

**CONTRACT #4**  
**RFS # 318.65-00212**  
**FA # 06-16693-00**

**Finance & Administration**  
**Bureau of TennCare**

**VENDOR:**  
**Health Management Systems,**  
**Inc.**



STATE OF TENNESSEE  
BUREAU OF TENNCARE  
310 Great Circle Road  
NASHVILLE, TENNESSEE 37243

RECEIVED

OCT 19 2009

FISCAL REVIEW

October 19, 2009

Mr. Jim White, Director  
Fiscal Review Committee  
8<sup>th</sup> Floor, Rachel Jackson Bldg.  
Nashville, TN 37243

Attention: Ms. Leni Chick

RE: Bureau of TennCare Contract Amendments

Dear Mr. White:

The Department of Finance and Administration, Bureau of TennCare, is submitting for consideration by the Fiscal Review Committee, Amendment #21 to Volunteer State Health Plan, Inc. (TennCare Select), TennCare's provider of medical and behavioral services for children in state custody as well as other high risk populations. On September 30, 2009, the federal court in Memphis ruled in the State's favor on a particular point in the Arlington Developmental Center case. As a result of the ruling, the State is permitted to terminate a contract with Community Services Network for services that have been provided to members of the Arlington class and funded with pure state dollars. Instead, TennCare will deliver very similar services through this proposed amendment with TennCare Select. By making this change the state will be able to draw federal matching dollars which will permit us to serve a larger group of enrollees; those in the Arlington class and those individuals with MR who are enrolled in the other (non-Arlington associated) MR waivers or who are receiving care in a private ICF-MR. Per the plan presented to the court, individuals who currently meet the criteria previously noted will be given the option to "opt in" to TennCare Select as their MCO. New enrollees meeting such criteria will be assigned to TennCare Select with the ability to "opt out". TennCare Select will provide nurse care management services to this group of enrollees who have specialized health care needs.

Mr. Jim White  
October 19, 2009

Additionally, TennCare is submitting for consideration proposed amendment #3 to Health Management Systems, Inc., TennCare's contract for the recovery of state funds resulting from third party payments. This competitively procured contract has resulted in millions of dollars in state recovery and the proposed amendment exercises the State's option to extend the term for the final year of the contract. No additional funding is required to support this term extension.

The Bureau of TennCare would greatly appreciate the consideration and approval of these contract amendments by the Fiscal Review Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Pierce", with a long horizontal flourish extending to the right.

Scott Pierce  
Chief Financial Officer

cc: Darin J. Gordon, Deputy Commissioner  
Alma Chilton, Contract Coordinator

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## Supplemental Documentation Required for Fiscal Review Committee

<b>*Contact Name:</b>	Scott Pierce	<b>*Contact Phone:</b>	615-507-6415		
<b>*Contract Number:</b>	FA-06-16693-00	<b>*RFS Number:</b>	31865-00212		
<b>*Original Contract Begin Date:</b>	February 1, 2006	<b>*Current End Date:</b>	January 31, 2010		
<b>Current Request Amendment Number (if applicable):</b>	3				
<b>Proposed Amendment Effective Date (if applicable):</b>	February 1, 2010				
<b>*Department Submitting:</b>	Finance and Administration				
<b>*Division:</b>	Bureau of TennCare				
<b>*Date Submitted:</b>	October 19, 2009				
<b>*Submitted Within Sixty (60) days (if not, explain):</b>	Yes				
<b>*Contract Vendor Name:</b>	Health Management Systems, Inc.				
<b>*Current Maximum Liability:</b>	\$25,000,000.00				
<b>*Current Contract Allocation by Fiscal Year (as Shown on Most Current Fully Executed Contract Summary Sheet)</b>					
<b>FY:2006</b>	<b>FY: 2007</b>	<b>FY: 2008</b>	<b>FY:2009</b>	<b>FY 2010</b>	<b>FY :</b>
\$ 2,780,000	\$6,670,000	\$6,670,000	\$3,880,000	\$ 5,000,000	\$
<b>*Current Total Expenditures by Fiscal Year of Contract (attach backup documentation from STARS or FDAS report) (Attached)</b>					
<b>FY: 2006</b>	<b>FY: 2007</b>	<b>FY: 2008</b>	<b>FY: 2009</b>	<b>FY: 2010</b>	<b>FY</b>
\$ 23,34885	\$2,522,204.57	\$3,780,603.19	\$5,500,391.95	\$665,460.53	\$
<b>If Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:</b>			This contract with Health Management Systems is the first contractor TennCare has had for the recovery of third party funds. The dollars paid to the contractor are percentages of actual amounts recovered and vary widely from one month to the other. The initial contract maximum liability was a projection and any unused funds for a fiscal year roll over to be available for payment during remaining term of contract.		
<b>If surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:</b>			The funds for this contract are not specific to the fiscal year. The dollars paid to the contractor are percentages of actual amounts recovered and vary widely from billing period to the next. The initial contract maximum liability was a projection and any unused funds for a fiscal year roll over to be available for payment during remaining term of contract.		
<b>If Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:</b>			N/A		

**Supplemental Documentation Required for  
Fiscal Review Committee**

Contract Funding Source/Amount	State	\$12,500,000.00	Federal	\$12,500,000.00
	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)		
January, 2007		Amendment #1 – Name, vendor ID change		
January, 2009		Amendment #2 – Term Extension, funding to support extension, and OCR standard language changes		
Method of Original Award: (if applicable)		Request for Proposal		

Pursuant to the request from the Fiscal Review Committee regarding additional information relative to contracts, the following responses pertain to Health Management Systems, Inc., Amendment #3 and are submitted to Fiscal Review for consideration.

- (1) **A detailed breakdown of the actual expenditures anticipated in each year of the contract, including specific line items, the source of funds (federal, state, or other--if other, please specify source), and the disposition of any excess funds.**

Payments to Health Management Systems, Inc. are paid at the following funding source:

**50% State - 50% Federal**

All payments to contractor are based on rates per recovery as submitted in RFP Cost Proposal and included in contract, detailed below:

- C.3. Payment Methodology. The State of Tennessee agrees to pay the Contractor a contingency fee based on percentages of revenue generated as a direct result of the Contractor's efforts, as listed below. These payments are final and are contingent upon the Contractor's performance and shall not be adjusted by either party except as provided herein. The Contractor shall be paid within sixty (60) days after the State has received the appropriate recovery and the invoice has been approved by the state. Prior to the submission of an invoice, the Contractor shall submit a draft invoice with backup data for review and approval by the State. The Contractor may identify revenues to which the State may be entitled from prior periods which have not already been claimed. Such retroactive claims, which result in actual net recovery being received by the State, shall also be included as a component of the total amount on which compensation to the Contractor is calculated.

## Supplemental Documentation Required for Fiscal Review Committee

Cost Item Description	Same Percentage Rate for Duration of Contract Including any Options for Extension
Insurance Verification Cost Savings	<u>.80</u> % of Cost Savings
Health Insurance Recovery	<u>4.25</u> % of Recovered Funds
Medicare Recovery	<u>5.00</u> % of Recovered Funds
Estate Recovery	<u>8.00</u> % of Recovered Funds
Subrogation Recovery	<u>5.00</u> % of Recovered Funds
HIPP (Health Insurance Premium Purchase) Cost Savings	<u>.80</u> % of Cost Savings
Medical Support Enforcement Cost Saving	<u>.80</u> % of Cost Savings
Other Projects as Defined	<u>10.00</u> % of Recovered Funds or Cost Savings

**A detailed breakdown in dollars of any savings that the department anticipates will result from this contract, including but not limited to, reduction in positions, reduced equipment costs, travel, or any other item related to the contract.**

TennCare does not anticipate cost savings from staffing, travel, equipment, etc., however, this contractor recovers funds for the state that during the term of the current contract has exceeded one billion dollars in combined state recovery and cost savings to the state (see attached).

- (3) **A detailed analysis in dollars of the cost of obtaining this service through the proposed contract as compared to other options.**

This competitively procured contract was initiated to provide state recovery of third party funds resulting in millions of dollars recovered to the state. There is no other viable option for provision of these services than through professional service contract.

