

CONTRACT #3
RFS # 345.01-01511
FA # 11-33823
Edison # 23740

Human Services

VENDOR:
Cognosante, LLC (formerly Fox
Systems, LLC)



**STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES**

CITIZENS PLAZA BUILDING
400 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-1403

TELEPHONE: 615-313-4700 FAX: 615-741-4165
TTY: 1-800-270-1349
www.tn.gov/humanserv/

BILL HASLAM
GOVERNOR

RAQUEL HATTER, MSW, Ed.D.
COMMISSIONER

December 19, 2012

Mr. Lucian Geise, Executive Director
Tennessee General Assembly
Fiscal Review Committee
320 Sixth Ave., N.
8th Floor Rachel Jackson Building
Nashville, TN 34243

Dear Mr. Geise:

In 2010, the Tennessee Department of Human Services entered into contract (FA 11-33823) for the provision of Quality Assurance/Independent Verification and Validation (QA/IV&V) services. At the time of their proposal, Fox Systems, LLC divulged they were a part of the Cognosante, LLC organization. Subsequent to the award of the contract, Fox Systems, LLC officially changed its name to Cognosante, LLC. This change did not affect the contracted services provided for the QA/IV&V project.

The purpose of this amendment is to align the contract with that of the Xerox contract which is set to end June 30, 2013, increase funding to cover the additional work, change the name from Fox System, Inc. to Cognosante, LLC., and update or add other requisite clauses to the contract.

In addition to the actual text of the non-competitive amendment #1 with its corresponding *Summary Cover Sheet*, we have provided a copy of the executed base contract, a *Non-competitive Amendment Request* form associated with this proposed amendment, and the supplemental documentation that is required by the FRC.

If you require additional information, please contact Basil A. Dosunmu, Assistant Commissioner of Finance and Administration, at 615-313-4705. Otherwise, thank you for your attention to this matter.

Sincerely,

Raquel Hatter, MSW, Ed.D.
Commissioner

RH: EJC

Attachments

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Basil A. Dosunmu	*Contact Phone:	(615) 313-4705
*Original Contract Number:	FA11-33823	*Original RFS Number:	34501-01511
Edison Contract Number: <i>(if applicable)</i>	23740	Edison RFS Number: <i>(if applicable)</i>	NA
*Original Contract Begin Date:	November 1, 2010	*Current End Date:	February 28, 2013
Current Request Amendment Number: <i>(if applicable)</i>	One		
Proposed Amendment Effective Date: <i>(if applicable)</i>	March 1, 2013		
*Department Submitting:	Department of Human Services		
*Division:	Division of Finance and Administration		
*Date Submitted:	December 19, 2012		
*Submitted Within Sixty (60) days:	Yes		
<i>If not, explain:</i>			
*Contract Vendor Name:	Cognosante, LLC (formerly Fox Systems, LLC)		
*Current Maximum Liability:	\$415,744.00		
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>			
FY:2011	FY:2012	FY:2013	
\$118,784.00	\$178,176.00	\$118,784.00	
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>			
FY: 2011	FY: 2012	FY 2013	
\$59,312.00	\$ 193,104.00	\$ 44,544.00	
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	N/A		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	N/A		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:	N/A		

Supplemental Documentation Required for
Fiscal Review Committee

*Contract Funding Source/Amount:	State:	\$75,831.70	Federal:	\$ 208,412.47
Interdepartmental:		\$ 131,499.83	Other:	\$0
If "other" please define:				
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>			Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
N/A				
Method of Original Award: <i>(if applicable)</i>			Request for Proposal	
*What were the projected costs of the service for the entire term of the contract prior to contract award?			\$660,000.00	

Supplemental Documentation Required for
Fiscal Review Committee

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

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

N/A. Sections A or C.3 are not changed by this amendment.

