

CONTRACT #6

RFS # N/A

FA # N/A

**Tennessee Board of Regents
East Tennessee State
University**

**VENDOR:
Medical Education Assistance
Corporation**



Tennessee Board of Regents

1415 Murfreesboro Road – Suite 350 – Nashville, Tennessee 37217-2833
Telephone (615) 366-4400 FAX (615) 366-4464

November 17, 2010

RECEIVED

NOV 18 2010

FISCAL REVIEW

Ms. Leni S. Chick
Fiscal Analyst
Rachel Jackson Building, 8th Floor
Nashville, TN 37243

Dear Ms. Chick:

Enclosed please find a Contract between East Tennessee State University (ETSU) and Medical Education Assistance Corporation (MEAC) providing central office billing services for all Family Medicine clinics. Please note that this is a non-competitive Contract request for continuation with MEAC, who was the successful proposer and awarded the contract, from a competitive process conducted in the 2006-2007 fiscal year. See attached letter to the Fiscal Review Committee and other backup documentation from ETSU for explanation.

Per Fiscal Review's request to see non-competitive agreements/amendments, this contract must be approved by the Committee. **Please contact me regarding the date this will go before the Fiscal Review Committee and I will inform the representatives to insure they are present for the meeting in which the contract will be discussed.** If you have any questions, please do not hesitate to contact me at 366-4436.

Information regarding the contract may be sent to my attention at the Tennessee Board of Regents, 1415 Murfreesboro Road, Suite 350, Nashville, Tennessee 37217.

Sincerely,

Angela A. Gregory
Director of Purchasing and Contracts

Enclosure

cc: John G. Morgan, Chancellor
Dale Sims, Vice Chancellor for Business and Finance
David Collins, ETSU
Greg Wilgocki, ETSU

Austin Peay State University – East Tennessee State University – Middle Tennessee State University – Tennessee State University
Tennessee Tech University – University of Memphis – Chattanooga State Community College – Cleveland State Community College
Columbia State Community College – Dyersburg State Community College – Jackson State Community College
Motlow State Community College – Nashville State Community College - Northeast State Community College
Pellissippi State Community College – Roane State Community College – Southwest Tennessee Community
Volunteer State Community College - Walters State Community College – The Tennessee Technology Centers



QUILLEN
COLLEGE OF MEDICINE
EAST TENNESSEE STATE UNIVERSITY

November 11, 2010

Fiscal Review Committee
Attn: Ms. Leni Chick, Contract & Audit Coordinator
320 Sixth Avenue North
8th Floor, Rachel Jackson Building
Nashville, TN 37243

Dear Ms. Chick:

East Tennessee State University is requesting the approval of a non-competitive procurement contract for the Family Medicine Residency Program through the Medical Education Assistance Corporation (MEAC). MEAC is a 501(c) (3) nonprofit corporation affiliated with the James H. Quillen College of Medicine providing billing, collection and administrative services for the physicians of the Quillen College of Medicine. The Department of Family Medicine Residency beginning in fiscal year 2005-2006 through a competitive bid process entered into a contract with the Medical Education Assistance Corporation to obtain billing, collection and administrative services.

The contract for the billing, collection and administrative services will be expiring on November 30, 2010. We are requesting a non-competitive procurement to continue the billing, collection and administrative services for the Family Medicine Residency Program Physicians. In addition, the Medical Education Assistance Corporation is implementing the Allscripts electronic medical records system. The current patient demographics database and history will interface with the Allscripts electronic medical record. MEAC has entered into contracts with Allscripts after extensive search over the last two years to determine the electronic medical record that best meet the needs of the College of Medicine Physicians including, those in the Department of Family Medicine Residency.

We are requesting approval of this non-competitive contract with a total estimated cost over the five year period of \$2,407,842.00. The Medical Education Assistance Corporation has agreed to no cost increase for the billing, collection and administrative services, which will remain at eight percent of cash collections. The cost of the Allscripts electronic medical record to the Family Medicine Residency program is based on negotiations with MEAC taking into consideration patient volumes and number of individual using the system..

If the Family Medicine Residency Program had to implement the electronic medical records system on their own, there would be a substantial investment in equipment and other costs well above the sixteen percent currently allocated as their portion of the cost for the project.

We have not met the sixty day filing deadline due to the extensive contract discussions necessary to reach an equitable allocation of costs.

We look forward to discussing any questions you may have regarding this procurement, but do feel it is in the best interest of East Tennessee State University, the Family Medicine Residency Program and the State of Tennessee to acquire these services through a non-competitive procurement.

