

CONTRACT #15
RFS # 317.01-19124
FA # 6177

Finance & Administration
Office of eHealth Initiatives

VENDOR:
Manatt Health Solutions

RECEIVED

JUL 22 2009

SUMMARY LETTER

FISCAL REVIEW

The Office of eHealth Initiatives is requesting that the Fiscal Review Committee approve this contract in order for the State to quickly align itself for American Recovery and Reinvestment Act funding (ARRA). It was recently announced that the guidelines for applying for the Health Information Technology for Economic and Clinical Health Act (HITEC) funding will be released within a short time period and that the timeline for applying for these competitive grants has been accelerated to less than 90 days. Due to this unforeseen rigorous time frame, this request does not meet the 60-day required notice.

The State had a prior contract with Manatt Health Solutions that ended July 31, 2009 in the amount of \$250,000.00 to assist the State in preparing a governance model and conceptual architecture for an integrated, statewide health information exchange and a proposed plan to begin implementation through a Not-For-Profit (NFP) Entity. The previous contract plus, the contracts only amendment and Manatt's final report is attached to this request.

The HITEC grant funding will be obtained through competitive grant applications for the implementation of a Health Information Exchange (HIE) in the State of Tennessee. The requirements will include a statewide plan which will incorporate the plans from each of the Regional Health Information Exchanges (RHIOs) in the State and the State's plan for the continued development of the over arching state-wide technology, the eHealth Network, which will be operate through the State's secure network, NetTN.

The Office of eHealth, with Manatt's oversight and grant writing skills, will apply for these funds which will include submission of the statewide plan which Manatt will help to create. Once an award is funded, the Office of eHealth will receive those funds from the federal government. The Office will divide the funds pursuant to the statewide plan with a grant to the NFP and interagency grants to other State agencies. The NFP will then sub-grant the funds to the RHIOs and other qualified organizations pursuant to the statewide plan.

The Manatt Health Solutions contract contains tasks to develop the strategy to maximize "meaningful use" incentives under the Medicaid and Medicare portion of the HITEC Act. The Office of eHealth will administer these incentive funds for TennCare. The administrative funds used to develop and implement the strategy, education and implementation are subject to a federal match of 90/10. Therefore, the \$675,000 being paid to Manatt Health Solutions as well as other funds for the administration of this plan will be reimbursed by Centers for Medicare and Medicaid at 90% level.

Based on this background information, the State is requesting that Manatt Health Care Solutions assist with the following tasks:

- Task 1. Assist in Development of a Contractual Framework between State and Not-for-Profit
- Task 2. Assist in the Development of a State eHealth Plan (as required under HITECH)
- Task 3. Assist State and SDE Develop Responses to HITECH Request for Proposals
- Task 4. Develop TennCare Strategy to Maximize "Meaningful Use" Incentives
- Task 5. Develop a coalition of states to address policy and operational issues

Supplemental Documentation Required for Fiscal Review Committee

*Contact Name:	Melissa Hargiss	*Contact Phone:	615-532-1553
*Contract Number:	Edison 6177	*RFS Number:	31701-19124
*Original Contract Begin Date:	04/01/2009	*Current End Date:	07/31/2009
Current Request Amendment Number: <i>(if applicable)</i>	01		
Proposed Amendment Effective Date: <i>(if applicable)</i>	July 1, 2009		
*Department Submitting:	Office of eHealth Initiatives		
*Division:	Finance And Administration		
*Date Submitted:	7/20/09		
*Submitted Within Sixty (60) days:	No		
<i>If not, explain:</i>	It is in the State's best interest to begin the contract in order to aid the State in significant work that must be done quickly in order for the State to develop a comprehensive plan conforming to federal requirements for funding under ARRA.		
*Contract Vendor Name:	Manatt Health Solutions, a division of Manatt, Phelps & Phillips, LLP		
*Current Maximum Liability:	\$250,000.00		
*Current Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)			
FY: 2009	FY: 2010	FY:	FY:
\$200,000.00	\$50,000.00	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from STARS or FDAS report)			
FY:2010	FY:	FY:	FY:
\$200,000.00	\$50,000.00	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	The appropriated funds are to be used to advance health information technology statewide. The use of the funds for the Manatt contract will help us to continue this goal by applying for federal funding since the state is unable to fund this at this time. Public Chapter No. 554, Section 36, Item 1		

