

**CONTRACT #1**  
**RFS # 339.12-10011**  
**FA # 11-32405**  
**Edison # 21459**

**Mental Health**  
**Western Mental Health**  
**Institute**

**VENDOR:**  
**Guardian Healthcare Providers,**  
**Inc.**



GENERAL ASSEMBLY OF THE STATE OF TENNESSEE  
FISCAL REVIEW COMMITTEE

320 Sixth Avenue, North – 8<sup>th</sup> Floor  
NASHVILLE, TENNESSEE 37243-0057  
615-741-2564

**Sen. Bill Ketron, Chairman**

Senators

Douglas Henry            Reginald Tate  
Brian Kelsey             Ken Yager  
Eric Stewart  
Randy McNally, *ex officio*  
Lt. Governor Ron Ramsey, *ex officio*

**Rep. Curtis Johnson, Vice-Chairman**

Representatives

Tommie Brown            David Shepard  
Jim Coley                 Tony Shipley  
Charles Curtiss            Curry Todd  
Johnny Shaw                Mark White  
Charles Sargent, *ex officio*  
Speaker Beth Harwell, *ex officio*

**M E M O R A N D U M**

TO:                    The Honorable Mark Emkes, Commissioner  
                          Department of Finance and Administration

FROM:                Bill Ketron, Chairman, Fiscal Review Committee  
                          Curtis Johnson, Vice-Chairman, Fiscal Review Committee

DATE:                April 12, 2011

SUBJECT:            **Contract Comments**  
                          (Fiscal Review Committee Meeting 4/11/11)

BK      CJ

**RFS# 339.12-10011 (Edison # 21459)**

**Department: Mental Health**

**Division: Western Mental Health Institute**

**Vendor: Guardian Healthcare Providers, Inc.**

**Summary: The vendor currently provides nursing services for the care and treatment of psychiatric patients at the Western Mental Health Institute. The proposed amendment extends the current contract by one year through June 30, 2012 and increases the maximum liability by \$288,715.**

**Current maximum liability: \$1,182,285**

**Proposed maximum liability: \$1,471,000**

After review, the Fiscal Review Committee voted to approve the contract amendment.

cc: The Honorable Doug Varney, Commissioner  
      Mr. Robert Barlow, Director, Office of Contracts Review



STATE OF TENNESSEE  
DEPARTMENT OF MENTAL HEALTH  
WESTERN MENTAL HEALTH INSTITUTE  
11100 OLD HIGHWAY 64 WEST  
BOLIVAR, TN 38008  
(731)-228-2000

ROGER PURSLEY  
CHIEF EXECUTIVE OFFICER

RONALD BRUCE  
ADMINISTRATOR

February 08, 2011

To: Fiscal Review Committee  
Allotment Code: 339.12  
Vendor: Guardian Healthcare Providers, Inc.  
Contract Number: FA1132405

Western Mental Health Institute is a 162 bed state operated psychiatric inpatient hospital in Bolivar, Tennessee. It is a division of the Tennessee Department of Mental Health.

Western Mental Health Institute (WMHI) respectfully requests approval for continuation of the Guardian Healthcare Providers Contract Amendment 01 for fiscal year 2012. This is a safety net contract (option) for WMHI to insure that we maintain the required staffing ratio of licensed nurses per patient population as defined by CMS (Medicare) and The Joint Commission for continued hospital accreditation. This is a specific contract for nurses only, with three specific (3) vendors as the result of a bidding process through a previous (RFP) Request For Proposal.

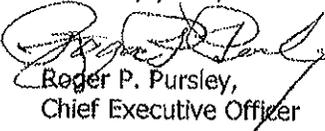
**Note: WMHI does not currently have any other contract or resource option to insure staffing compliance for nurses at this time beyond these three contracts, Delta T Group, Inc., Med Redy, Inc., and Guardian Healthcare Providers, Inc.**

WMHI requires twenty-four (24) hours per day, seven (7) days per week of coverage with Registered Nurses for the care and treatment of psychiatric patients admitted to the state facility. The Nurse Executive of WMHI determines the need for utilizing contract Registered Nurses based on an on-going review of the daily patient census demands and the availability of existing WMHI staff to maintain compliance with CMS (Medicare) and Joint Commission requirements.

This request is to amend the original contract to utilize the option to continue the existing contract through fiscal year 2012 as stated in section B.2. of the contract. This contract requires an annual review because the contract process at the time the RFP was awarded required that the contract be renewed on a year to year basis, in order to determine the continued need for services up to a maximum of five (5) years. This contract continues to meet the safety net need requirement to insure staffing capability and mandatory regulatory compliance according to healthcare regulations.

If you have questions about this request or need further information please contact me, Roger Pursley, at 731-228-2015.