Sincerely,

Gregory L. Wilgocki
Executive Associate Vice President, Department of Finance and Administration

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	James Graeca, Director	*Contact Phone:	(423)439-4682		
*Original Contract Number:	100689	*Original RFS Number:	6339		
Edison Contract Number: <i>(if applicable)</i>		Edison RFS Number: <i>(if applicable)</i>			
*Original Contract Begin Date:	December 1, 2005	*Current End Date:	November 30, 2010		
Current Request Amendment Number: <i>(if applicable)</i>					
Proposed Amendment Effective Date: <i>(if applicable)</i>	December 1, 2010				
*Department Submitting:	East Tennessee State University				
*Division:	ETSU-COM – Family Medicine				
*Date Submitted:	October 18, 2010				
*Submitted Within Sixty (60) days:	No				
<i>If not, explain:</i>	Contract negotiations prevented.				
*Contract Vendor Name:	Medical Education Assistance Corporation				
*Current Maximum Liability:	\$1,217,936				
*Current Contract Allocation by Fiscal Year: 8% of total cash collections (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY:06-07	FY:07-08	FY:08-09	FY:09-10	FY	FY
\$140,000	\$240,000	\$240,000	\$240,000	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: *allocated through 6/30 (attach backup documentation from STARS or FDAS report)					
FY:06-07	FY:07-08	FY:08-09	FY:09-10	FY	FY
\$239,270	\$298,200	\$255,800	\$295,230*	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:					
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:					
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			FY 06-07 included start-up costs; subsequent years reflect total collections were greater than estimated.		
*Contract	State:	\$999,966	Federal:	0	

Supplemental Documentation Required for
Fiscal Review Committee

Funding Source/Amount:				
Interdepartmental:	\$1,407,876	Other:	Clinical Earnings	
If "other" please define:				
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
12/1/08 through 11/30/2010		Contract Renewal 11.08.028 (Terms remained constant)		
Method of Original Award: <i>(if applicable)</i>		RFP		
*What were the projected costs of the service for the entire term of the contract prior to contract award?		8% of total collections and start-up costs not to exceed \$15,000 \$1,217,936		

Supplemental Documentation Required for Fiscal Review Committee

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

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

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

Deliverable description:	FY:2010/2011	FY:2011/2012	FY:2012/2013	FY:2013/2014	FY:2014/2015
Billing Collections	\$276,000.00	\$278,760.00	281,547.00	284,363.00	287,206.00
EMR	\$309,222.00	\$169,432.00	\$170,481.00	\$173,419.00	\$177,412.00

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

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

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

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

ETSU and MEAC Contract - Family Practice Billings Services

Contract Period 12/1/2010 - 11/30/15

	12/1/2010	12/1/2011	12/1/2012	12/1/2013	12/1/2014	5 year total
	11/30/2011	11/30/2012	11/30/2013	11/30/2014	11/30/2015	
Billing Services	\$276,000.00	\$278,760.00	\$281,547.00	\$284,363.00	\$287,206.00	\$1,407,876.00
EMR Services						
Licenses	\$65,944.20					\$65,944.20
License Support*	\$33,970.05	\$34,989.15	\$36,038.83	\$37,119.99	\$38,233.59	\$180,351.61
Implementation Costs**	\$26,425.00	\$26,425.00	\$26,425.00	\$26,425.00	\$26,425.00	\$132,125.00
Data Conversion	\$10,000.00					\$10,000.00
Hardware Use Lease	\$22,161.60	\$22,161.60	\$22,161.60	\$22,161.60	\$22,161.60	\$110,808.00
Leased Equipment	\$1,638.00	\$4,224.00	\$4,224.00	\$6,080.00	\$8,960.00	\$25,126.00
Maintenance						
Additional Support	***	***	***	***	***	***
Network Services						
Leased Hardware	\$53,148.00					\$53,148.00
Hardware Maintenance	\$9,552.00	\$9,552.00	\$9,552.00	\$9,552.00	\$9,552.00	\$47,760.00
Data Center Lease	\$1,920.00	\$1,920.00	\$1,920.00	\$1,920.00	\$1,920.00	\$9,600.00
Network Engineer/Help Desk	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00	\$20,000.00	\$100,000.00
Connectivity	\$24,660.00	\$24,660.00	\$24,660.00	\$24,660.00	\$24,660.00	\$123,300.00
Citrix	\$14,304.00					\$14,304.00
Wireless Access Points	\$25,500.00	\$25,500.00	\$25,500.00	\$25,500.00	\$25,500.00	\$127,500.00
Total EMR Costs	\$309,222.85	\$169,431.75	\$170,481.43	\$173,418.59	\$177,412.19	\$999,966.81
Total EMR and Billing and Collection	\$585,222.85	\$448,191.75	\$452,028.43	\$457,781.59	\$464,618.19	\$2,407,842.81

*Annual support may increase annually by an amount not to exceed 3%.

**Based on no less than 302 hours of personnel services at a rate of \$87.50 per hour. Additional implementation hours shall be provided at a rate of \$175 per hour.

***Prorated amount applicable for employees of MEAC plus out-of-pocket expenses subject to the limits set by the State of Tennessee.

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

1) RFS #		
2) State Agency Name :	East Tennessee State University, Department of Family Medicine	
3) Service Caption :	Billing Services and Electronic Medical Record Services	
4) Proposed Contractor :	Medical Education Assistance Corporation	
5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt)	December 1, 2010	
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised :	November 30, 2015	
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised :	\$2,407,842.00	
8) 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	
9) Description of Service to be Acquired : Outsourcing of Billing Services		
The ETSU Department of Family Medicine proposes to continue the current contract for Billing and Management Services of Family Practice Residency Program. Continued use of the total package in place of the practice management software program that integrates Scheduling, Registration, Charge Entry, Billing and Collections to manage our practices as well as the Electronic Medical Record (EMR). The current contractor will continue to provide essentially the same services as are currently performed with the addition of the Electronic Medical Record.		
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :		
The continuation of the existing contract for billing services with the Medical Education Assistance Corporation (MEAC) will prevent the need for additional cost which would be incurred for conversion and interfaces if the billing functions were performed by another contractor. The Department of Family Medicine needs to be consistent with the rest of East Tennessee State University College of Medicine by utilizing the same system ensuring confidential handling of all medical records and patient information. The entire College of Medicine will utilize the MEAC billing and EMR system. The continued inclusion of Family Medicine in the billing system streamlines the operations and support of all data and billing information. The consistency of the educational training component for medical students and residents within the College of Medicine is essential for continued accreditation.		
11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :		
East Tennessee State University Request for proposal No. 6339 for Billing Services was placed out for competitive bid		