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

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

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

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

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

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

Fiscal Review Committee - Cognosante, LLC (Fox Systems, LLC)

Unit	Voucher	Invoice	Date	Remit Vndr	Name	Gross Amt	Reference	Pymnt Date	Message	Recon St
34501	00039046	004781	1/21/2011	0000073557	Fox Systems LLC	14828.000	0000742117	3/14/2011		REC
34501	00039934	004834	2/23/2011	0000073557	Fox Systems LLC	14828.000	0000755662	3/25/2011		REC
34501	00043577	004947	4/20/2011	0000073557	Fox Systems LLC	14828.000	0000830703	5/20/2011		REC
34501	00042554	004886	3/22/2011	0000073557	Fox Systems LLC	14828.000	0000790449	4/20/2011		REC
FY 10-11 Total						59312.000				

Unit	Voucher	Invoice	Date	Remit Vndr	Name	Gross Amt	Reference	Pymnt Date	Message	Recon St
34501	00048983	004992	5/23/2011	0000073557	Fox Systems LLC	14828.000	0000900785	7/13/2011		REC
34501	00051468	005064	6/29/2011	0000073557	Fox Systems LLC	14948.000	0000934278	8/10/2011		REC
34501	00051469	005105	8/1/2011	0000073557	Fox Systems LLC	14848.000	0000934278	8/10/2011		REC
34501	00054594	009995	8/24/2011	0000073557	Cognosante LLC	14848.000	0000999942	9/30/2011		REC
34501	00057202	0010036	10/6/2011	0000073557	Cognosante LLC	14848.000	0001049416	11/7/2011		REC
34501	00059555	010095-October 2011	12/5/2011	0000073557	Cognosante LLC	14848.000	0001121251	1/4/2012		REC
34501	00059554	010095-September 2011	12/5/2011	0000073557	Cognosante LLC	14848.000	0001121251	1/4/2012		REC
34501	00061907	010127	1/9/2012	0000073557	Cognosante LLC	29696.000	0001166607	2/8/2012		REC
34501	00067836	010162	2/6/2012	0000073557	Cognosante LLC	14848.000	0000009053	4/10/2012		REC
34501	00067837	010200	3/7/2012	0000073557	Cognosante LLC	14848.000	0000009053	4/10/2012		REC
34501	00068888	010233	4/5/2012	0000073557	Cognosante LLC	14848.000	0000045905	5/4/2012		REC
34501	00071924	010280	5/7/2012	0000073557	Cognosante LLC	14848.000	0000089792	6/6/2012		REC
FY 11-12 Total						193104.000				

Unit	Voucher	Invoice	Date	Remit Vndr	Name	Gross Amt	Reference	Pymnt Date	Message	Recon St
34501	00078973	010356	7/9/2012	0000073557	Cognosante LLC	14848.000	0000177146	8/8/2012		REC
34501	00080021	010307	6/5/2012	0000073557	Cognosante LLC	14848.000	0000180280	8/10/2012		REC
34501	00087041	010379	8/3/2012	0000073557	Cognosante LLC	14848.000	0000280413	10/24/2012		REC
FY 12-13 Total						44544.000				



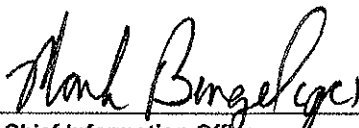
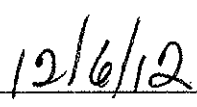
OIR Pre-Approval Endorsement Request E-Mail Transmittal

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

FROM : Norman Maxwell
E-mail : Norman.Maxwell@tn.gov

DATE : December 6, 2012

RE : Request for OIR Pre-Approval Endorsement

Applicable RFS # 34501-01511
OIR Endorsement Signature & Date:
 
Chief Information Officer
<i>NOTE: Proposed contract/grant support is applicable to the subject IT service technical merit.</i>

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

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

Contracting Agency	Department of Human Services
Agency Contact (name, phone, e-mail)	Norman Maxwell 615-313-3145 Norman.Maxwell@tn.gov
Subject Procurement Document (mark one)	
<input type="checkbox"/> RFP	<input type="checkbox"/> Contract
<input type="checkbox"/> Competitive Negotiation Request	<input type="checkbox"/> Contract Amendment
<input type="checkbox"/> Alternative Procurement Method Request	<input type="checkbox"/> Grant
<input type="checkbox"/> Non-Competitive Contract Request	<input type="checkbox"/> Grant Amendment
<input checked="" type="checkbox"/> Non-Competitive Amendment Request	