**PAYMENTS MADE TO  
HEALTH MANAGEMENT SYSTEMS, INC.  
BY FISCAL YEAR**

FA0616693	2006	7/11/2006	\$23,348.85	
			<b>\$23,348.85</b>	<b>FY 2006 Total</b>

FA0616693	2007	8/15/2006	\$28,527.93	
FA0616693	2007	8/15/2006	\$48,168.26	
FA0616693	2007	8/15/2006	\$33,111.61	
FA0616693	2007	9/5/2006	\$5,757.90	
FA0616693	2007	9/5/2006	\$18,666.50	
FA0616693	2007	9/28/2006	\$78,674.38	
FA0616693	2007	9/28/2006	\$76,295.60	
FA0616693	2007	2/1/2007	\$200,771.89	
FA0616693	2007	2/1/2007	\$84,835.71	
FA0616693	2007	2/1/2007	\$116,045.40	
FA0616693	2007	2/16/2007	\$220,322.15	
FA0616693	2007	3/12/2007	\$156,168.01	
FA0616693	2007	4/18/2007	\$175,711.50	
FA0616693	2007	5/14/2007	\$297,029.23	
FA0616693	2007	7/2/2007	\$342,168.20	
FA0616693	2007	7/25/2007	\$640,000.00	
			<b>\$2,522,254.27</b>	<b>FY 2007 Total</b>

FA0616693	2008	11/19/2007	\$392,103.97	
FA0616693	2008	11/19/2007	(\$279.50)	
FA0616693	2008	1/16/2008	\$230,439.29	
FA0616693	2008	2/12/2008	\$474,751.03	
FA0616693	2008	3/7/2008	\$251,916.13	
FA0616693	2008	4/2/2008	\$425,534.15	
FA0616693	2008	5/5/2008	\$482,101.96	
FA0616693	2008	6/23/2008	\$313,476.98	
FA0616693	2008	6/26/2008	\$354,528.32	
FA0616693	2008	12/7/2007	\$518,245.13	
FA0616693	2008	12/7/2007	\$337,785.73	
			<b>\$3,780,603.19</b>	<b>FY 2008 Total</b>

FA0616693	2009	9/18/2008	\$612,474.28
FA0616693	2009	10/20/2008	\$628,627.84
FA0616693	2009	11/25/2008	\$476,967.93
FA0616693	2009	12/15/2008	\$602,667.86
FA0616693	2009	8/18/2008	\$827,100.45
FA0616693	2009	11/13/2008	\$388,431.53
FA0616693	2009	1/30/2009	\$153,439.74
FA0616693	2009	3/19/2009	\$514,715.69
FA0616693	2009	4/8/2009	\$346,421.12
FA0616693	2009	6/16/2009	\$241,654.43
FA0616693	2009	5/26/2009	\$707,891.08

**\$5,500,391.95**      **FY 2009 Total**

FA0616693	2010	8/3/2009	\$279,106.35
FA0616693	2010	8/3/2009	\$215,471.93
FA0616693	2010	9/10/2009	\$170,882.25

**\$665,460.53**      **FY 2010 Total**

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# Results for TennCare – '06 to Current

Commercial Insurance Recoveries	\$ 64,423,074
Estate Recovery	\$ 42,978,730
Medicare Recoveries	\$ 3,262,527
Credit Balance Audits	\$ 2,114,162
Mass Tort Settlements	\$ 1,511,005
Subrogation	\$ 758,729
<b>Total Recoveries</b>	<b>\$115,048,227</b>

Major Medical Policies	\$762M
Drug Policies	\$204M
<b>Total Policies</b>	<b>\$966M</b>

**Total Recoveries and Savings: \$1.08B**

**NON-COMPETITIVE AMENDMENT REQUEST:**

APPROVED

Commissioner of Finance &amp; Administration

1) RFS #	31865-00212	
2) Procuring Agency	Department of Finance and Administration, Bureau of TennCare	
<b>EXISTING CONTRACT INFORMATION</b>		
3) Service Caption	Third Party Liability Recoveries	
4) Contractor	Health Management Systems, Inc.	
5) Contract #	FA-06-16693-00	
6) Contract Start Date	February 1, 2006	
7) CURRENT Contract End Date : (if ALL options to extend the contract are exercised)	January 31, 2010	
8) CURRENT Maximum Cost : (if ALL options to extend the contract are exercised)	\$25,000,000.00	
<b>PROPOSED AMENDMENT INFORMATION</b>		
9) Amendment #	3	
10) Amendment Effective Date : (attached explanation required if < 60 days after F&A receipt)	February 1, 2010	
11) PROPOSED Contract End Date : (if ALL options to extend the contract are exercised)	January 31, 2011	
12) PROPOSED Maximum Cost : (if ALL options to extend the contract are exercised)	\$25,000,000.00	
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	<p>This proposed amendment does not represent any additional services to the Contractor, only an extension of the current contract that provides for the recovery of TennCare expended funds for which full or partial amount of medical expenses were previously paid by TennCare on behalf of recipients who have other third party coverage.</p>	
15) Explanation of Need for the Proposed Amendment	<p>This contract has resulted in millions of dollars recovered by the Contractor on behalf of the state. The proposed amendment is extending the term of the contract relative to extension language in the contract. There are no additional funds associated with the amendment.</p>	
16) Name & Address of Contractor's Current Principal Owner(s) : (not required for a TN state education institution)	<p>Health Management Systems, Inc.  Mr. William Lucia, President  401 Park Avenue South  New York, NY 10016</p>	
17) Office for Information Resources Endorsement : (required for information technology service; n/a to THDA)		

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

18) eHealth Initiative Endorsement : (required for health-related professional, pharmaceutical, laboratory, or imaging service)

Documentation is ...  Not Applicable to this Request  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 :

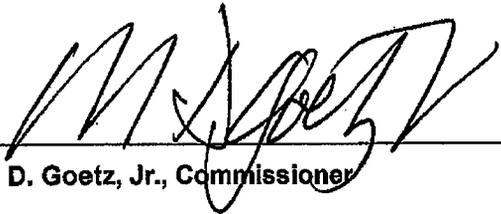
The Bureau of TennCare released a Request for Proposal that resulted in Health Management Systems, Inc. receiving the competitively awarded contract. This contract has had no changes to scope of service throughout the term of the contract. TennCare is proposing an amendment to extend the term as dictated by language in the original Request for Proposal and resulting contract. The amendment does not include additional funds.

21) Justification for the Proposed Non-Competitive Amendment :

Health Management Systems, Inc. is a competitively procured contract that TennCare is proposing to amend to extend the term for an additional year as provided in Request for Proposal and original contract language. This contractor has diligently worked to recover funds for the state resulting from third party recoveries. No additional funds are associated with this amendment. The Bureau of TennCare would very much appreciate approval by the Commissioner of Finance and Administration.

**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)



M. D. Goetz, Jr., Commissioner

Date



# C O N T R A C T   A M E N D M E N T

<b>Agency Tracking #</b> 31865-00212	<b>Edison ID</b> 12046	<b>Contract #</b> FA-06-16693	<b>Amendment #</b> 3
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<b>Contractor</b> Health Management Systems, Inc	<b>Contractor Federal Employer Identification or Social Security #</b> <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 132770433
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**Amendment Purpose/ Effects**  
Amendment extends the contract term for the provision of Third Party Liability Recoveries

<b>Contract Begin Date</b> February 1, 2006	<b>Contract End Date</b> January 31, 2011	<b>Subrecipient or Vendor</b> <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	<b>CFDA #(s)</b> 93.778
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FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2006	\$1,390,000.00	\$1,390,000.00			\$2,780,000.00
2007	\$3,335,000.00	\$3,335,000.00			\$6,670,000.00
2008	\$3,335,000.00	\$3,335,000.00			\$6,670,000.00
2009	\$1,940,000.00	\$1,940,000.00			\$3,880,000.00
2010	\$2,500,000.00	\$2,500,000.00			\$5,000,000.00
2011	0.00	0.00			0.00
<b>TOTAL:</b>	<b>\$12,500,000.00</b>	<b>\$12,500,000.00</b>			<b>\$25,000,000.00</b>

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

<b>— COMPLETE FOR AMENDMENTS —</b>			<b>Agency Contact &amp; Telephone #</b>	
<b>END DATE AMENDED?</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			Scott Pierce	
<b>FY</b>	<b>Base Contract &amp; Prior Amendments</b>	<b>THIS Amendment ONLY</b>	<b>Agency Budget Officer Approval</b> (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)	
2006	\$2,780,000.00			
2007	\$6,670,000.00			
2008	\$6,670,000.00			
2009	\$3,880,000.00			
2010	\$5,000,000.00			
2011		0.00		
<b>TOTAL:</b>	<b>\$25,000,000.00</b>	<b>0.00</b>		

<p>— OCR USE —</p>	<p><b>Procurement Process Summary</b> (non-competitive, FA- or ED-type only)</p>
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**AMENDMENT NO #3  
TO FA-06-16693-00  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
TENNCARE BUREAU  
AND  
HEALTH MANAGEMENT SYSTEMS, INC.**

This contract, by and between the State of Tennessee, Department of Finance and Administration, Bureau of TennCare, hereinafter referred to as the State, or TennCare and Health Management Systems, Inc., hereinafter referred to as the Contractor, is hereby amended as follows:

1. Contract language is amended by deleting Section B.1 in its entirety and replacing with the following:
  - B.1. Contract Term. This Contract shall be effective for the period commencing on February 1, 2006 and ending on January 31, 2011. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period. The Contractor shall have no claim to any collections received by the Bureau of TennCare that are the result of the Contractor's efforts, but which have been received by the Bureau of TennCare more than ninety (90) days after the date of the contract's expiration date.