June 16, 2005. The RFP was scored and evaluated based on the requirements of the RFP as listed in Attachment E of the RFP. The RFP is attached for review if desired. The Medical Education Assistance Corporation (MEAC) scored 260 points, charging 8% of collections for their billing services or \$ 240,587.00 for the year with Highland Campus Health scoring 250 points and charging 9.66% of collections or \$290,590.00 which placed MEAC the lowest response to the RFP by a savings to Family Medicine of greater than \$50,000.00. The other seven responders to the RFP were of considerable higher cost for their services. The RFP evaluation table (Attachment F) is attached to this document for review.

12) Name & Address of the Proposed Contractor's Principal Owner(s) :
(not required if proposed contractor is a state education institution)

Medical Education Assistance Corporation
Russell Lewis, Executive Director
222 E. Main Street
Johnson City, TN 37604

13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :

Medical Education Assistance Corporation has in excess of 25 years experience in physician practice management, experience in compliance with Teaching Physician Guidelines, HIPAA, and applicable legislation such as Stark. MEAC has experience in cost-effective management of most specialties and sub-specialties. Also, extensive experience in negotiating with the dominant managed care organizations in the Tri-Cities has been available to ETSU Family Physicians. MEAC has consistently produced revenue cycle numbers that exceed national benchmarks.

14) Documentation of Office for Information Resources Endorsement :
(required only if the subject service involves information technology)

select one:

Documentation Not Applicable to this Request

Documentation Attached to this Request

15) Documentation of Department of Personnel Endorsement :
(required only if the subject service involves training for state employees)

select one:

Documentation Not Applicable to this Request

Documentation Attached to this Request

16) Documentation of State Architect Endorsement :
(required only if the subject service involves construction or real property related services)

select one:

Documentation Not Applicable to this Request

Documentation Attached to this Request

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

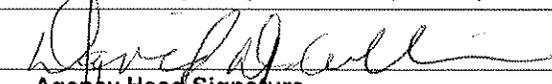
As stated in the referenced TBR Policy No. 4:02:10:00; "Outsourcing. Institutions are encouraged to determine whether some services can be delivered more economically by the private rather than the public sector." The evaluation of existing institutional personnel costs as well as increased hardware and software resource expenses identified the savings of outsourcing the Billing Service. Software maintenance contracts alone for Family Medicine exceeded the base percentage charged for the Billing Service Contract resulted through the competitive procurement process.

18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

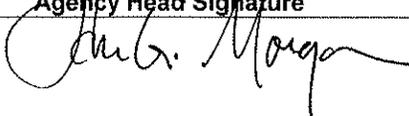
Service was acquired through competitive negotiation originally. The need is to continue the agreement from RFP 6339 to avoid costly conversion and interface charges as well as to comply with state and federal laws for confidential medical records. The secure network for East Tennessee State University Quillen College of Medicine will be within the MEAC operations. Continuing our contract as established with RFP 6339 will limit expenses and comply with all regulations for a secure Electronic Medical Record and Billing System. MEAC has agreed to continue to charge 8% of collections plus negotiated cost for the EMR.

REQUESTING 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)


Agency Head Signature

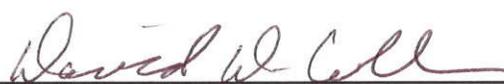
10/14/10
Date



11/16/10

CONTRACT SUMMARY SHEET

021406

RFS #		Contract #			
		9.05.92			
State Agency		State Agency Division			
East Tennessee State University		Tennessee Board of Regents			
Contractor Name		Contractor ID # (FEIN or SSN)			
Medical Education Assistance Corporation		<input type="checkbox"/> C- or <input type="checkbox"/> V- 62-1052914			
Service Description					
Billing Services and Electronic Medical Record Service					
Contract BEGIN Date		Contract END Date		Subrecipient or Vendor?	
12/1/2010		11/30/2015		N/A	
Mark Each TRUE Statement					
<input type="checkbox"/> Contractor is on STARS		<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts			
Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
74440	32100/110/120	200	180001		
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2010/2011	\$ 309,222.00			\$ 276,000.00	\$ 585,222.00
2011/2012	\$ 169,432.00			\$ 278,760.00	\$ 448,192.00
2012/2013	\$ 170,481.00			\$ 281,547.00	\$ 452,028.00
2013/2014	\$ 173,419.00			\$ 284,363.00	\$ 457,782.00
2014/2015	\$ 177,412.00			\$ 287,206.00	\$ 464,618.00
					\$ -
TOTAL:	\$ 999,966.00	\$ -	\$ -	\$ 1,407,876.00	\$ 2,407,842.00
— COMPLETE FOR AMENDMENTS ONLY —			State Agency Fiscal Contact & Telephone #		
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Jim Graeca, P.O. Box 70621, Johnson City, TN 37614, (423) 439-4682		
			State Agency Budget Officer Approval		
					