Information Systems Plan (ISP) Project Applicability <input type="checkbox"/> Not Applicable to this Request <input checked="" type="checkbox"/> Applicable- ISP Response Confirmed by IT Director/Staff (name): Norman Maxwell
Required Attachments (as applicable – copies without signatures acceptable) <input checked="" type="checkbox"/> RFP, Competitive Negotiation Request, Alternative Procurement Method Request, Non-Competitive Contract Request, Non-Competitive Amendment Request <input type="checkbox"/> Original Contract/Grant or Amendment <input checked="" type="checkbox"/> Proposed Contract/Grant or Amendment
Subject Information Technology Service Description (Brief summary of information technology services involved. Clearly identify included technologies such as system development/maintenance, security, networking, etc. As applicable, identify the contract & solicitation sections related to the IT services.) This contract is for the provision of Quality Assurance/Independent Verification and Validation for the Vision Integration Platform (VIP) project. The subject amendment is for the purpose of changing the name of the contractor, extending the term and increasing the funding amount.

Non-Competitive Amendment Request


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

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

APPROVED

COMMISSIONER OF FINANCE & ADMINISTRATION

Request Tracking #	34501-10213 (associated with 34501-01511)	
1. Procuring Agency	Department of Human Services	
2. Contractor	Cognosante, LLC (formerly Fox Systems, LLC)	
3. Contract #	FA 11-33823	
4. Proposed Amendment #	1	
5. Edison ID #	23740	
6. Contract Begin Date	November 1, 2010	
7. Current Contract End Date – with ALL options to extend exercised	February 28, 2013	
8. Proposed Contract End Date – with ALL options to extend exercised	June 30, 2013	
9. Current Maximum Contract Cost – with ALL options to extend exercised	\$ 415,744.00	
10. Proposed Maximum Contract Cost – with ALL options to extend exercised	\$ 571,136.00	
11. Office for Information Resources Endorsement – information technology service (N/A to THDA)	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Attached	
12. eHealth Initiative Support – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
13. Human Resources Support – state employee training service	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
14. Explanation Need for the Proposed Amendment	<p>The purpose of this amendment is to align the contract term with that of the Vision Integration Platform (VIP) which ends June 30, 2013. This Contractor is providing the Quality Assurance/ Independent Verification and Validation (QA/IV&V) services for the VIP contract. This amendment will add funding to cover the additional work, and change the Contractor's name from Fox Systems, LLC to Cognosante, LLC.</p>	
15. Name & Address of the Contractor's Principal Owner(s)		

Request Tracking #	34501-10213 (associated with 34501-01511)
<p>– NOT required for a TN state education institution</p> <p>Susan J. Fox, President 6263 N. Scottsdale Road Suite 200 Scottsdale, AZ 85250</p>	
<p>16. Evidence Contractor's Experience & Length Of Experience Providing the Service</p> <p>The Contractor has a twenty-six years history of delivering and providing Quality Assurance/Independent Verification and Validation services to over 90% of state Medicaid agencies.</p>	
<p>17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives</p> <p>This proposed amendment with this Contractor will aid the Department with completing its ongoing analysis of the VIP Contractor's progress toward completing delivery of the system application; therefore, efforts to identify procurement alternatives are not applicable at this time.</p>	
<p>18. Justification – specifically explain why non-competitive negotiation is in the best interest of the state</p> <p>It is in the best interest of the State to remain with this Contractor through-out the extended term period as it is integral to the Department's assessment of the progress of the VIP project toward completion.</p>	
<p>Agency Head Signature and Date – MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances</p>	
 RAQUEL HATTER, COMMISSIONER	12/10/12 DATE