The revisions set forth herein shall be effective January 31, 2010. All other terms and conditions not expressly amended herein shall remain in full force and effect.

**IN WITNESS WHEREOF:**

**HEALTH MANAGEMENT SYSTEMS, INC:**

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**WILLIAM LUCIA, PRESIDENT**

**DATE**

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**DEPARTMENT OF FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE:**

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**M. D. GOETZ, JR., COMMISSIONER**

**DATE**

# CONTRACT SUMMARY SHEET

021908

**318.65-212**

**FA-06-16693-02**

Tennessee Department of Finance and Administration

Bureau of TennCare

Health Management Systems, Inc.

C- or  V-

132770433 000

Third Party Liability Recoveries

February 1, 2006

January 31, 2010

vendor

93.778 Dept. of Health and Human Services/Title XIX

Contractor is on STARS

Contractor's Form W-9 is on file in Accounts

318.66

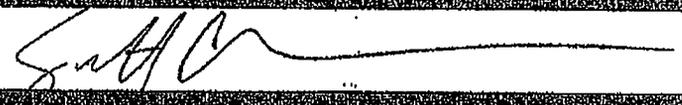
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Year	FY 06	FY 07	FY 08	FY 09	FY 10	TOTAL
2006	\$1,390,000.00	\$1,390,000.00				\$2,780,000.00
2007	\$3,335,000.00	\$3,335,000.00				\$6,670,000.00
2008	\$3,335,000.00	\$3,335,000.00				\$6,670,000.00
2009	\$1,940,000.00	\$1,940,000.00				\$3,880,000.00
2010	\$2,500,000.00	\$2,500,000.00				\$5,000,000.00
	\$12,500,000.00	\$12,500,000.00				\$25,000,000.00

Scott Pierce  
615-507-6415



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2006 \$2,780,000.00

2007 \$6,670,000.00

2008 \$6,670,000.00

2009 \$3,880,000.00

2010 \$5,000,000.00

\$20,000,000.00

\$5,000,000.00

January 31, 2009

January 31, 2010

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

- RFP   
  Competitive Negotiation \*   
  Alternative Competitive Method \*  
 Non-Competitive Negotiation \*   
  Negotiation w/ Government (ID, GG, GU)

NOV 24 2008

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**AMENDMENT NO #2  
TO FA-06-16693-00  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
TENNCARE BUREAU  
AND  
HEALTH MANAGEMENT SYSTEMS, INC.**

This contract, by and between the State of Tennessee, Department of Finance and Administration, Bureau of TennCare, hereinafter referred to as the State, or TennCare and Health Management Systems, Inc., hereinafter referred to as the Contractor, is hereby amended as follows:

1. Contract language is amended by deleting Section B.1 in its entirety and replacing with the following:
  - B.1. Contract Term. This Contract shall be effective for the period commencing on February 1, 2006 and ending on January 31, 2010. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period. The Contractor shall have no claim to any collections received by the Bureau of TennCare that are the result of the Contractor's efforts, but which have been received by the Bureau of TennCare more than ninety (90) days after the date of the contract's expiration date.
  
2. Contract language is amended by deleting Section C.1 in its entirety and replacing with the following:
  - C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Twenty-Five Million Dollars (\$25,000,000.00). The Service 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 Service 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 Service 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 language is amended by adding the following new language to Standard Terms and Conditions:
  - D.20. 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 3, 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.
4. Contract language is amended by adding the following new language to Special Terms and Conditions:

**E.26. 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.

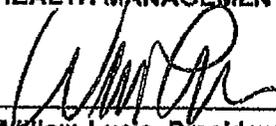
- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
- b. The State may contract with an 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](http://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.
5. Contract is amended by adding Attachment 3, Attestation of Personnel Used in Contract Performance.

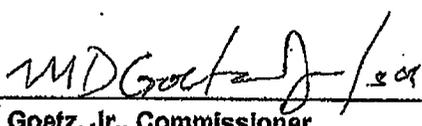
The revisions set forth herein shall be effective January 31, 2009. All other terms and conditions not expressly amended herein shall remain in full force and effect.

**IN WITNESS WHEREOF:**

**HEALTH MANAGEMENT SYSTEMS, INC:**

  
 \_\_\_\_\_  
 William Lucia, President 1/31/09  
DATE

**DEPARTMENT OF FINANCE AND ADMINISTRATION  
 BUREAU OF TENNCARE:**

  
 \_\_\_\_\_  
 M. D. Goetz, Jr., Commissioner 12/29/08  
DATE

**APPROVED:**

**DEPARTMENT OF FINANCE AND ADMINISTRATION:**

  
 \_\_\_\_\_  
 M. D. GOETZ, JR., COMMISSIONER 1/5/09  
DATE

EA-06-16693-02

COMPTROLLER OF THE TREASURY:

*John G. Morgan*

1/9/09

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JOHN G. MORGAN, COMPTROLLER OF THE TREASURY      DATE

# CONTRACT SUMMARY SHEET

010606

RFS # **318.65-212** Contract # **FA-06-16693-01**

State Agency **Department of Finance and Administration** State Agency Division **Bureau of TennCare**

Contractor Name **Health Management Systems, Inc. (Formerly known as [REDACTED])** Contractor ID # (FEIN or SSN)  C- or  X V- **132770433 00**

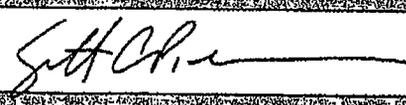
Service Description **Third Party Liability Recoveries**

Contract Begin Date **February 1, 2006** Contract End Date **January 31, 2009** SUBRECIPIENT/ VENDOR? **Vendor** CEDA? **93.778 Dept. of Health & Human Services/Title XIX**

Mark Each TRUE Statement  
 Contractor is on STARS  Contractor's Form W-9 is on file in Accounts

Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
318.66	060	083	11		

FY	State		Federal		Interdepartmental	Other	TOTAL Contract Amount
2006	\$1,390,000.00	\$1,390,000.00					\$2,780,000.00
2007	\$3,335,000.00	\$3,335,000.00					\$6,670,000.00
2008	\$3,335,000.00	\$3,335,000.00					\$6,670,000.00
2009	\$1,940,000.00	\$1,940,000.00					\$3,880,000.00
<b>TOTAL</b>	<b>\$10,000,000.00</b>	<b>\$10,000,000.00</b>					<b>\$20,000,000.00</b>

COMPLETE FOR AMENDMENTS ONLY			State Agency Fiscal Contact & Telephone #
FY	Base Contract Prior Amendments	THIS Amendment ONLY	
2006	\$2,780,000.00		Scott Pierce 507-6415
2007	\$6,670,000.00		State Agency Budget Officer Approval
2008	\$6,670,000.00		
2009	\$3,880,000.00		Funding Certification: Certification required by 16 C.A.R. 9-1-03 that there is no state fund appropriation from which this obligation or amendment is required to be paid that is not available to support other obligations or amendments included.
<b>TOTAL</b>	<b>\$20,000,000.00</b>	<b>0.00</b>	
End Date	January 31, 2009	January 31, 2009	

Contractor Ownership (complete on non base contracts with contractor prep) (FA or GR)

African American     Person w/ Disability     Hispanic     Small Business     NOT minority/disadvantaged  
 Asian     Female     Native American     OTHER minority/disadvantaged

Contractor Selection Method (complete on all base contracts with amendments or delegated authority)

RFP     Competitive Negotiation     Alternative Competitive Method  
 Non-Competitive Negotiation     Negotiation w/ Government (GG or GU)     Other

Procurement Process Summary (complete on selection by Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)

RECEIVED  
 JAN 22 2009  
 OFFICE OF  
 PROCUREMENT  
 AMENDMENTS

JAN 25

**AMENDMENT #1 TO  
CONTRACT #FA-06-16693-00**

This contract, by and between the State of Tennessee, Department of Finance and Administration, Bureau of TennCare, hereinafter referred to as the State, or TennCare and Public Consulting Group, hereinafter referred to as the Contractor, is hereby amended as follows:

1. Delete Section E.2 in its entirety and replace 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 facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:  
Deputy Commissioner  
Tennessee Department of Finance and Administration  
310 Great Circle Road  
Nashville, Tennessee 37243  
(615) 507-6471 (phone)  
(615) 532-5236 (fax)

The Contractor:  
Health Management Systems, Inc.  
Attn: Mr. William Lucia, President  
401 Park Avenue South  
New York, NY 10016  
Phone: (212) 685-4545  
Fax: (212) 857-5110

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the fax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- 
2. Add the following as Section E.26 under "SPECIAL TERMS AND CONDITIONS:"

E.26. Contractor Name: Effective January 1, 2007, all references to "Public Consulting Group" shall be deleted and replaced with "Health Management Systems, Inc."