Supplemental Documentation Required for Fiscal Review Committee

IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:				
*Contract Funding Source/Amount:	State:	100%	Federal:	
Interdepartmental:			Other:	
If "other" please define:				
Dates of All Previous Amendments or Revisions: (if applicable)		Brief Description of Actions in Previous Amendments or Revisions: (if applicable)		
Method of Original Award: (if applicable)				
Include a detailed breakdown of the actual expenditures anticipated in each year of the contract. Include specific line items, source of funding, and disposition of any excess fund. (if applicable)				
Include a detailed breakdown, in dollars, of any savings that the department anticipates will result from this contract. Include, at a minimum, reduction in positions, reduction in equipment costs, reduction in travel. (if applicable)				
Include a detailed analysis, in dollars, of the cost of obtaining this service through the proposed contract as compared to other options. (if applicable)				

Contract Number 6177
 Vendor Number 109100
 Total Contract Amt: \$200,000.00
 Amendment One \$50,000.00
TOTAL \$250,000.00
 Term of Contract: 4/1/09-6/30/09
 SleadChart FA00001722
 Account No. 70803000
 Program No. 190007
 Fund Number 11000

Inv. #	Invoice Date	Services	Grant Amount Invoice Amount	Remaining Grant Amount	Submitted for Payment
2009043531	4/29/2009		\$250,000.00	\$175,000.00	5/7/2009
2009051840	5/26/2009		\$75,000.00	\$100,000.00	6/9/2009
2009060871	6/11/2009		\$50,000.00	\$50,000.00	7/7/2009

\$200,000.00

NON-COMPETITIVE AMENDMENT REQUEST:

APPROVED

M.D. Fitch

Commissioner of Finance & Administration

1) RFS #	31701-19124	
2) Procuring Agency :	Office of eHealth Initiatives	
EXISTING CONTRACT INFORMATION		
3) Service Caption :	Fee for Service	
4) Contractor :	Manatt, Phelps and Phillips, LLC	
5) Contract #	000000000000000000000006177	
6) Contract Start Date :	April 1, 2009	
7) CURRENT Contract End Date : (if ALL options to extend the contract are exercised)	June 30, 2009	
8) CURRENT Maximum Cost : (if ALL options to extend the contract are exercised)	\$ 200,000.00	
PROPOSED AMENDMENT INFORMATION		
9) Amendment #	01	
10) Amendment Effective Date : (attached explanation required if < 60 days after F&A receipt)	July 1, 2009	
11) PROPOSED Contract End Date : (if ALL options to extend the contract are exercised)	July 31, 2009	
12) PROPOSED Maximum Cost : (if ALL options to extend the contract are exercised)	\$ 250,000.00	
13) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
14) Description of the Proposed Amendment Effects & Any Additional Service :	This amendment will extend the contract date and add additional funding	
15) Explanation of Need for the Proposed Amendment :	Allow more time and funding to complete the project	
16) Name & Address of Contractor's Current Principal Owner(s) : (not required for a TN state education institution)	William Berstein, Manatt Health Solutions, 7 Times Square, New York, NY 10036	
17) Office for Information Resources Endorsement : (required for information technology service; n/a to THDA)	Documentation is ... <input checked="" type="checkbox"/> Not Applicable to this Request <input type="checkbox"/> Attached to this Request	
18) eHealth Initiative Endorsement : (required for health-related professional, pharmaceutical, laboratory, or imaging service)	Documentation is ... <input checked="" type="checkbox"/> Not Applicable to this Request <input type="checkbox"/> Attached to this Request	

19) Department of Human Resources Endorsement : (required for state employees training service)

Documentation Is ... Not Applicable to this Request Attached to this Request

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

The State is looking for health care consultants who could aid the Office of eHealth to develop a state-wide strategic and governance plan within a very short period of time in order to meet the anticipated criteria for the ARRA funds. However, with time being of the essence, the State needs a consulting firm that has a working knowledge of Tennessee's unique state-wide eHealth projects while also leveraging knowledge of the content of health information technology part of the ARRA. Additionally, the state needs a firm that is nationally recognized and uniquely qualified to leverage this reputation to attract attention to the State of Tennessee and its eHealth initiatives in order to align our state to receive ARRA funding.