CONTRACT AMENDMENT

Agency Tracking # 34501-01511		Edison ID 23740		Contract # FA 11-33823		Amendment # 1	
Contractor Legal Entity Name Cognosante, LLC				Edison Vendor ID 73557			
Amendment Purpose & Effect(s) Change in Funding, Wording, and Dates				FEIN or SSN (optional)			
Amendment Changes Contract End Date:						End Date	
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO						June 30, 2013	
TOTAL Liability Increase or Decrease per this Amendment (zero if N/A):						\$155,392.00	
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount		
2011	\$21,666.20	\$59,546.42	\$37,571.38	\$0.00	\$118,784.00		
2012	\$32,499.30	\$89,319.63	\$56,357.07	\$0.00	\$178,176.00		
2013	\$50,009.70	\$137,444.43	\$86,721.87	\$0.00	\$274,176.00		
					\$0.00		
					\$0.00		
					\$0.00		
TOTAL:	\$104,175.20	\$286,310.48	\$180,650.32	\$0.00	\$571,136.00		
American Recovery and Reinvestment Act (ARRA) Funding:						<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
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. <div style="text-align: center; font-family: cursive; font-size: 1.2em;">Basil A. Dasunnu</div>				OCR USE			
				Speed Code (optional) HS00000226		Account Code (optional) 70803000	

**AMENDMENT ONE
OF CONTRACT FA 11-33823**

This Amendment is made and entered by and between the State of Tennessee, Department of Human Services, hereinafter referred to as the "State" and Cognosante, LLC (as amended herein), hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract section B.1. is deleted in its entirety and replaced with the following:
 - B.1. This Contract shall be effective for the period commencing on November 1, 2010 and ending on June 30, 2013. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

2. Contract section C.1. is deleted in its entirety and replaced with the following:
 - C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Five Hundred Seventy-One Thousand One Hundred Thirty-Six Dollars and No Cents (\$571,136.00). 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.

3. Contract section C.5. is deleted in its entirety and replaced with the following:
 - 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 as required below prior to any payment.
 - a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Norman Maxwell, IT Contracts Administrator
Tennessee Department of Human Service
Citizens Plaza Building, 4th Floor
400 Deaderick Street
Nashville, TN 37243-1403
 - b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.
 - (1) Invoice/Reference Number (assigned by the Contractor);
 - (2) Invoice Date;
 - (3) Invoice Period (period to which all invoiced charges are applicable);
 - (4) Contract Number (assigned by the State to this Contract);
 - (5) Account Name: Department of Human Services; Division of Finance & Administration;

- (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
- (7) Contractor Name;
- (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
- (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
- (10) Contractor Remittance Address;
- (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
 - iv. Amount Due by Service; and
 - v. Total Amount Due for the invoice period.

c. The Contractor understands and agrees that an invoice to the State 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) not include any future work but will only be submitted for completed service; and
- (3) not include sales tax or shipping charges.
- (4) An invoice under this Contract shall be presented to the State within thirty (30) days after the end of the calendar month in which the subject costs were incurred or services were rendered by the Contractor. An invoice submitted more than thirty (30) days after such date will NOT be paid. The State will not deem such Contractor costs to be allowable and reimbursable by the State unless, at the sole discretion of the State, the failure to submit a timely invoice is warranted. The Contractor shall submit a special, written request for reimbursement with any such untimely invoice. The request must detail the reason the invoice is untimely as well as the Contractor's plan for submitting future invoices as required, and it must be signed by a Contractor agent that would be authorized to sign this Contract.

d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

4. Contract section E.2. is deleted in its entirety and replaced with the following:

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:
 Norman Maxwell, IT Contracts Administrator
 Department of Human Services
 Citizens Plaza Building, 4th Floor
 400 Deaderick Street
 Nashville, TN 37243-1403
 norman.maxwell@tn.gov
 Telephone # (615) 313-3145
 FAX # (615) 313-6682

The Contractor:
 Mark Shishida, Executive Vice President of Business Development
 Cognosante, LLC
 6263 N. Scottsdale Road, Suite 200
 Scottsdale, AZ 85250
 Mark.Shishida@cognosante.com
 Telephone # (480) 423-8184
 FAX # (480) 423-8108