3. Add the following as Section E.27 under "SPECIAL TERMS AND CONDITIONS:"

E.27. Federal Employer Identification Number. Effective January 1, 2007, the Federal Employer Identification Number of the Contractor shall be V132770433 00.

The other terms and conditions of this agreement not amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF:

HEALTH MANAGEMENT SYSTEMS, INC:

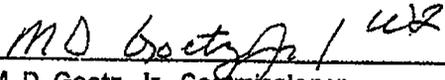


William Lucia, President

1/11/07

DATE

DEPARTMENT OF FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE:



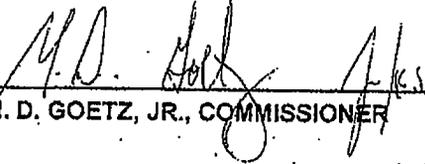
M. D. Goetz, Jr., Commissioner

1/11/07

DATE

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

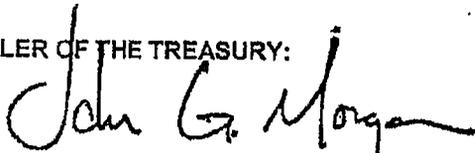


M. D. GOETZ, JR., COMMISSIONER

1/19/07

DATE

COMPTROLLER OF THE TREASURY:



JOHN G. MORGAN, COMPTROLLER OF THE TREASURY

1/23/07

DATE

# CONTRACT SUMMARY SHEET

010806

<b>RF#</b>  <b>318.65-212</b>	<b>Contract #</b> <b>FA-06-16693-00</b>
<b>State Agency</b>  Department of Finance and Administration	<b>State Agency Division</b>  Bureau of TennCare
<b>Contractor Name</b>  Public Consulting Group	<b>Contractor ID # (FEIN or SSN)</b>  <input type="checkbox"/> C- or <input checked="" type="checkbox"/> X V- 042942913 00

**Service Description**  
Third Party Liability Recoveries

<b>Contract Begin Date</b> February 1, 2006	<b>Contract End Date</b> January 31, 2009	<b>SUBRECIPIENT or VENDOR?</b> Vendor	<b>CFDA #</b> 93.778 Dept. of Health & Human Services/Title XIX
--	--	--	--

**Mark Each TRUE Statement**

Contractor is on STARS       Contractor's Form W-9 is on file in Accounts

Alignment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
318.66	060	083	11		

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2006	\$1,390,000.00	\$1,390,000.00			\$2,780,000.00
2007	\$3,335,000.00	\$3,335,000.00			\$6,670,000.00
2008	\$3,335,000.00	\$3,335,000.00			\$6,670,000.00
2009	\$1,940,000.00	\$1,940,000.00			\$3,880,000.00
<b>TOTAL</b>	<b>\$10,000,000.00</b>	<b>\$10,000,000.00</b>			<b>\$20,000,000.00</b>

COPY REASED  
FEB 14 2006  
TO ACCOUNTS

COMPLETE FOR AMENDMENTS ONLY			State Agency Fiscal Contact & Telephone #
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Scott Pierce, 507-6415
			State Agency Budget Officer Approval
			<i>Scott Pierce</i>
			Funding Certification (certification required by 6/15/05) (This statement is to be filed in the appropriate form with the original date of execution and is to be submitted to the appropriate agency or to the payor of the obligation.)
			FEB 16 2006 FY
			DIRECTOR OF ACCOUNTS

**Contractor Ownership** (complete on all base contracts with contract # prefix FA or GR)

<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input checked="" type="checkbox"/> NOT minority/disadvantaged
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—	

**Contractor Selection Method** (complete on all base contracts—N/A to amendments or delegated activities)

<input checked="" type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation	<input type="checkbox"/> Alternative Competitive Method
<input type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government (GG or GU)	<input type="checkbox"/> Other

**Amendment Process Summary** (complete on selection by Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE  
AND  
PUBLIC CONSULTING GROUP**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Bureau of TennCare, hereinafter referred to as the "State" and Public Consulting Group, hereinafter referred to as the "Contractor," is for the provision of Third-Party Liability Recoveries, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit corporation. The Contractor's address is 148 State Street, 10<sup>th</sup> Floor, Boston, MA 02109.

The Contractor's place of incorporation or organization is Massachusetts.

**A. SCOPE OF SERVICES**

A.1 Program Areas. The Contractor shall perform third-party recovery, estate, subrogation, tort and accident recovery and provide third-party coverage information (refer to Attachment 1, Definitions) as assigned by the Bureau of TennCare. The contractor shall:

- a) Pursue recovery of Bureau of TennCare expended funds for which the full or partial amount of medical expenses were previously paid by TennCare on behalf of TennCare recipients who have other third party payment coverage, unless payment was approved otherwise by the Bureau of TennCare, when the Bureau of TennCare has not initiated recovery efforts or has discontinued the pursuit of recovery;
  - b) Pursue recovery of Bureau of TennCare managed care contracting entity expended funds for which the full or partial amount of medical expenses were previously paid by TennCare on behalf of TennCare recipients who have other third party payment coverage, unless payment was approved otherwise by the Bureau of TennCare, when the Bureau of TennCare managed care contracting entity has not initiated recovery efforts or has discontinued the pursuit of recovery;
  - c) Identify Bureau of TennCare recipients with Medicare coverage, not previously identified by the Bureau of TennCare or the managed care contracting entity, to include accounting of unused Medicare reserve days, verification of Medicare coverage and pursuit of Medicaid funds if the Bureau of TennCare or the managed care contracting entity has not initiated recovery efforts or has discontinued pursuit of recovery.
- 
- d) ~~If assigned by the Bureau of TennCare, develop a plan to identify claims meeting state established criteria of recoverable estate recovery claims and/or subrogation recovery claims and establish a process to pursue recovery of the identified claims that meet criteria of estate recovery claims and/or subrogation recovery claims;~~
  - e) Perform additional recovery projects as requested and approved by the State to recover Bureau of TennCare monies where other insurance coverage is available;
  - f) Develop and implement a plan to identify liable third parties and/or insurance coverage, including, but not limited to, hospitalization, major medical, incidental policies such as Medicare A, B, C, D, Medicare Advantage policies, dental, eye care, Workers' Compensation and tort liability;
  - g) Verify insurance coverage information for Bureau of TennCare eligible recipient population by conducting data matches with insurance carriers and other entities and develop a process to update the Medicaid Management Information System (MMIS), otherwise called Interchange;

- h) Obtain and maintain cooperative agreements with agencies or entities to accept and process claims billed by the Contractor on behalf of the Bureau of TennCare;
- i) Design and reproduce information and/or educational materials necessary to complete all required services of this contract. Such materials will be shared with legal counsel for recipient population for casualty recovery cases, Department of Human Services caseworkers, recipient population, as well as state staff. The Contractor shall not disseminate any information and/or educational material without express consent of the State;
- j) The contractor shall be responsible for all costs incurred to design and disseminate all educational and/or informational material;
- k) The contractor shall identify, establish and pursue recovery projects and recovery cases but shall not represent the Bureau of TennCare in any legal forum unless authorized by the State.
- l) The contractor shall, upon the request of the State, return to the Bureau of TennCare all cases requiring legal assistance.
- m) If assigned by the Bureau of TennCare, develop a health insurance premium purchase program as set out in CMS provisions. The program should include educational packages for eligible recipients, cost effective determination, completion of all necessary forms to establish coverage with the employer and continuation of payment of policy premium and tracking.
- n) If assigned by the Bureau of TennCare, develop a medical support enforcement program to identify those recipients who have an existing medical support order, identify the responsible party employer and establish a withholding order, when necessary, to implement insurance coverage on behalf of those recipients with existing orders. When applicable, work with the appropriate county official to amend court orders to include medical support enforcement and establish all withholding orders.