21) Justification for the Proposed Non-Competitive Amendment :

Manatt has been nationally recognized by the federal government as they were involved in the drafting of the health information technology part of the ARRA. They have also had consulting contracts to develop governance and strategic planning with many states, including New York so they would quickly be able to assist in the development of the Tennessee plan. Additionally, The Office of National Coordinator (a major funding source for the ARRA) is funding the State-Level Health Information Exchange Steering Committee (SLHIE) to hire Manatt to analyze, advise, and direct States on the general content of the ARRA. Manatt, through its work with SLHIE's steering committee, on which the State sits, has become intimately familiar with the State of TN's eHealth projects, at the State and regional levels, with considerable knowledge about CareSpark and MidSouth eHealth Alliance (Tennessee regional health exchanges). Therefore, Manatt is uniquely qualified to leverage their prior work with Tennessee's eHealth community and their knowledge of the ARRA content in order to **quickly** develop the strategic and governance plans that align with the anticipated criteria for receiving a part of the \$2 billion in health information technology funding.

AGENCY HEAD SIGNATURE & DATE :

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

SIGNATURE & DATE

H. D. Smith Jr. 1/3/2



CONTRACT AMENDMENT

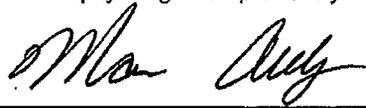
Agency Tracking # 31701-19124	Edison ID 000000000000000000006177	Amendment # 01
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Contractor Manatt Health Solutions, a division of Manatt, Phelps & Phillips, LLP	Contractor Federal Employer Identification or Social Security # <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 95-2375841
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Amendment Purpose/ Effects
This amendment extends the term date, expands the scope of services and adds funding.

Contract Begin Date April 1, 2009	Contract End Date July 31, 2009	Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA #(s)
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FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2009	\$200,000.00				\$200,000.00
2010	\$50,000.00				\$50,000.00
TOTAL:	\$250,000.00				\$250,000.00

— COMPLETE FOR AMENDMENTS —			Agency Contact & Telephone # Lovel VanArsdale, 615-253-8570	
END DATE AMENDED? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred) 	
FY	Base Contract & Prior Amendments	THIS Amendment ONLY		
2009	\$200,000.00			
2010		\$50,000.00		
TOTAL:	\$200,000.00	\$50,000.00		
			Speed Code FA00001772	Account Code 70803000

Man
F&A Secured Document
FA0927530-01

Procurement Process Summary (non-competitive, FA- or ED-type only)

**AMENDMENT ONE
TO 6177**

This Contract Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Office of eHealth Initiatives, hereinafter referred to as the "State" and Manatt Health Solutions, a division of Manatt, Phelps & Phillips, LLP, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The following provision is added as Contract Section A.9:
 - A.9. Contractor shall assist and support the State in establishing the State Designated Entity (SDE) for the implementation of the Tennessee Plan. See Contract Section A.2. The support shall include, but not be limited to:
 - a. Provide consulting services to the Office of eHealth Initiatives during the transition to the SDE and to the Steering Committee during the creation of the SDE Board of Directors
 - b. Provide a governance structure and assist in executing the high level implementation plan as stated in the final report. See Section A.6.
2. The text of 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 April 1, 2009 and ending on July 31, 2009. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
3. The text of 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 Two Hundred and Fifty Thousand dollars (\$250,000.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.
4. The text of Contract Section C.3 is deleted in its entirety and replaced with the following:
 - 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)
Upon completion of A.4.a	\$75,000.00
Upon completion and satisfaction of State of A.6.	\$75,000.00
Upon satisfactory completion of assignment, as described in A.7.	\$50,000.00
Upon satisfactory completion of A.9	\$50,000.00

The revisions set forth herein shall be effective July 1, 2009. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

MANATT HEALTH SOLUTIONS, A DIVISION OF MANATT, PHELPS & PHILLIPS, LLP:

Will A. R. E. 6/17/09
CONTRACTOR SIGNATURE DATE

William S. Bernstein, Partner
PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz 6-22-09
M. D. GOETZ, COMMISSIONER DATE