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

5. The following is added as Contract section E.15.
 - E.15. Contractor Name. All references to "Fox Systems, LLC" shall be deleted and replaced with "Cognosante, LLC."
6. The following is added as Contract section E.16.
 - E.16. Disaster Recovery / Business Continuity Plan. Upon request by the State, the Contractor shall furnish to the State, within 10 days following such request, the Contractor's documented and tested Disaster Recovery / Business Continuity Plan. Said plan shall be subject to written approval by the State.
7. The following is added as Contract section E.17.
 - E.17. **NOTICE OF ORGANIZATIONAL CHANGE / FINANCIAL STATUS INFORMATION.**
 - E.17.a. The Contractor shall immediately notify the State in writing of a proposed merger, acquisition or sale of its business operation, or the part of its business operation that provides services under this Contract, or that this Contract will be sold to or assumed by another entity.
 - E.17.b. The notification shall provide to the State information regarding the date and terms of the merger, acquisition or sale, including specifically, but not limited to, adequate documentation of the financial solvency and adequate capitalization of the proposed new entity, or the entity which proposes to acquire the Contractor's business operation, or the part of any business operations of the Contractor that provides services to fulfill any obligations arising under this Contract or the entity to which the Contract itself will be sold or which will otherwise assume the obligations of the Contract.
 - E.17.c. Evidence of financial solvency and adequate capitalization of the proposed new entity by merger or with which Contractor has merged or the entity that will acquire or has acquired

the original Contractor or the Contract itself shall consist of, at a minimum, but is not limited to:

- i. Debt;
 - ii. Assets;
 - iii. Liabilities;
 - iv. Cash flow;
 - i. Percentage of the total revenues of the company that are represented by this Contract;
 - v. The most recent annual financial reports;
 - vi. The most recent annual financial reports filed with government agencies, if applicable.
- E.17.d. The new entity or the entity that has acquired the original Contractor or the part of the original Contractor that provided services under this Contract or has assumed the Contract itself shall provide to the State within ten (10) business days of the State's request, a notarized statement signed by an individual authorized to bind the new or acquiring entity certifying that all liabilities and obligations incurred by the former entity are assumed by the new entity or the entity that has acquired the original Contractor or that part of the original Contractor's business that provided services under this Contract or that has assumed the contract itself.
- E.17.e. i. Within ten (10) business days of the State's request, the new or acquiring entity shall provide to the State a complete narrative description of the relationship of any new entity to any parent company or subsidiary or division resulting from the merger, acquisition or sale of the original Contractor's business or the part of the original Contractor's business that provides services under this Contract or from assumption by, or sale to, another entity of the contract itself, and,
- ii. Shall provide a statement on company letterhead regarding the names and positions of corporate or company officers, project managers, other Contractor management staff with responsibilities under the Contract, and numbers and the type of technical or other personnel who will be responsible for fulfilling the obligations of the Contract, and any subcontracts that will be used to provide any personal or other services under the Contract by the new entity or acquiring company; and,
 - iii. Shall provide an organizational chart clearly describing the organizational structure of the new or acquired or acquiring entity and its status as a new entity, parent company, subsidiary, division or other unit of the entity or parent company with which it has merged or by which it, or the Contract, has been acquired.
- E.17.f. The Contractor shall provide to the State, within ten (10) business days of the request by the State, such additional evidence of financial solvency, adequate capitalization and information regarding corporate organizational and personnel assigned to the Contract as it determines is necessary to evaluate the status of the proposed or consummated merger, acquisition or sale.
- E.17.g. If the merger or acquisition or sale has occurred without prior notice to the State, the entity that results from the merger, or that has acquired the Contractor's business operations, or the part of the business operations that provide services under this Contract, shall provide the information required by subparagraphs a.-f.
- E.17.h. The financial information referenced in subparagraph c. shall be provided to the State upon request of the State within ten (10) business days of said request.
- E.17.i. The original Contractor shall immediately notify the State in writing in the event of a change in its legal name and/or Federal Employer Identification Number (FEIN), shall provide to the State certified copies of any documents that have been filed with state

corporate records officials or other officials in the state of its incorporation that verify the name change and the Contractor shall provide a narrative description on company letterhead of the reasons for the name change.