			Funding Certification (certification, required by T.C.A., § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)		
TOTAL:	\$ -	\$ -			
End Date					
Contractor Ownership (complete only for 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 disadvantaged	
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input type="checkbox"/> OTHER minority/disadvantaged—		
Contractor Selection Method (complete for ALL base contracts— N/A to amendments or delegated authorities)					
<input type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation		<input type="checkbox"/> Alternative Competitive Method		
<input checked="" type="checkbox"/> Non-Competitive Negotiation	<input type="checkbox"/> Negotiation w/ Government(eg, ID, GG, GU)		<input type="checkbox"/> Other		
Procurement Process Summary (complete for Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)					

**CONTRACT
BETWEEN
EAST TENNESSEE STATE UNIVERSITY
AND
MEDICAL EDUCATION ASSISTANCE CORPORATION**

December 1, 2010

This Contract, by and between EAST TENNESSEE STATE UNIVERSITY, hereinafter referred to as the "Institution", and MEDICAL EDUCATION ASSISTANCE CORPORATION, a Tennessee corporation not-for-profit, located at 222 E. Main Street, Johnson City, Tennessee 37604, hereinafter referred to as the "Contractor", is for the purpose of providing practice management and billing software and electronic medical record software, along with accompanying hardware and maintenance services, as further defined in the "Scope of Services."

RECITALS

Whereas, Contractor currently provides practice management and central billing and collection services for Institution under RFP #6339 dated June 27, 2005, the contract for which is set to expire on November 20, 2010.

Whereas, Institution desires to continue the use of the billing services (defined hereinafter).

Whereas, the billing services include access to an enterprise medical management application, and such services will become an integrated application with the electronic medical record ("EMR") software and its associated EMR system.

Whereas, Institution has determined that an EMR system is necessary in order to properly serve the patients served by its students, residents, fellows, employees and faculty.

Whereas, the physical requirements to house, protect and maintain computer hardware and related infrastructure are considerable and costly.

Whereas, Institution does not possess the physical assets to accommodate the hardware, infrastructure and emergency data protection necessary to comply with the Health Insurance Portability and Accountability Act ("HIPAA") nor sufficient resources to devote to acquiring such capital-intensive assets.

Whereas, Contractor can provide the EMR services that will comply with HIPAA and serve the needs of Institution.

Whereas, Contractor has agreed to lease to Institution computing platforms comparable to those used by Institution's hospital partner, Mountain States Health Alliance ("MSHA"),

thus allowing Institution to obtain and maintain an EMR system without purchasing the physical assets.

Whereas, by partnering with MSHA, Contractor is able to provide to Institution a total EMR system, including maintenance and hardware, at substantially reduced costs.

Whereas, the American Recovery and Reinvestment Act of 2009 (Recovery Act) provides economic incentives to physicians and hospitals for use of certified EMR systems, and the EMR system to be provided hereunder will be such a system.

A. SCOPE OF SERVICES:

A.1. Billing Services. The Contractor will provide central billing office functions to the Institution for family medicine clinics located in Kingsport, Bristol and Johnson City, Tennessee. "Central billing office functions" shall include follow-up on outstanding accounts, payment posting, bank lockbox services and management reporting. Contractor shall also provide practice management software that integrates scheduling, patient registration, charge entry, billing and collections. Contractor shall assist Institution with managed care contracting and provider credentialing. Contractor will meet with Institution management on a monthly basis to review prior month results. Collectively, all services in this Section A.1 may be referred to herein as "billing services".

A.2. Electronic Medical Records Services and related Software and Hardware. Contractor shall provide twenty-one (21) Allscripts Misys Enterprise Electronic Health Record Software user licenses ("Licenses") for the use of Institution's Family Medicine department of the Quillen College of Medicine, and shall provide necessary software implementation support, use of necessary and supporting hardware and data center infrastructure, and ongoing technical and application support.

Contractor shall also provide hardware and data center infrastructure necessary to support the use of the Licenses, along with corresponding infrastructure support, including, but not limited to training, scanning and maintenance for the term of this Contract. Contractor will deploy an application support team to assist Institution as requested. Collectively, all services in this Section A.2 may be referred to herein as "EMR services".

B. CONTRACT TERM:

B.1. Contract Term. This Contract shall be effective for the period commencing on December 1, 2010, and ending on November 30, 2015. The Institution shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Compensation Firm. The compensation due and the Maximum Liability of the Institution under this Contract is \$2,407,842.00, and not subject to escalation for any reason, unless the Contract is amended.

C.2. Payment Methodology. The Contractor shall be compensated based on the terms herein for services authorized by the Institution in a total amount not to exceed the Contract Maximum Liability established in Section C.1. The Contractor's compensation shall be contingent upon the satisfactory completion of the services defined in Section A. The Contractor shall be compensated based upon the following terms:

a. Billing Services. Contractor shall be paid an amount equal to 8% of total cash collections of ETSU Family Medicine Clinics. Contractor will remit to Institution total cash receipts within three working days after the end of the month along with an invoice for services.

b. EMR Services.

(1) Licenses. Institution shall pay to Contractor a one-time cost of \$65,944.20 for the use of twenty-one (21) non-revocable Licenses upon delivery of same and invoicing, as set forth below.

