Grantee shall not use any federal Substance Abuse Prevention and Treatment Block Grant (now SABG, formerly SAPT BG) funds made available under this Grant Contract for any of the following purposes:
- a. to provide inpatient hospital or inpatient community mental health services;



- b. to make cash payments to intended recipients of health services;
- c. to purchase or improve land, purchase, construct or permanently improve (other than minor remodeling) any building or facility, or purchase major medical equipment
- d. to satisfy any requirement for the expenditure of non-federal funds for the receipt of federal funds;
- e. to provide financial assistance to any entity other than a public or non-profit private entity;
- f. to carry out any program of distributing sterile needles for the hypodermic injection of any illegal drug or distributing bleach for the purpose of cleansing needles for such hypodermic injection;
- g. to carry out any testing for the etiologic agent for acquired immune deficiency syndrome unless such testing is accompanied by the appropriate pre-test counseling and appropriate post-test counseling.

E.22. Prohibition on Supplantation of Federal Substance Abuse Block Grant (SABG) Funds. Pursuant to federal laws and regulations, the Grantee shall not use any funds paid or services rendered under the federal Substance Abuse Prevention and Treatment Block Grant (now SABG, formerly SAPT BG) to supplant any other funds available for the services provided under this Grant Contract.

IN WITNESS WHEREOF,

FEI.COM, INC.:

Jiao Zhong Gu, Ph.D.
President, CEO

6/19/2014

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES:

6/30/14

E. DOUGLAS VARNEY, COMMISSIONER

DATE

ATTACHMENT



ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER (<u>Edison Record ID</u>):	42625
CONTRACTOR LEGAL ENTITY NAME:	FEI.com, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number or <u>Edison Vendor ID</u>)	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.

Jiao Zhong Gu, Ph.D.

President, CEO

6/19/2014

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.

Jiao Zhong Gu *President, CEO*

PRINTED NAME AND TITLE OF SIGNATORY

6/19/2014

DATE OF ATTESTATION