E.17.j. Notwithstanding any other provisions of this Contract to the contrary, the State may immediately terminate this Contract in whole or in stages in the event that it determines that the original Contractor or the new entity resulting from the merger, acquisition, sale of all or part of the original Contractor's business providing services under this Contract, or that the entity that purchases the Contract and that will be providing the services required by this Contract, is, in the State's sole discretion, unacceptable for any reason, or the State determines, in its sole discretion, that it has failed to provide the information required by this paragraph E.17. The Contractor or the new entity or the entity that acquires all or part of the original Contractor's business or that assumes the Contract 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.

Required Approvals. The State is not bound by this Amendment 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).

Amendment Effective Date. The revisions set forth herein shall be effective March 1, 2013. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

COGNOSANTE, LLC:

**MARK SHISHIDA, EXECUTIVE VICE PRESIDENT
OF BUSINESS DEVELOPMENT**

DATE

DEPARTMENT OF HUMAN SERVICES:

RAQUEL HATTER, COMMISSIONER

DATE



CONTRACT

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

Begin Date November 1, 2010	End Date February 28, 2013	Agency Tracking # 34501-01511	Edison ID 23740
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Contractor Legal Entity Name Fox Systems , LLC	Registration ID 73557
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Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA #	FEIN or SSN (optional) 68-0121468
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Service Caption (one line only)
Vision Integration Platform (V.I.P.)

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011	\$21,666.20	\$59,546.42	\$37,571.38	\$0.00	\$118,784.00
2012	\$32,499.30	\$89,319.63	\$56,357.07	\$0.00	\$178,176.00
2013	\$21,666.20	\$59,546.42	\$37,571.38	\$0.00	\$118,784.00
					\$0.00
					\$0.00
					\$0.00
TOTAL:	\$75,831.70	\$208,412.47	\$131,499.83	\$0.00	\$415,744.00

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

Ownership/Control

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

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

<input checked="" 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 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 & 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.

Jeffrey W. Roberts

M. J. [Signature]
F&A Secured Document
 # FA1133823

Speed Code (optional) HS0000226	Account Code (optional) 70803000
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**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF HUMAN SERVICES
AND
FOX SYSTEMS, LLC**

This Contract, by and between the State of Tennessee, Department of Human Services, hereinafter referred to as the "State" and Fox Systems, LLC, hereinafter referred to as the "Contractor," is for the provision of Quality Assurance / Independent Verification and Validation (QA/IV&V) services for the Vision Integration Platform (VIP) project, as further defined in the "SCOPE OF SERVICES."

The Contractor is a limited liability company.
Contractor Federal Employer Identification or Social Security Number: 68-0121468
Contractor Place of Incorporation or Organization: Delaware

A. SCOPE OF SERVICES:

CONTRACTOR RESPONSIBILITIES:

- A.1. The Contractor shall provide all services and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. General Scope. The Contractor shall provide Quality Assurance/Independent Verification and Validation (QA/IV&V) services for the Vision Integration Platform (VIP) project. The Contractor's primary focus shall be on the VIP project schedule and issues that could introduce or increase risk during the course of the project. The Contractor shall perform QA/IV&V services through the Implementation Phase of the VIP project.
- A.3. QA/IV&V Services. The Contractor shall provide/perform the QA/IV&V services outlined in the section below. All services provided by the Contractor shall adhere to industry standard methodologies and approaches.
- a. Project Schedule. For the duration of the Contract, the Contractor shall review and evaluate the VIP project schedule, including, at a minimum:
 - (1) project progress against planned completion dates and milestones;
 - (2) issues impacting the schedule; and
 - (3) appropriateness of tasks, duration, and resources utilized against the project schedule.
 - b. Risk Assessment. The Contractor shall review and evaluate risks to successful completion of the VIP project.
 - c. Project Phase Assessments. The Contractor shall review and evaluate the activities and progress of System Integration and User Acceptance Testing, Conversion, Pilot, and Implementation phases of the VIP project. The Contractor shall provide recommendations for remediating issues and risks identified by the Contractor relative to these project phases.
- A.4. Monthly QA/IV&V Report.