(2) License Support. Institution shall pay to Contractor support fees for the Licenses in the amount of \$2,380.84 per month, the pro rata amount of an annual fee of \$33,970.05. The annual support may increase annually by an amount not to exceed 3%.

(3) Implementation. Institution shall pay Contractor for implementation costs, including on-site training conducted, and lodging and travel expenses incurred, by Allscripts personnel. Contractor shall provide to Institution through Allscripts personnel no less than 302 hours of personnel services for on-site training and support ("implementation hours") at a rate of \$87.50 per hour. Additional implementation hours requested by Institution shall be provided at a rate of \$175 per hour. Subject to the limits set by the State of Tennessee, all costs of travel and lodging incurred by Allscripts personnel will be reimbursed to Contractor. Any costs associated with training at Allscripts' facilities will be the direct responsibility of Institution.

(4) Data Conversion. Institution shall pay Contractor for the costs of data conversion from the current manual record system to the EMR system. The initial data conversion costs are estimated to be \$7,825. The total cost will be based on the personnel hours required to complete the conversion, not to exceed \$10,000.

(5) Hardware Use Lease. Institution shall pay \$1,846.80 per month, the pro rata amount of an annual fee of \$22,161.60, to Contractor for the use of hardware and data infrastructure sufficient to support the Licenses for the term of the Contract.

(6) Maintenance of Leased Equipment. Institution shall pay to Contractor a maintenance fee in the amount of \$136.50 per month, the pro rata amount of an annual fee of \$1638.00, for maintenance of the hardware, infrastructure and correlating information technology support, for the term of the Contract. Annual maintenance will increase to \$4,224 in years two and three and will increase to \$6,080 in year four and \$8,960 in year five.

(7) Additional Support. Additional implementation and application support services required by Institution, including EHR support team, will be billed at the prorated amount applicable for employees of Contractor plus out-of-pocket expenses, subject to the limits set by the State of Tennessee.

c. Network Services. In order to secure the above applications, the Institution has determined all clinical operations should reside on an independent network which will be provided and managed by MEAC,

(1) Leased Hardware. Institution shall pay to Contractor an initial investment of \$53,148 for hardware and software sufficient to support the network infrastructure.

(2) Hardware Maintenance. Institution shall pay to Contractor \$9,552 annually for maintenance of hardware infrastructure.

(3) Data Center Lease. Institution shall pay \$1,920 annually for data center lease in the MSHA data center.

(4) Network Engineer and Help Desk. Institution shall pay to Contractor \$20,000 annually for network engineering and help desk.

(5) Connectivity. E-connectivity shall be provided through Embarq to Institution to each of the three (3) clinical sites at \$685 per month per site.

(6) Citrix. Institution understands that each concurrent user must have an active Citrix license. Initial cost will be \$14,304 for prorated share of 300 concurrent seats.

(7) Wireless Access Points. Institution shall pay to Contractor \$8,500 per 10 wireless access points required. A total of 30 wireless access points will be required.

C.3. Payment Schedule. The Contractor shall submit monthly invoices, in form and substance acceptable to the Institution with all of the necessary supporting documentation, prior to any payment. Payment for services delivered or performed shall be made within thirty (30) days from the receipt by Institution of an invoice for same.

- C.4. Travel Compensation. Compensation to the Contractor for travel, meals and/or lodging in connection to work performed under this Contract shall be in the amount of actual cost to the Contractor, subject to the maximum amounts and limitations specified in the Tennessee Board of Regents Policies, as they may be from time to time amended.
- C.5. Payment of Invoice. The payment of the invoice by the Institution shall not prejudice the Institution's right to object to or question any invoice or matter in relation thereto. Such payment by the Institution 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 Institution, 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 Institution 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 Institution any amounts which are or shall become due and payable to the Institution by the Contractor.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The Institution is not bound by this Contract until it is approved by the appropriate 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 officials in accordance with applicable Tennessee state laws and regulations.
- D.3. Ethnicity. This Contract shall not be executed until the Contractor has completed the Minority/Ethnicity Form.
- D.4. Termination for Convenience. The Institution may terminate this Contract without cause for any reason. Such termination shall not be deemed a Breach of Contract by the Institution. The Institution shall give the Contractor at least one hundred eighty (180) 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 Institution 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.5. 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 Institution 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 Institution for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.6. 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 Institution. If such subcontracts are approved by the Institution, they shall contain, at a minimum, sections of this Contract pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.7. and D.8.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.7. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.8. 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, veteran status, national origin, or any other classification protected by Federal, or Tennessee 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.9. Records. The Contractor shall maintain documentation for all charges against the Institution 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 Institution, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the Institution, the Comptroller of the Treasury, or their duly appointed representatives.

- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the Institution as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that the 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 Institution, agrees to carry adequate liability and other appropriate forms of insurance, including workers' compensation coverage as required by applicable law on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.14. Institution Liability. The Institution shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, epidemics or any other similar cause.
- D.16. Institution and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations, including Institution policies and guidelines in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the Tennessee Claims Commission in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the Institution or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

- D.18. 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. Assignment of Contract. Contractor and Institution understand that a portion of the Contract shall be carried out by MSHA, but that Contractor shall remain ultimately responsible for the performance of its duties herein. Otherwise, Contractor shall not assign this Contract or enter into a subcontract for any part of the services to be performed under this Contract without obtaining the prior written approval of Institution. If such subcontracts are approved by Institution, they shall contain, at a minimum, the Contract Term and the Standard Terms and Conditions of this Contract.
- E.2. Communications and Contacts.