A.2. Provide Project and/or Recovery Process Recommendations. Upon request of the State, review the Bureau of TennCare's TPL recovery process, subrogation recovery process and estate recovery process to identify recovery opportunities and make recommendations and/or proposals in writing and in briefings detailing recovery opportunities or process changes needed.

A.3. Reporting Requirements.

- a) The Contractor shall provide the State with report design layouts of all reports. All final report design layouts will be subject to the State's approval.
- b) The Contractor shall provide individual monthly status reports to the State detailing the progress of each active project. ~~The monthly status reports shall be submitted electronically on excel spreadsheets as well as hard copy by the 15<sup>th</sup> of each month in a format specified by the State.~~
- c) The Contractor shall provide quarterly status reports to be submitted no later than July 15<sup>th</sup>, October 15<sup>th</sup>, January 15<sup>th</sup> and April 15<sup>th</sup>, to the State detailing the results and operations of third party liability recoveries and cost avoidance per project. The report shall be submitted electronically on Excel spreadsheets as well as hard copy and shall include information pertinent to each quarter's activities and to the cumulative activities per project for the current fiscal year, as specified below:

Information to be included per project report:

- The projected revenue/costs savings for each project by fiscal year;
- Maximum project recoverables based on work currently in process;
- Total dollars recouped and costs saved in reporting period;

- Total count of claims billed and the dollar value of claims billed by the Contractor in reporting period;
- Total dollars recouped and costs saved by project;
- Total billed by the Contractor by work project or initiative.

Failure to provide reports as specified above may, at the discretion of the State, result in suspension of future payments to the Contractor and/or a delay in implementation of new projects and/or delay in completion of existing projects until such time as the Contractor complies with the reporting requirements.

A.4. Proposed Project Presentation. The contractor shall prepare project proposal reports as necessary for use by the Bureau of TennCare. Such reports shall include:

- a. Proposed recovery amounts per project;
- b. Overall savings per project;
- c. Impact of budgeted Contract amount;
- d. All ad hoc report results as requested by the State in relation to the third-party liability program;
- e. All ad hoc report results as requested by the State in relation to the Estate Recovery Program;
- f. All ad hoc report results as requested by the State in relation to the Subrogation Recovery work;
- g. All ad hoc report results as requested by the State in relation to all other recovery project proposals presented by the Contractor; and
- h. All ad hoc report results as requested by the State in relation to Medicare funds recovery.

A.5. Posting Requirements.

- a. The Contractor shall establish and maintain an accounting system in accordance with generally accepted accounting principles, and
- b. Provide posting reports of revenue recoveries on behalf of the Bureau of TennCare within five (5) days of receipt of funds. The reports will reflect posting of all recovered funds to claim level detail for each claim payment received. The posting shall be performed from photocopies of payments received through the lock box or payments received directly by the Bureau of TennCare for those claims billed by the contractor on behalf of the Bureau of TennCare. Reports shall be in tape or electronic format, unless otherwise specified by the Bureau of TennCare. All claim payments received must be posted to claim detail within 97% accuracy. No contingency rates (based on specified percentage of recovered monies) will be paid on payments received through the lockbox or directly by the Bureau of TennCare for payments that are not posted to claim detail.

A.6. Insurance Coverage Reporting. The Contractor shall provide insurance coverage reports monthly by ~~submitting electronic Excel spreadsheet as well as hard copy.~~ The contractor insurance coverage reports shall be consistently clean, legible and error free. The contractor insurance coverage reports shall be 97% accurate.

A.7. Work Performance Timeframe.

- a. The Contractor shall bring any work determined by the State to be non-compliant with the Contract or non-compliant with Bureau of TennCare specifications into conformance, within ten (10) working days of written notice from the State, at no expense to the Bureau of TennCare;
- b. The Contractor shall have in place (on-line, usable and functioning properly) all equipment, software and/or computer elements necessary to accept Bureau of TennCare data, in a format and manner prescribed by the Bureau of TennCare, within 90 days of contract award.
- c. The Contractor shall have the ability to accept and produce third-party liability (TPL) billing data in a HIPAA compliant format;

A.8. Work Performance Validity.

- a. The Contractor shall warrant that general reports produced shall be within 97% accuracy. Any errors shall be corrected by the contractor at no cost to the Bureau of TennCare. The contractor shall further warrant that the completed reports shall be legible, uniform in appearance, clean and presentable. Reports shall be submitted monthly in an electronic excel spreadsheet, as well as hard copy.
- b. The Contractor shall warrant that individual accounts receivable posting to claim detail will be within 97% accuracy. Any errors shall be corrected by the contractor at no cost to the Bureau of TennCare. The contractor shall produce accurate reports of contract work and the contractor further warrants that the completed reports shall be submitted within five (5) working days of posting, shall be legible, uniform in appearance, clean and presentable in an electronic excel spreadsheet as well as hard copy.

A.9. Supplies.

- a. The Contractor shall provide all supplies required to perform all aspects of the services under the contract;
- b. The Contractor shall be responsible for all mailing costs incurred in the performance of the services under the contract;
- c. The Contractor shall provide and maintain electronic office equipment necessary to perform all aspects of the scope of work in this contract, and
- d. The Contractor shall be responsible for obtaining and bearing the cost of direct access to the Bureau of TennCare's Medicaid Management Information System.

A.10. Office and Staffing Requirements.

- a. The Contractor shall designate one employee to maintain presence at the Bureau of TennCare office, 310 Great Circle Road, Nashville, Tennessee, for the duration of the contract. No additional cost shall be paid to Contractor for on-site staff. All other contractor staff required to support the contract will be located at offices of Contractor.
- b. The Contractor shall provide sufficient administrative staff and organizational resources to perform the scope of work defined in the contract. Contractor staff shall include a minimum of:
  - (1) Project Manager and designated Back-up Project Manager assigned directly to the scope of the work included in this contract; both persons will possess a clear understanding of the nature and scope of work to be performed;
  - (2) Key personnel, assigned to the scope of work included in this contract, with a working knowledge of the work to be performed; and
  - (3) Clerical and support staff with skills and training required for the successful completion of work to be performed.
- c. The Contractor shall provide training to the contractor staff sufficient to conduct the scope of work of this contract;
- d. The Contractor Project Manager or Back-up Project Manager shall be available and accessible by phone during the hours of 8:00 a.m. through 4:30 p.m. CST, Monday through Friday, excluding state-observed holidays. The Contractor shall also provide a contact number for after-hours emergencies;

- e. The Bureau of TennCare reserves the right to require the Contractor to reassign or otherwise remove from the project any contractor employees found unacceptable by the Bureau of TennCare.

A.11. Lockbox. The contractor shall be responsible for establishing and maintaining a lock box through a bonded agency not affiliated with the contractor. All contractor billings will bear written instructions to submit payment and pertinent documentation to the lock box address, unless otherwise specified by the Bureau of TennCare. All recoveries, unless otherwise specified by the Bureau of TennCare, are to be made payable by check to the Treasurer, State of Tennessee. All recoveries shall be deposited each work day into an account designated by the Bureau of TennCare. Copies of checks and documentation will be mailed from the lock box company to the contractor by the lock box company. All expenses incurred in conjunction with the scope of service of the lock box, including copying and postage, shall be borne by the contractor. The State will have final approval of contractor's selection of the lock box company.

A.12. Invoicing and Overpayments.

- a. The Contractor shall submit invoices to the State on a monthly basis. Invoices shall be based on actual recoveries posted to claim detail and documented by the contractor posting reports.
- b. The Contractor shall request payment on recoveries only in the areas of work assigned to the contractor by the Bureau of TennCare. Payment will not be made to the contractor for work performed without the express request or consent of the Bureau of TennCare.
- c. The Contractor shall make restitution to the Bureau of TennCare within thirty (30) days of discharge for any monies paid as contingency fees based on recoveries by the contractor for billings which are later disallowed due to an audit of accounts or determination by the Bureau of TennCare of an inappropriate recovery.
- d. In the event the contractor receives any erroneous payment or any overpayment, either directly or through the lock box, the contractor shall return the overpayment or reimburse the Bureau of TennCare the full amount of any erroneous payment or overpayment within thirty (30) days of discovery of the inappropriate payment. If the Bureau of TennCare discovers any inappropriate or erroneous payment received by the contractor, the Bureau of TennCare will advise the Contractor of such finding by written notice and the Contractor will return or reimburse the Bureau of TennCare the full amount of any erroneous payment or overpayment. The Contractor will make adjustment for refund to the Bureau of TennCare whatever contingency fee the Bureau of TennCare paid for recovery of identified erroneous or inappropriate recovery within thirty (30) days of discovery by the Contractor or notification of the inappropriate recovery by the Bureau of TennCare.
- e. The contractor shall not receive compensation or payment of any nature in advance of the receipt of an invoice for services provided.