- a. The Contractor shall prepare and deliver to the State for review and approval a monthly QA/IV&V Report.
 - b. The report shall be delivered to the State by the fifth (5th) business day of each month.
 - c. Each Monthly QA/IV&V Report shall contain, at a minimum, following:
 - (1) Project Schedule. The Contractor shall provide a written assessment of the progress of the project against planned tasks, duration, resources, completion dates, and milestones, and issues impacting the schedule. The Contractor shall include recommendations specifying what can be done immediately and in the long-term to remediate variations and deviations from the schedule.
 - (2) Risk Assessment. The Contractor shall report on the identified risks to the successful implementation of the VIP project and the potential level of severity of said risks. The Contractor shall recommend mitigation and/or resolution strategies to manage and/or eliminate the identified risks.
 - (3) Project Phase Assessments. The Contractor shall provide an assessment of the activities and progress of System Integration and User Acceptance Testing, Conversion, Pilot, and Implementation phases of the VIP project; and shall provide recommendations, as necessary, for addressing any issues relative to the successful completion of these project phases, including detailed recommendations in each area of the project phases specifying what can be done immediately and in the long term to improve in said area.
 - d. Each Monthly QA/IV&V Report will be reviewed and, if acceptable, will be approved by the State in writing. The Contractor shall not rely on any verbal commitment from the State regarding report approval. No report shall be considered to be final or eligible for payment until the report has received written State approval. (Reference Section A.9)
- A.5. State Office Hours. Normal State office hours are 8:00 a.m. to 4:30 p.m., Central Time, with additional hours worked as necessary to meet project deadlines. All work performed on the State's premises shall be completed during the State's standard business hours, unless otherwise agreed to by the State.
 - A.6. Supplies and Equipment. The Contractor shall provide all supplies and equipment for Contractor staff. The Contractor shall ensure that equipment meets minimum State platform requirements and that any desktop computer and laptop devices connected to the State's network are current with operating system patches and antivirus software. The Contractor shall provide office automation software for Contractor staff that is in compliance with minimum State platform requirements. In addition, the Contractor shall be responsible for all long-distance telephone and Contractor employee parking costs.
 - A.7. Compliance with State Security Policies and Procedures. The Contractor shall comply with all State security and other policies and procedures. Should it be determined that any fault in the State network (virus, worm, etc.) can be traced to an action taken (or not taken) by the Contractor, the Contractor shall be fully responsible for all remedial actions taken and all expenses incurred to correct the fault.

- A.8. Staff Management and Administrative Support. The Contractor shall provide day-to-day management of its staff. The Contractor shall provide administrative support for its staff and activities.

STATE RESPONSIBILITIES:

- A.9. Monthly QA/IV&V Report Approval. The State will review each Monthly QA/IV&V Report and, if acceptable, will provide written approval of each report. The Contractor shall not rely on any verbal commitment from the State regarding report approval. The State will not consider any report to be final or eligible for payment until the report has received written State approval. (Reference Section A.4.d)
- A.10. Integration Vendor Management. The State will provide direct management and oversight of the Integration Vendor contract and, as necessary, serve as the liaison between the Contractor and the Integration Vendor.
- A.11. Work Space and Resources. The State will provide office space, meeting room space, and phone service to the Contractor. The State will also provide connectivity to the State's network and access to printers.
- A.12. Project Documentation Access. The State will provide access to VIP Project information, including, but not limited to, technical documentation and VIP Project status data.
- A.13. Project Personnel Access. The State will provide reasonable access to State and Contractor project personnel for information related to the project.