The Institution:

Gregory L. Wilgocki
Executive Associate Vice President – Finance and Administration
East Tennessee State University
P.O. Box 70420
Johnson City, TN 37614
423-439-6318
423-439-8854
wilgocki@etsu.edu

The Contractor:

Russell Lewis
Executive Director
Medical Education Assistance Corporation
P.O. Box 699
Mountain Home, TN 37684
423.433.6050
423.433.6060
lewisr@etsu.edu

All instructions, notices, consents, demands, or other communications shall be sent in a manner that verifies proof of delivery. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission. Changes to the Contract shall not be effective until agreed to, in writing, by both parties.

- 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 Institution reserves the right to terminate the Contract upon written notice to the Contractor. Such termination shall not be deemed a breach of Contract by the Institution. 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 Institution 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, including but not limited to, occurs:
- (a) failure to perform in accordance with any term or provision of the Contract;
 - (b) partial performance of any term or provision of the Contract;
 - (c) any act prohibited or restricted by the Contract; or
 - (d) any violation of any warranty.

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

- a. Contractor Breach— Institution shall notify Contractor in writing of a Breach.
- (1) In event of a Breach by Contractor, the Institution shall have available the remedy of actual damages and any other remedy available at law or in equity.
 - (2) Partial Default— In the event of a Breach, the Institution may declare a Partial Default. In which case, the Institution 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 Institution will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the Institution may revise the time periods contained in the notice written to the Contractor.

In the event the Institution declares a Partial Default, the Institution 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 Institution of providing the defaulted service, whether the service is provided by the Institution or a third party. To determine the amount the Contractor is being

paid for any particular service, the Institution shall be entitled to receive within five (5) days any requested material from Contractor. The Institution shall make the final and binding determination of the amount.

The Institution may assess Liquidated Damages against the Contractor for any failure to perform. Upon Partial Default, the Contractor shall have no right to recover from the Institution any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the Institution in the event a Partial Default is declared.

- b. Institution Breach— In the event of a Breach of contract by the Institution, the Contractor shall notify the Institution in writing within 30 days of any Breach of contract by the Institution. The notice shall contain a description of the Breach. In the event of Breach by the Institution, the Contractor may avail itself of any remedy at law in the Claims Commission; provided, however, failure by the Contractor to give the Institution written notice and opportunity to cure as described herein operates as a waiver of the Institution'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. Institution Ownership of Work Products. The Institution 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 Institution under this Contract. The Institution shall have unlimited rights to use, disclose, reproduce, or publish, for any purpose whatsoever, all such work products. The Contractor shall furnish such information and data upon request of the Institution, in accordance with the Contract and applicable state law.

E.6. Insurance. The Contractor shall maintain a commercial general liability policy. The policy shall provide coverage which includes, but is not limited to, bodily injury, personal injury, death, property damage and medical claims, with minimum limits of \$1,000,000 per occurrence, \$3,000,000 in the aggregate. The Contractor shall maintain workers' compensation coverage or a self-insured program as required under Tennessee law, with Employer's Liability Limits of \$100,000. The Contractor shall deliver to the Institution a certificate of insurance no later than the effective date of the Contract. If any policy providing insurance required by the Contract is cancelled prior to the policy expiration date, the Contractor, upon receiving a notice of cancellation, shall give immediate notice to the Institution.

The enumeration in the Contract of the kinds and amounts of liability insurance shall not abridge, diminish or affect the Contractor's legal responsibilities arising out of or resulting from the services under this Contract.

- E.7. Equipment/Inventory. The Contractor agrees to be responsible for the accountability, maintenance, management, and inventory of all property purchased totally or in part with funds provided under this Contract. The Contractor shall maintain a perpetual inventory system for all equipment purchased with funds provided under this Contract and shall submit an inventory control report with the required progress reports.

The Contractor shall notify the Institution, in writing, of any equipment loss describing reason(s) for the loss. Should the equipment be destroyed, lost, or stolen, the Contractor shall be responsible to the Institution for the *pro rata* amount of the residual value at the time of loss based upon the Institution's original contribution to the purchase price.

Upon completion or cancellation of this Contract, all equipment purchased with funds provided under this Contract shall be returned to the Institution.

- E.8. Institution Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the Institution for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the Institution in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the Institution for the residual value of the property at the time of loss.

- E.9. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

- E.10. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the Institution hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.
- E.11. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the Institution as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the Institution for infringement of any laws regarding patents or copyrights which may arise from the performance of this Contract. In any such action brought against the Institution, the Contractor shall satisfy and indemnify the Institution 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 Institution in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the Institution. The Institution 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.12. Authorized Individuals. Each party has provided the other party with a list identifying the individuals from whom the other party is authorized to accept any notices, requests, demands, or other advice which may be given hereunder by the party providing such list. Lists, which are attached hereto as **Attachment A** shall be valid until revoked or amended by further written notice. The parties shall only be entitled to rely on notices, requests, demands, or other advice given by such individuals.
- E.13. Hold Harmless. The Contractor agrees to indemnify and hold harmless the Institution 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 Institution in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the Institution.