CONTRACT COVER

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

RFS Tracking #		Edison Contract ID #			
31701-19124		00000000000000000000000000000000 Lel 77			
Service Caption		Delegated Authority Requisition ID # (ONLY if applicable)			
The primary deliverables of the project will be a Tennessee Plan: including (1) a proposed governance model and conceptual architecture for an integrated, statewide health information exchange, and (2) a proposed plan to begin implementation, either through the State or a State Designated Entity (SDE).					
Contractor		Contractor FEIN or SSN			
Manatt Health Solutions, a division of Manatt, Phelps & Phillips, LLP		<input type="checkbox"/> C- or 95-2375841 <input checked="" type="checkbox"/> V-			
Begin Date	End Date	Subrecipient or Vendor	CFDA #(s)		
April 1, 2009	June 30, 2009	<input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor			
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2009	200,000.00				200,000.00
TOTAL:	200,000.00				200,000.00

M. J. Phelps

F&A Secured Document

6177-FA0927530

Procuring Agency Contact & Telephone #	
Level VanArsdale / 615-253-8570	
Procuring Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred.)	
Ma. Aully	
Speed Code	Account Code
FA0000 TO COME	70803000 JA

Contractor Ownership/Control		<i>Program Code Provided</i>			
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> Government	
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input checked="" type="checkbox"/> NOT Minority/Disadvantaged	<input type="checkbox"/> Other	
Contractor Selection Method					

DIR PCM
MHT
3-30-09

RFP

Competitive Negotiation *

Alternative Competitive Method *

Non-Competitive Negotiation *

Other *

***Procurement Process Summary**

There are no other consultants who have the vast experience and have worked with other States to create key components of governance, technical and business requirements, (including sustainability challenges) for the Tennessee Plan, identify possible sources funding, define the optimum Tennessee organization and structure, and develop principles to maximize the installation and use of EHRs across the state.

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
OFFICE OF eHEALTH INITIATIVES
AND**

Manatt Health Solutions, a division of Manatt, Phelps & Phillips, LLP

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Office of eHealth Initiatives, hereinafter referred to as the "State" and Manatt Health Solutions, a division of Manatt, Phelps & Phillips, LLP, hereinafter referred to as the "Contractor," is for the provision of consulting services, as further defined in the "SCOPE OF SERVICES."

The Contractor is a division of a Limited Liability Partnership.
Contractor Federal Employer Identification or Social Security Number: 95-2375841
Contractor Place of Incorporation or Organization: California

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service 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. The primary deliverables of the project will be a Tennessee Plan: including (1) a proposed governance model and conceptual architecture for an integrated, statewide health information exchange, and (2) a proposed plan to begin implementation, either through the State or a State Designated Entity (SDE).
- A.3. State shall establish a Steering Committee which will be involved directly in day-to-day project decisions and serve as a means for the team to obtain feedback and direction rapidly. Contractor will interact with the full Steering Committee as needed.
- A.4. Assessment.
- a. Contractor shall catalogue Governance, Technical, Business and Finance strategies of selected states as agreed to with the Steering Committee.
 - b. Contractor shall review and assess information on technical architecture framework, privacy and security framework and governance model developed by State.
 - c. State shall provide information to Contractor on the significant Health Information Exchange (HIE) implementation projects underway or planned by executive branch state agencies. Contractor shall follow up with interviews with the executive branch state agencies as needed.
 - d. Contractor shall also conduct interviews, with some of those interviews to be in person, at the request of the state, with key stakeholders throughout the state about their significant HIE implementations. This work will include determining the stage of implementation of each project as either: planning; preliminary implementation, advanced implementation, operational. This effort will also include a high-level description of the functionality included in the project which may include: e-prescribing, Electronic Health Record (EHR), hospital/clinical management, laboratory results, clinical data exchange, administrative payment processing, as well as high level description of technical architecture, definition of key stakeholders, an estimation of number of individuals served, and the region served. Based on all the information provided to and compiled by Contractor, the Contractor shall provide an assessment of the significant HIE implementation projects currently underway within Tennessee.

- e. Contractor shall review State's assessment of procurement statutes to ascertain the viable options for (1) the feasibility of establishing a SDE relationship within the State, (2) the structural requirements for a SDE; and (3) the extent to which Tennessee statute revision may be needed or desirable.