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A.13. Contract Start Up and Maintenance.

- a. The Contractor shall be responsible for any expenses incurred for changes to the MMIS required by the contractor including, but not limited to, file layout changes and/or data upload interfaces.
- b. The Contractor shall be responsible for any expenses incurred pursuant to implementation activities associated with the Contract.

A.14. Computer Equipment and Systems.

- a. The Bureau of TennCare shall have all ownership rights to computer software, or modifications thereof, associated documentation designed, developed or installed for this contract and shall have the right to reproduce, publish, or otherwise use, and to authorize others to do so, all computer software, instructions, files and documentation.

- b. The Contractor shall provide the Bureau of TennCare with real time on-line access to the contractor's database with print and query capability.
- c. The Contractor shall develop and install all computer software, hardware and data access lines necessary to conduct the activities and/or perform the services within the scope of the contract. The contractor shall be responsible for all costs incurred for obtaining any necessary data access, software and hardware to perform the scope of work under this Contract.
- d. The Contractor shall provide a system that will meet the interface needs and requirements of the current MMIS. The contractor must anticipate and be prepared to provide any necessary interface capabilities that may be required by the current or any subsequent MMIS.

A.15. Complaints and/or Inquiries. The contractor shall investigate, document and bear the cost of resolution of any complaints, regarding the scope of the work under this contract, that are received by either the contractor or the Bureau of TennCare within twenty (20) days of receipt of the complaint or inquiry. This includes, but is not limited to, provider and recipient complaints pertaining to the scope of work performed under the contract.

A.16. Staff Instruction.

- a. The Contractor shall provide, at Contractor's expense, instructional guidelines as well as instruction to State staff that details each recovery process for those areas/proposed projects the Bureau of TennCare deems appropriate, and
- b. Provide instructional guidelines to the State staff for the performance of any project that the Bureau of TennCare determines should be performed by State staff that may have been previously performed by the contractor.

A.17. Prohibited Activity:

- a. The Contractor is prohibited from using any data acquired as a part of this Contract, that is not otherwise protected under any other confidentiality statute or agreement, for any use not outlined in this Contract.
- b. The Contractor is prohibited from entering into any legal action or making reference to any potential legal action without the Bureau of TennCare's prior approval. Prior written approval must be received from the Bureau of TennCare before entering into any legal actions for recovery and/or collections.
- c. The Contractor shall not accept settlement of a Bureau of TennCare claim for an amount less than what was expended by the State on an individual, excluding attorney fee and/or administrative expenses, without prior written approval of the State.

d. The Contractor shall have no claim to any collection received by the Bureau of TennCare that is not the result of the contractor's efforts. The contractor shall have no claim to any collection received by the Bureau of TennCare if the payment was received by the Bureau of TennCare more than ninety (90) days after the date of the contract's expiration date without written exception to this section from the Bureau of TennCare.

A.18. The Bureau of TennCare Has the Responsibility and /or Right To:

- a. Pay the Contractor a percentage of actual cash collection for all collections attributable to the areas of recovery assigned to the Contractor by the Bureau of TennCare as stated in Section A.1 – A.17 of this contract;
- b. Pay the Contractor a percentage of the value of cost saving initiatives which result in diverted claims as stated in Section A.1 – A.17 of this contract;
- c. Intervene in cases assigned to the contractor under Section A.1 – A.17 of this contract involving litigation to protect the interest of the Bureau of TennCare;

- d. Withdraw any claims from further recovery efforts by notifying the contractor in writing. A contingency fee will not be paid on withdrawn recovery projects for those claims recovered after the date of notification;
- e. Change the scope of work as it relates to any group of claims which the contractor is allowed to seek recovery, such as Medicare or insurance billings;
- f. Have final approval of all design layouts (including form letters);
- g. Monitor the contractor's work for compliance with the terms, conditions and performance criteria included in the contract;
- h. Have discretion of which initiatives and/or work projects the Contractor will perform at startup of the contract and set the timeframe for implementation of initiatives and/or work projects at startup of the contract; and
- i. Have discretion of which initiatives and/or work projects the Contractor will perform after startup of the contract and set the timeframe for implementation of initiatives and/or work projects.

**B. CONTRACT TERM**

- B.1. Contract Term. This Contract shall be effective for the period commencing on February 1, 2006 and ending on January 31, 2009. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period. The Contractor shall have no claim to any collections received by the Bureau of TennCare that are the result of the Contractor's efforts, but which have been received by the Bureau of TennCare more than ninety (90) days after the date of the contract's expiration date.
- 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 the State notifies the Contractor in writing of its intention to do so at least thirty (30) days prior to the contract expiration date. An extension of the term of this Contract will be effected through 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 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 Twenty Million Dollars (\$20,000,000.00). ~~The Service 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 Service 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 Service 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 Service 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 State of Tennessee agrees to pay the Contractor a contingency fee based on percentages of revenue generated as a direct result of the Contractor's efforts, as listed below. These payments are final and are contingent upon the Contractor's performance and shall not be adjusted by either party except as provided herein. The Contractor shall be paid within sixty (60) days after the State has received the appropriate recovery and the invoice has been approved by the state. Prior to the submission of an invoice, the Contractor shall submit a draft invoice with backup data for review and approval by the State. The Contractor may identify revenues to which the State may be entitled from prior periods which have not already been claimed. Such retroactive claims, which result in actual net recovery being received by the State, shall also be included as a component of the total amount on which compensation to the Contractor is calculated.

Cost Item Description	Same Percentage Rate for Duration of Contract Including any Options for Extension
Insurance Verification Cost Savings	.80 % of Cost Savings
Health Insurance Recovery	4.25 % of Recovered Funds
Medicare Recovery	5.00 % of Recovered Funds
Estate Recovery	8.00 % of Recovered Funds
Subrogation Recovery	5.00 % of Recovered Funds
HIPP (Health Insurance Premium Purchase) Cost Savings	.80 % of Cost Savings
Medical Support Enforcement Cost Saving	.80 % of Cost Savings
Other Projects as Defined	10.00 % of Recovered Funds or Cost Savings

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

C.5. 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.6. 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.7. 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.8. 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 sixty (60) 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 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 pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). 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, subcontractors, 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. Records. The Contractor shall maintain documentation for all charges against the State 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.9. 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.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.11. 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.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint ventures, 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.13. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.14. 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, acts of God, riots, wars, strikes, epidemics or any other similar cause.
- D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.16. 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.17. 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.18. 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.19. 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 facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Deputy Commissioner  
Tennessee Department of Finance and Administration  
310 Great Circle Road  
Nashville, Tennessee 37243  
(615) 507-6471 (phone)  
(615) 532-5236 (fax)

The Contractor:

Public Consulting Group  
Attn: Ben Bobo  
505 East Huntland Drive, Suite 380  
Austin, TX 78752  
Phone: 512-407-9680  
Fax: 512-407-9249

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the fax machine at the receiving location and receipt is verbally confirmed by the sender if prior to 4:30 p.m. CST. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- 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. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

- 
- failure to perform in accordance with any term or provision of the Contract;
  - partial performance of any term or provision of the Contract;
  - any act prohibited or restricted by the Contract, or
  - violation of any warranty.

For purposes of this contract, these items shall hereinafter be referred to as a "Breach."

- a. Contractor Breach— The State shall notify Contractor in writing of a Breach.

- (1) In event of a Breach by Contractor, the state shall have available the remedy of Actual Damages and any other remedy available at law or equity.
- (2) Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach.

Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

(3) **Contract Termination**— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

b. **State Breach**— In the event of a Breach of contract by the State, the Contractor shall notify the State in writing within thirty (30) days of any Breach of contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

E.5. **Partial Takeover.** The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.6. **State Ownership of Work Products.** The State shall have all ownership right, title, and interest, including ownership of copyright, in all work products created, designed, developed, derived, documented, installed, or delivered to the State under this Contract. The State shall have royalty-free and unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all said work products. The Contractor shall furnish such information and data upon request of the State, in accordance with the Contract and applicable State law.