In the event of any such suit or claim, the Contractor shall give the Institution immediate notice thereof and shall provide all assistance required by the Institution in the Institution's defense. The Institution 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 Institution in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

E.14. 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 Institution 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.15. Prohibition on Hiring Illegal Immigrants. Tennessee Public Chapter No. 878 of 2006, TCA 12-4-124, requires that Contactor attest in writing that Contractor will not knowingly utilize the services of illegal immigrants in the performance of this Contract and will not knowingly utilize the services of any subcontractor, if permitted under this Contract, who will utilize the services of illegal immigrants in the performance of this Contract. The attestation shall be made on the form, Attestation re Personnel Used in Contract Performance ("the Attestation"), which is attached and hereby incorporated as **Attachment B**.

If Contractor is discovered to have breached the Attestation, the Commissioner of Finance and Administration shall declare that the Contractor shall be prohibited from contracting or submitting a bid to any Tennessee Board of Regents institution or any other state entity for a period of one (1) year from the date of discovery of the breach. Contractor may appeal the one (1) year by utilizing an appeals process in the Rules of Finance and Administration, Chapter 0620.

E.16. HIPAA Requirements.

Institution and affiliate agree to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. Section 132d (“HIPAA”) and any current and future regulations promulgated thereunder including without limitation the federal privacy regulations contained in 445 C.F.R. Pars 160 and 164 (the “Federal Security Regulations”), the federal security standards contained in 45 C.F.R. Part 142 (the “Federal Security Regulation”), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162, all collectively referred to herein as “HIPAA Requirements.” Institution and affiliate agree not to use or further disclose any Protected Health Information (as defined in 45 C.F.R. Section 164.501) or Individuality Identifiable Health Information (as defined in 42 U.S.C. Section 130d), other than as permitted by HIPAA Requirements and the terms of this Agreement. Institution and affiliate will make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary of Health and Human Services to the extent required for determining compliance with the Federal Privacy Regulations.

E.17. Gramm Leach Bliley Act.

Throughout the term of this Agreement, Service Provider shall implement and maintain ‘appropriate safeguards,’ as that term is used in § 314.4(d) of the FTC Safeguard Rule, 16 C.F.R. § 314, for all ‘customer information,’ as that term is defined in § 314.2(b) of the FTC Safeguard Rule, delivered to Service Provider by Institution pursuant to this Agreement. The Service Provider shall implement an Information Security Program (‘the Program’) as required by the FTC Safeguard Rule. Service Provider shall promptly notify the Institution, in writing, of each instance of (i) unauthorized access to or use of that nonpublic financial customer information that could result in substantial harm or inconvenience to a customer of the Institution or (ii) unauthorized disclosure, misuse, alteration, destruction or other compromise of that nonpublic financial customer information.

- F. 1. This agreement shall not be binding upon the parties until it is approved by the president or his designee and the Tennessee Board of Regents, and approved by the Fiscal Review Board.

In witness whereof, the parties have by duly authorized representatives set their signatures hereto.

MEDICAL EDUCATION ASSISTANCE CORPORATION

Mr. Russell Lewis, Executive Director

Date

ATTACHMENT A

Medical Education Assistance Corporation:

Mr. Russell E. Lewis
Executive Director
P.O. Box 699
Mountain Home, TN 37684

East Tennessee State University:

Mr. James Graeca
Director
Department of Family Medicine
Box 70621
Johnson City, TN 37614

Contract copies for 2006-2010

**CONTRACT BETWEEN
EAST TENNESSEE STATE UNIVERSITY
AND
MEDICAL EDUCATION ASSISTANCE CORPORATION**

This contract, by and between East Tennessee State University, hereinafter Institution, and Medical Education Assistance Corporation, hereinafter Contractor, is for the provision of central billing office services, as further defined in Section A., Scope of Services.

A. Scope of Services

The Contractor will provide central billing office functions to the Institution for family medicine clinics located in Kingsport, Bristol, and Johnson City, Tennessee. Also provided will be practice management software that integrates scheduling, patient registration, charge entry, billing, and collections. Also provided will be assistance with managed care contracting and physician credentialing.

Included in central billing office functions are follow-up on outstanding accounts, payment posting, bank lockbox services, and management reporting. Contractor will meet with Institution management on a monthly basis to review prior month results.

This Contract shall hereby incorporate by reference Institution's RFP #6339 and Contractor's Proposal dated June 27, 2005. These contract documents shall be interpreted in the following order of priority: 1) this Contract and any attachments or amendments, 2) Institution's RFP, and 3) Contractor's Proposal.

B. Payment Terms and Conditions

Contractor shall be paid an amount equal to 8% of total cash collections of ETSU Family Medicine Clinics. In addition, Institution will pay all hardware costs and applicable licenses.

Start-up costs will include training and software licenses. Start-up costs will not exceed \$15,000 and will be paid by the Institution.

Contractor will remit to Institution total cash receipts within three working days after the end of the month along with an invoice for services.

Payment to the Contractor shall be made according to the schedule set out above, but only after receipt of invoices for services performed/items delivered. Final payment to the Contractor shall be made only after the Contractor has completely performed its duties under this Contract.

C. Term

This contract shall be effective for a period commencing on December 1, 2008 and shall end on November 30, 2010. Institution shall have no obligation for services rendered by the Contractor which are performed outside the specified period.