A.5. Analysis.

- a. Contractor shall develop critical success factors to optimize the implementation and use of EHRs by providers across the state by defining "meaningful use" that best supports Tennessee's success and by assessing the possible role of Regional Extension Centers in advancing EHR implementation.
- b. Contractor shall develop success criteria and critical components of key governance, technical and business requirements (including sustainability challenges) for the Tennessee Plan, and identification of possible sources of matching funds.
- c. Contractor shall define the optimum Tennessee organization and structure, and develop principles to maximize the installation and use of EHRs across the state.
- d. Contractor shall develop and maintain capacity to monitor developments related to implementation of the American Recovery and Reinvestment Act of 2009 (ARRA) at the federal and state-levels and provide routine analysis and updates to the Steering Committee.
- e. Contractor shall make a presentation of all analysis to the Steering Committee.

A.6. Contractor shall develop a report, to the State's satisfaction, on or before May 8, 2009, or other date designated by the Steering Committee, including a description of the current landscape, a summary of known federal requirements, a statement of EHR advancement principles, proposed governance structure of a state or SDE operated HIE, a documented set of architectural principles and clinical requirements, and detailed high level implementation plan.

A.7. Contractor shall participate in presentation of report to eHealth Advisory Council on May 21, 2009 or other date designated by the Steering Committee. In addition, following this meeting, the contractor shall provide consulting services in support of the subcommittees of the eHealth Advisory Council.

A.8. Scope Constraints.

- a. The services the Contractor will provide involve policy and business consulting and do not include providing legal advice to the State.
- b. The ARRA presents opportunities across a variety of programmatic areas. In order to produce the required recommendations in a timely fashion, Contractor will focus on the HIE and health information technology adoption components of the new law. Consequently, Contractor will not be included in the following activities in this project:
 - 1. Assessment or development of strategies related to the ARRA loan fund, research and development, or workforce development
 - 2. Development of proposal(s) for HIE Planning and Implementation funds available through ARRA; and
 - 3. Federal policy and regulatory advocacy

B. CONTRACT TERM:

- B.1. This Contract shall be effective for the period commencing on April 1, 2009 and ending on June 30, 2009. 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 two (2) 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 Two Hundred Thousand dollars (\$200,000.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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

- 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)
Upon completion of A.4.a	\$75,000.00
Upon completion and satisfaction of State of A.6.	\$75,000.00
Upon satisfactory completion of assignment, as described in A.7.	\$50,000.00

- 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:

Department of Finance and Administration
Office of eHealth Initiatives
312 Rosa L. Parks Avenue, 13th Floor
Nashville, TN 37243

- 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 Finance & Administration, Office of eHealth Initiatives;
- (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 involved 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 Contract may be terminated by either party by giving written notice to the other, at least 30 (thirty) days before the effective date of termination. Should the State exercise this provision, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Should the Contractor exercise this provision, the State shall have no liability to the Contractor except for those units of service which can be effectively used by the State. The final decision as to what these units of service are, shall be determined by the State. In the event of disagreement, the Contractor may file a claim with the Tennessee Claims Commission in order to seek redress.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract 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:

Melissa E. Hargiss, Director of Office of eHealth Initiatives
Department of Finance and Administration
312 Rosa L. Parks Avenue, 13th Floor
Nashville, TN 37243
Melissa.hargiss@state.tn.us
Telephone # 615-532-1553
FAX # 615-532-2849

The Contractor:

William Bernstein
Manatt Health Solutions, a Division of Manatt, Phelps & Phillips, LLP
7 Times Square
New York, NY 10036
wbernstein@manatt.com
Telephone # (212) 830-7282
FAX # (212) 830-7321

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. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.

- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
- b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
- c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

IN WITNESS WHEREOF,

MANATT HEALTH SOLUTIONS, A DIVISION OF MANATT, PHELPS & PHILLIPS, LLP:



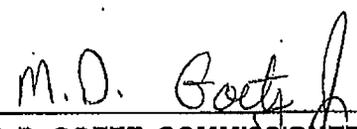
CONTRACTOR SIGNATURE

Apr. 12, 2009

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz


M. D. GOETZ, COMMISSIONER *of MOA*

4-3-09

DATE