- E.7. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of *Tennessee Code Annotated*, Section 12-7-101, *et. seq.*, shall be printed unless a printing authorization number has been obtained and affixed as required by *Tennessee Code Annotated*, Section 12-7-103 (d).
- E.8. 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.9. Work-Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work-papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.10. Lobbying.

A. Definitions

- (1) Lobbying means to communicate, directly or indirectly, with any official in the legislative or executive branch, for pay or for any consideration, for the purpose of influencing any legislative action or administrative action. (T.C.A. § 3-6-102(13))
- (2) Public Official means any elected official, appointed official, or employee of:
  - (a) A federal, State or local unit of government in the United States.
  - (b) A government corporation. (2 U.S.C.A. § 1602(15)(A) and (B))
- (3) Official in the Executive Branch means the governor, any member or the governor's staff, any member or employee of a state regulatory commission, including, without limitation, directors of the Tennessee regulatory authority, or any member or employee of any executive department or agency or other state body in the executive branch. (T.C.A. § 3-6-102(16))
- (4) Official in the Legislative Branch means any member, member-elect, any staff person or employee of the General Assembly or any member of a commission established by and responsible to the General Assembly or either house thereof who takes legislative action. This includes the Secretary of State, Treasurer, and Comptroller of the Treasury and any employee of such offices. (T.C.A. § 3-6-102(17))

B. The Contractor certifies by signing this Contract, to the best of its knowledge and belief, that Federal funds have not been used for lobbying in accordance with 45 CFR 93.100 and 31 U.S.C. 1352. Regardless of funding source, lobbyist compensation cannot be directly or indirectly contingent on 1) the passage or defeat of a bill related to TennCare or sister health departments, 2) the number of covered TennCare enrollees, or 3) the amount of TennCare reimbursement to a vendor. Certification from the Contractor must include the following:

- (1) No appropriated funds may be expended by the recipient of this Contract to pay 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, an elected or appointed official or employee of the State of Tennessee, the General Accounting Office, Department of Health and Human Services, Center for Medicare and Medicaid

Services (CMS) or any other federal agency in connection with this Contract or subcontractors, vendors, agents, providers, representatives and others with verbal or written agreements with the Contractor which receive reimbursement through this Agreement from the Contractor.

- (2) The Contractor must certify annually by filling a TennCare Disclosure of Lobbying Activities Form (Attachment 2) with TennCare and the TennCare Oversight Committee that the Contractor is in compliance with all state and federal laws relating to conflicts of interest and lobbying. This form must be signed by the Chief Executive Officer of the Contractor or his/her designee and must be received by TennCare and the TennCare Oversight Committee no later than December 31, 2005. The certification must include any and all subcontractors, vendors, agents, providers, representatives and others with verbal or written agreements with the Contractor which receive reimbursement through this Agreement from the Contractor. The certification must also include signed copies of any contracts or agreements as well as a list of individual entities who have been lobbied or influenced.

Failure by the Contractor to comply with the provisions herein shall result in termination of the Contract as provided in Section D.4.

- E.11. Public Funding Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Contractor relative to this Contract shall include the statement, "This project is funded under an agreement with the State of Tennessee." Any such notices by the Contractor shall be approved by the State.
- E.12. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.
- E.13. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the 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 State law and ethical standards and 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 State law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

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.

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

- E.14. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees 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. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.

- E.15. Public Accountability. If this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor agrees to display a sign stating:

"NOTICE: This Contractor is a recipient of taxpayer funding. If you observe an employee engaging in any activity which you consider to be illegal or improper, please call the State Comptroller's toll free hotline: 1-800-232-5454"

Said sign shall be displayed in a prominent place, located near the passageway(s) through which the public passes to receive State funded services.

- E.16. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

- E.17. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

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

- E.18. 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.19. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its 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 for 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.

E.20. Date/Time Hold Harmless. As required by *Tennessee Code Annotated* Section 12-4-118; the Contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure to computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.

E.21. 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.22. MFCU Access to Contractor and Provider Records  
Office of TennCare Inspector General Access to Contractor, Provider, and Enrollee Records

Pursuant to Executive Order 47 and 42 CFR §1007, The Medicaid Fraud Control Unit (MFCU) is the State agency responsible for the investigation of provider fraud, abuse and neglect in the State Medicaid program (TennCare). The Office of TennCare Inspector General (TennCare OIG) is responsible for assisting MFCU with provider cases and has the primary responsibility of investigating TennCare enrollee fraud and abuse.

Pursuant to the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations, MFCU and TennCare OIG shall be health oversight agencies as defined at 45 C.F.R. §§ 164.501 and 164.512(d) and 65 F.R. § 82462. When acting in their respective capacities as health oversight agencies, MFCU and TennCare OIG do not need authorization to obtain enrollee protected health information (PHI). Because MFCU and TennCare OIG will request the information mentioned above for health oversight activities, "minimum necessary" standards do not apply to disclosures to MFCU or TennCare OIG that are required by law. See 45 C.F.R. §§ 164.502(b)(2)(iv), 164.502(b)(2)(v), and 164.512(d).

The Contractor shall immediately report to MFCU all factually based known or suspected fraud, abuse, waste and/or neglect of a provider or Contractor, including, but not limited to, the false or fraudulent filings of claims and/or the acceptance or failure to return money allowed or paid on claims known to be false or fraudulent. The Contractor shall not investigate or resolve the suspicion, knowledge or action without

informing MFCU, and must cooperate fully in any investigation by MFCU or subsequent legal action that may result from such an investigation.

The Contractor and all its health care providers who have access to any administrative, financial, and/or medical records which relate to the delivery of items or services for which TennCare monies are expended, shall, upon request, make them available to MFCU or TennCare OIG. In addition, the MFCU must be allowed access to the place of business and to all TennCare records of any Contractor or health care provider, during normal business hours, except under special circumstances when after hour admission shall be allowed. MFCU shall determine any and all special circumstances.

The Contractor and its participating and non-participating providers shall report TennCare enrollee fraud and abuse to TennCare OIG. The Contractor and/or provider may be asked to help and assist in investigations by providing requested information and access to records. Shall the need arise, TennCare OIG must be allowed access to the place of business and to all TennCare records of any TennCare Contractor or health care provider, whether participating or non-participating, during normal business hours.

The Contractor shall inform its participating and non-participating providers that as a condition of receiving any amount of TennCare payment, the provider must comply with this Section of this Contract regarding fraud, abuse, waste and neglect.

E.23. Conflict of Interest. The Contractor warrants that during the term of this Contract no payments shall be paid to the following:

- (1) any State or federal officer, including but not limited to:
  - a. a member of the State Legislature, or
  - b. a member of Congress, or
  - c. any immediate family member of any State or federal officer; or
  
- (2) any State or federal employee or any immediate family member of a State or federal employee unless otherwise authorized by the Commissioner, Tennessee Department of Finance and Administration. Immediate family members may be exempted if State or federal officer or employee discloses such relationship to TennCare and the TennCare Oversight Committee. The applicability of this section includes, but is not limited to, any and all arrangements and/or agreements, written or verbal, that result in the Contractor making a payment or providing a gift in exchange for services or supplies.

The Contractor must certify annually by filing a TennCare Disclosure of Lobbying Activities Form (Attachment 2) with TennCare and the TennCare Oversight Committee that the Contractor is in compliance with all state and federal laws relating to conflicts of interest and lobbying, having made diligent inquiry of all subcontractors and/or persons receiving payment or gifts from Contractor pursuant to this Contract. This form must be signed by the Chief Executive Officer of the Contractor or his/her designee and must be received by TennCare and the TennCare Oversight Committee no later than December 31, 2005. ~~The certification must include any and all subcontractors, vendors, agents, providers, representatives and others with verbal or written agreements with the Contractor which receive reimbursement through this Agreement from the Contractor. The Chief Executive Officer acknowledges that he/she is responsible for ensuring that internal controls are in place to prevent and detect potential conflicts of interest and that due diligence was performed before providing certification of compliance. Any changes by the Contractor relating to the disclosure of conflicts of interest or lobbying must be disclosed to TennCare within five (5) business days of the date of the change. (Refer to E.10, lobbying activities).~~

This Contract may be terminated by TennCare if it is determined that the Contractor, its agents or employees offered or gave gratuities of any kind to any official, employee or immediate family member of an employee of the State of Tennessee, including a member of the State legislature. This Agreement may be terminated by TennCare if it is determined that gratuities of any kind were offered to or received by any of the aforementioned officials or employees from the Contractor, his agent, or employees.