D. Standard Terms And Conditions

1. Institution is not bound by this Contract until it is approved by the appropriate TBR authorities as indicated on the signature page of this Contract.
2. This Contract may be modified only by written amendment which has been approved and executed by the appropriate parties as indicated on the signature page of this Contract.
3. This Contract is subject to the allotment of state and/or federal funds, and may be null and void unless funds have been appropriated and are available for the purchase of the service or item which forms the basis of the Contract.
4. Either party may terminate the Contract at any time before the effective termination date upon 60 days written notice to the Contractor. In such an event the Contractor shall be entitled to equitable compensation for satisfactory authorized services completed as of the termination date.
5. If the Contractor fails to perform its obligations under this Contract or violates any terms of this Contract, Institution 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 Institution for damages sustained by virtue of any breach of this Contract by the Contractor.

6. The Contractor shall not assign this Contract or enter into a subcontract for any part of the services performed under this Contract without obtaining the prior written approval of Institution. If such subcontracts are approved by Institution, they shall contain, at a minimum, Sections C. and D. of this Contract.
7. The Contractor shall maintain documentation for all charges against the Institution and payment made by the Institution 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 final payment. These documents shall be subject to audit at any time and upon reasonable notice, by Institution or the Comptroller of the Treasury or their duly appointed

representatives. The Contractor's financial statements shall be prepared in accordance with generally accepted accounting principles.

8. The parties agree to comply with Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, Executive Order 11,246, the Americans with Disabilities Act and the related regulations of each. Each party assures that it will not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students because of race, religion, creed, color, sex, age, disability, veteran status or national origin.

The parties also agree to take affirmative action to ensure that applicants are employed and that employees are treated during their employment without regard to their race, religion, creed, color, sex, age, disability, veteran status or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection available to employees and applications for employment.

9. The Contractor being an independent contractor and not an employee of this Institution, agrees to carry adequate public liability and other appropriate forms of insurance, to pay all taxes incurred in performance of this Contract, and otherwise protect and hold the Institution harmless from any and all liability arising as a result of this Contract which does not result from the Institution's own negligence.
10. In regard to the purchase of items, the risk of loss may not pass to the Institution before delivery unless the Contractor provides adequate insurance.
11. Institution shall have no liability under the Contract except as specifically provided in the Contract. Any and all claims against the State of Tennessee, its officers, agents, and employees in performing any responsibility specifically required under the terms of this Agreement shall be submitted to the Board of Claims or the Claims Commission of the State of Tennessee. Damages recoverable against the State of Tennessee shall be limited to claims paid by the Board of Claims or the Claims Commission pursuant to Tennessee law.
12. The Contractor shall comply with all applicable Federal and State laws and regulations in the performance of the Contract. The Contract shall be governed by and subject to the laws of the State of Tennessee.
13. The Contractor warrants that no part of the total Contract amount provided herein shall be paid directly or indirectly to any officer or employee of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, sub-contractor, or consultant to Contractor in connection with any work contemplated or performed relative to this Contract.

14. Institution will comply with the Tennessee Open Records Law in performing its duties under this Contract.
15. HIPAA Requirements: institution and affiliate agree to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. Section 132d ("HIPAA") and any current and future regulations promulgated thereunder including without limitation the federal privacy regulations contained in 445 C.F.R. Parts 160 and 164 (the "Federal Security Regulations"), the federal security standards contained in 45 C.F.R. Part 142 (the "Federal Security Regulation"), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162, all collectively referred to herein as "HIPAA Requirements." Institution and affiliate agree not to use or further disclose any Protected Health Information (as defined in 45 C.F.R. Section 164.501) or Individuality Identifiable Health Information (as defined in 42 U.S.C. Section 130d), other than as permitted by HIPAA Requirements and the terms of this Agreement. Institution and affiliate will make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary of Health and Human Services to the extent required for determining compliance with the Federal Privacy Regulations
16. Gramm Leach Bliley Act (GLBA):
Throughout the term of this Agreement, Service Provider shall implement and maintain 'appropriate safeguards,' as that term is used in § 314.4(d) of the FTC Safeguard Rule, 16 C.F.R. § 314, for all 'customer information,' as that term is defined in § 314.2(b) of the FTC Safeguard Rule, delivered to Service Provider by Institution pursuant to this Agreement. The Service Provider shall implement an Information Security Program ('the Program') as required by the FTC Safeguard Rule. Service Provider shall promptly notify the Institution, in writing, of each instance of (i) unauthorized access to or use of that nonpublic financial customer information that could result in substantial harm or inconvenience to a customer of the Institution or (ii) unauthorized disclosure, misuse, alteration, destruction or other compromise of that nonpublic financial customer information.

Service Provider shall forever defend and hold Institution harmless from all claims, liabilities, damages, or judgments involving a third party, including Institution's costs and attorney fees, which arise as a result of Service Provider's failure to meet any of its obligations under this provision. Service Provider shall further agree to reimburse the Institution for its direct damages (e.g., costs to reconstruct lost or altered information) resulting from any security breach, loss, or alteration of nonpublic financial customer information caused by the Service Provider or its subcontractors or agents.

Service Provider grants Institution the right to conduct on-site audits, as deemed necessary by the Institution, of the Service Provider's Program to