B. CONTRACT TERM:

- B.1. This Contract shall be effective for the period commencing on November 1, 2010 and ending on February 28, 2013. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract, and shall be based upon payment rates provided for in the original Contract.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Four Hundred Fifteen Thousand Seven Hundred Forty-Four Dollars and No Cents (\$415,744.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the

State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.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)
Monthly Quality Assurance/Independent Verification and Validation (QA/IV&V) Report, as described in Section A.4.	\$ 14,848.00 per Report

- 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 as required below prior to any payment.
 - a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Lynne Diver, Information Systems Director
Tennessee Department of Human Service
Citizens Plaza Building, 4th Floor
400 Deaderick Street
Nashville, TN 37243-1403
 - b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.
 - (1) Invoice/Reference Number (assigned by the Contractor);
 - (2) Invoice Date;
 - (3) Invoice Period (period to which all invoiced charges are applicable);
 - (4) Contract Number (assigned by the State to this Contract);
 - (5) Account Name: Department of Human Services; Division of Finance & Administration;
 - (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);

- (7) Contractor Name;
 - (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
 - (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
 - (10) Contractor Remittance Address;
 - (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
 - iv. Amount Due by Service; and
 - v. Total Amount Due for the invoice period.
- c. The Contractor understands and agrees that an invoice to the State 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) not include any future work but will only be submitted for completed service; and
 - (3) not include sales tax or shipping charges.
- d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.
- e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.
- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.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. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor

by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to terminate the Contract and withhold payments in excess of fair compensation for completed services.
- a. The State will provide notification of termination for cause in writing. This notice will: (1) specify in reasonable detail the nature of the breach; (2) provide the Contractor with an opportunity to cure, which must be requested in writing no less than 10 days from the date of the Termination Notice; and (3) shall specify the effective date of termination in the event the Contractor fails to correct the breach. The Contractor must present the State with a written request detailing the efforts it will take to resolve the problem and the time period for such resolution. This opportunity to "cure" shall not apply to circumstances in which the Contractor intentionally withholds its services or otherwise refuses to perform. The State will not consider a request to cure contract performance where there have been repeated problems with respect to identical or similar issues, or if a cure period would cause a delay that would impair the effectiveness of State operations. In circumstances where an opportunity to cure is not available, termination will be effective immediately.
 - b. Notwithstanding the foregoing, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract 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.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. 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.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. 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.13. 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.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. 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.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

- D.17. 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.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

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

The State:

Lynne Diver, Information Systems Director
Department of Human Services
Citizens Plaza Building, 4th Floor
400 Deaderick Street
Nashville, TN 37243-1403
Lynne.Diver@tn.gov
Telephone # (615) 313-5281
FAX # (615) 741-2185

The Contractor:

Mark Shishida, Executive Vice President of Business Development
Fox Systems, LLC
6263 N. Scottsdale Road, Suite 200
Scottsdale, AZ 85250

mark.shishida@foxsys.com
 Telephone # (480) 423-8184
 FAX # (480) 423-8108

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 may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

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

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

- E.6. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.7. 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.8. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.
- E.9. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:
- a. The Contract document and its attachments
 - b. All Clarifications and addenda made to the Contractor's Proposal
 - c. The Request for Proposal and its associated amendments
 - d. Technical Specifications provided to the Contractor
 - e. The Contractor's Proposal

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

- E.10. 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.11. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

- E.12. 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.13. Limitation of Liability. The parties agree that the Contractor's liability 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 intentional torts, criminal acts, or fraudulent conduct.
- E.14. 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.


IN WITNESS WHEREOF,

FOX SYSTEMS, LLC:



SUSAN FOX, PRESIDENT 10/20/2010
DATE
Mark Shishida, Executive Vice President
of Business Development

DEPARTMENT OF HUMAN SERVICES:



VIRGINIA T. LODGE, COMMISSIONER 10-25-10
DATE

ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	RFS #34501-01511
CONTRACTOR LEGAL ENTITY NAME:	Fox Systems, LLC
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	68-0121468

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.

Fox Systems, LLC

By 

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.

Mark Shishida, Executive Vice President of Business Development

PRINTED NAME AND TITLE OF SIGNATORY

October 20, 2010

DATE OF ATTESTATION