The Contractor shall be responsible for maintaining adequate internal controls to detect and prevent conflicts of interest from occurring at all levels of the organization and include the substance of this clause

in all agreements, subcontracts, provider agreements, and any and all agreements that result from this Agreement between Contractor and TennCare.

- E.24. State and Federal Compliance. The Contractor agrees to comply with all applicable federal and state laws and regulations, and court orders, including Constitutional provisions regarding due process and equal protection of the laws and including but not limited to:
- E.24.a. Title 42 Code of Federal Regulations (CFR) Chapter IV, Subchapter C (with the exception of those parts waived under the TennCare Section 1115(a) waiver).
  - E.24.b. Title 45 CFR, Part 74, General Grants Administration Requirements.
  - E.24.c. All applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 as amended (42 U.S.C. 7401, et seq.).
  - E.24.d. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations issued pursuant thereto, 45 C.F.R. Part 80.
  - E.24.e. Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) in regard to employees or applicants for employment.
  - E.24.f. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap in programs and activities receiving or benefiting from federal financial assistance, and regulations issued pursuant thereto, 45 C.F.R. Part 84.
  - E.24.g. The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age in programs or activities receiving or benefiting from federal financial assistance.
  - E.24.h. Omnibus Budget Reconciliation Act of 1981, P.E. 97-35, which prohibits discrimination on the basis of sex and religion in programs and activities receiving or benefiting from federal financial assistance.
  - E.24.i. Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq., and regulations issued pursuant thereto, 28 C.F.R. Parts 35, 36.
  - E.24.j. Sections 1128 and 1156 of the Social Security Act relating to exclusion of providers for fraudulent or abusive activities involving the Medicare and/or Medicaid program.
  - E.24.k. Tennessee Consumer Protection Act, T.C.A. Section 47-18-101 et seq.
  - E.24.l. The CMS waiver and all Special Terms and Conditions which relate to the waiver.
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- E.24.m. Executive Orders, including Executive Order 1 effective January 26, 1995.
  - E.24.n. The Clinical Laboratory Improvement Act (CLIA) of 1988.
  - E.24.o. Requests for approval of material modification as provided at TCA 56-32-201 et seq.
  - E.24.p. Title IX of the Education Amendments of 1972 (regarding education programs and activities)
  - E.24.q. The Rehabilitation Act of 1973
  - E.24.r. The Balanced Budget Act of 1997 Section 422.208 and 422.210
  - E.24.s. EEO Provisions
  - E.24.t. Copeland Anti-Kickback Act
  - E.24.u. Davis-Bacon Act

E.24.v. Contract Work Hours and Safety Standards

E.24.w. Rights to Inventions Made Under a Contract or Agreement

E.24.x. Byrd Anti-Lobbying Amendment

E.24.y. Debarment and Suspension

E.25. Offer of Gratuities. By signing this contract, the Contractor signifies that no member of or a delegate of Congress, nor any elected or appointed official or employee of the State of Tennessee, the General Accounting Office, Department of Health and Human Services, CMS, or any other federal agency has or will benefit financially or materially from this procurement. This contract may be terminated by TennCare if it is determined that gratuities of any kind were offered to or received by any of the aforementioned officials or employees from the Contractor, his agent, or employees and may result in termination of the Contract as provided in D.4 of this contract.



## Attachment 1

### Definitions

1. Contractor Back-Up Manager – The Contractor Back-Up Manager, or back up for the Contractor Project Manager, who can, and will, perform all aspects of the scope of work performed by the Contractor Project Manager in the event of the absence of the Contractor Project Manager;
  2. Cost Avoidance – The denial of payment due to coverage through another source prior to billing the Bureau of TennCare;
  3. Cost Savings – The total value to the Bureau of TennCare of cost avoided claims;
  4. Data Exchange/Data Match – Conducting a match of data with the Bureau of TennCare recipient eligibility file and the file of an entity outside the Bureau of TennCare to gather, upload and use for recovery or cost avoidance the information obtained through identification of insurance coverage, employer information or any other data which may enable the Bureau of TennCare to recover expended funds or avoid inappropriate expenditure of funds;
  5. Interchange – A computer interface to the Medicaid Management Information System that provides user-friendly access to data stored within the Medicaid Management Information System

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  6. Managed Care Contracting Entity – any entity that the Bureau of TennCare has established, or may establish, a contract with to perform Medicaid managed care services on behalf of Medicaid recipients or any contracting company performing claims adjudication under an existing, or future, contract with the Bureau of TennCare.
  7. Contractor Project Manager – The manager of the Contractor who oversees, and is ultimately responsible for, the successful completion of all work projects initiated by the Contractor on behalf of the Bureau of TennCare;
  8. Subrogation – Claims pursued which are directly related and attributable to an accident where there is first-party or third-party coverage either through filing a claim with a casualty insurance carrier or recovered through a tort action;
  9. Third-Party Liability Recoveries – Recoveries obtained from a source on behalf of the Bureau of TennCare.
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**ATTACHMENT 2**  
**INSTRUCTIONS FOR COMPLETION OF LOBBYING**  
**DISCLOSURE FORM FOR THE BUREAU OF TENNCARE**

This disclosure form shall be filed with TennCare and the TennCare Oversight Committee annually by the reporting entity no later than December 31 of each year, beginning on December 31, 2005; however an ongoing duty exists to amend and update all filings. All TennCare-related lobbying relationships and/or contracts should be disclosed on a separate form. Disclosure is required if any portion of funds received under a contract, grant or other relationship with TennCare was paid to a lobbyist or lobbying entity as defined by Tenn. Code Ann. 3-6-102 and as further defined in E.10 of the Contract. For those Contractors reliant on TennCare for greater than two-thirds of their total revenue in the previous fiscal year, all lobbying contracts will be presumed to be TennCare-related. This form has been designed consistent with federal regulations, 31 U.S.C. 1352 and 42 CFR 93.100. Refer to the implementing guidance provided by the Federal Office of Management and Budget for additional information.

1. Identify the type of lobbying relationship being disclosed (*e.g. ongoing, one-time*). Use a separate form for each lobbyist contract or relationship.
  2. Identify the purpose of the lobbying relationship as quoted in the contract.
  3. Identify the appropriate classification of this disclosure. Any material change to information previously reported should be disclosed in an amended form within five (5) business days.
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4. Enter the full name, address, city, state and zip code of the reporting entity.
  5. Enter the total reimbursement paid to lobbyist in the previous fiscal year.
  6. Enter the full name, job title, address, city, state and zip code of the lobbying registrant engaged by the reporting entity identified in item 4.
  7. Enter the full name(s) of the individual(s) performing services and include full address if different from item 6. Enter last name, first name, middle initial (MI), and job title.
  8. Enter the full name(s), job title(s) of individuals lobbied, the subject matter of the lobbying activity(ies) and the total value of all gifts/remuneration received. (See Tenn.Code Ann. 3-6-102 and Section E.10 of the Contract for a definition of relevant lobbying activities)
  9. The certifying contractor or vendor Chief Executive Officer shall sign and date the affirmation, print his/her name, title, and telephone number.
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## LOBBYING DISCLOSURE

Complete this form to disclose TennCare-related\* lobbying relationships entered into or existing in the previous fiscal year. Each lobbying relationship/contract requires a separate form.



State of Tennessee  
Bureau of TennCare

**1. Type of Relationship:**  
*(e.g., ongoing, one-time)*

**2. Stated Purpose of the Relationship:**

**3. Report Type:**

- a. Initial Filing
- b. Material Change

**For Material Change Only:**

Year \_\_\_\_\_ Quarter \_\_\_\_\_

Date of last Report \_\_\_\_\_

**4. Name and Address of Reporting Entity:**

**5. Total Reimbursement Paid to Lobbyist:**

\$ \_\_\_\_\_

**6. Name and Address of Lobbying Registrant:**

*(If individual, last name, first name, MI)*

**7. Individuals Performing Services:**

*(Including address if different from No. 6)*

**8. List of Individuals Lobbied:**

*(Including name, job title, subject matter of lobbying activity(ies) and total value of all gifts/remuneration received)*

**9. "I hereby affirm that to the best of my knowledge my organization and its sub-contractors**

**remain in compliance with state contractual requirements barring payment to state officials."**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Date: \_\_\_\_\_

\* Disclosure is required if any portion of a lobbying relationship relates to TennCare. For those Contractors reliant on TennCare for greater than two-thirds of their total revenue in the previous fiscal year, all lobbying contracts will be presumed to be TennCare-related.

\*\* Attach additional sheets if necessary. Include the name of the Reporting Entity and date on each additional sheet.