Sincerely yours,

  
Roger P. Pursley,  
Chief Executive Officer

RPP/ccm

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Richard Taylor, Fiscal Director	*Contact Phone:	731-228-2044		
*Contract Number:	FA1132405	*RFS Number:	33912-10011		
*Original Contract Begin Date:	July 1, 2010	*Current End Date:	June 30, 2011		
Current Request Amendment Number: <i>(if applicable)</i>	01				
Proposed Amendment Effective Date: <i>(if applicable)</i>	July 1, 2011				
*Department Submitting:	Department of Mental Health				
*Division:	Western Mental Health Institute				
*Date Submitted:	January 25, 2011				
*Submitted Within Sixty (60) days: <i>If not, explain:</i>	Yes N/A				
*Contract Vendor Name:	Guardian Healthcare Providers, Inc				
*Current Maximum Liability:	\$1,182,285.00				
<b>*Current Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)</b>					
FY:2011	FY:	FY:	FY:	FY	FY
\$1,182,285	\$	\$	\$	\$	\$
<b>*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from STARS or FDAS report)</b>					
FY:2011	FY:	FY:	FY:	FY	FY
\$333,839.09 as of 12/31/10	\$	\$	\$	\$	\$
<b>IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:</b>			Surplus funds were not used or spent		
<b>IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:</b>			N/A There is a continuing need for contract RN's. Edison permits unspent funds to be carried forward.		
<b>IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:</b>			N/A		
*Contract Funding Source/Amount:	State:	100%	Federal:	0%	
Interdepartmental:		0%	Other:	0%	

Supplemental Documentation Required for  
Fiscal Review Committee

If "other" please define:		N/A
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>	Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
N/A	N/A	
Method of Original Award: <i>(if applicable)</i>		RFP
Include a detailed breakdown of the actual expenditures anticipated in each year of the contract. Include specific line items, source of funding, and disposition of any excess fund. <i>(if applicable)</i>		<p><b>***Only State Funds will be used***</b></p> <p><b><u>FY 2011</u></b> 15,355 projected hours \$710,000.00 Projected Total for FY 2011</p> <p><b><u>FY 2012</u></b> 15,600 projected hours \$761,000.00 Projected Total for FY 2012</p>
Include a detailed breakdown, in dollars, of any savings that the department anticipates will result from this contract. Include, at a minimum, reduction in positions, reduction in equipment costs, reduction in travel. <i>(if applicable)</i>		N/A
Include a detailed analysis, in dollars, of the cost of obtaining this service through the proposed contract as compared to other options. <i>(if applicable)</i>		<p>WMHI has 2 options of obtaining registered nurses.</p> <p>Recruit and hire registered nurses as state employees. This is an on going effort. However, it is documented by national studies that there is an acute nation-wide shortage of registered nurses. The other tool is to utilize contract registered nurses.</p> <p>It takes both options to meet the required staffing standards of Joint Commission; Centers for Medicare &amp; Medicaid Services and State of Tennessee Licensure</p>

FY 2011

Per Edison Report Amount Paid on Invoices through December 31, 2010

Guardian Nurses (both RN's and EB3 RN's) Invoices = \$ 333,839.09

**RN's (2 Nurses)**

Regular Pay

2 Regular RN's x 37.5 hours per week = 75.0

75.0 hours x 26 weeks left in FY11 = 1,950.0 hours

1,950 hours x \$60.63 per hour = \$118,228.50

**Total RN's \$ 118,228.50**

**EB3 RN's (6 Nurses)**

Regular Pay

6 EB3 RN's x 37.50 hours per week = 225.00 hours each week

225.00 hours x 26 weeks left in FY 2011 = 5850.00 hours

5850.00 hours x \$43.65 per hour = \$255,352.55

**Total EB3 RN's \$ 255,352.50**

**Premium Holiday Pay - All Nurses**

For remaining Holiday in FY 2011 for both Regular RN's & EB3 Rn's = \$2395.25

**Total Premium Holiday \$ 2,395.25**

**RECAP**

Invoices Paid July - Dec 2010	\$	333,839.09	
RN's Projected Jan - June 2011	\$	118,228.50	2 Regular RN's & 6 EB3/Visa RN's - ***Pay Rates are different***
EB3 RN's Projected Jan - June 2011	\$	255,352.50	2 Regular RN & 6 EB3/Visa RN's - ***Pay Rates are different***
Premium Holiday Pay	\$	2,395.25	
<b>Total FY 2011 Projected Expenditures</b>	<b>\$</b>	<b>709,815.34</b>	

<b>Total Contract Amount</b>	<b>\$</b>	<b>1,182,285.00</b>
<b>FY 11 projected Expenditures</b>	<b>\$</b>	<b>(710,000.00)</b>
<b>FY12 Projected Expenditures</b>	<b>\$</b>	<b>(761,000.00)</b>
<b>Projected Shortfall</b>	<b>\$</b>	<b>(288,715.00)</b>

FY 2012

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**RN's (2 Nurses)**

**Regular Pay**

2 Regular RN x 37.5 hours per week = 75.0

75.0 hours x 52 weeks per year = 3,900.0 hours

3,900 hours x \$60.63 per hour = \$236,457.00

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**Total RN's \$ 236,457.00**

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**EB3 RN's (6 Nurses)**

**Regular Pay**

6 EB3 RN's x 37.5 hours per week = 225.00 hours each week

225.00 hours x 52 weeks per year = 11,700.0 hours

11,700.0 hours x \$43.65 per hour = \$510,705.00

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**Total EB3 RN's \$ 510,705.00**

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**Premium Holiday Pay - All Nurses**

For all 6 Holidays in FY 2012 for both Regular RN's & EB3 RN's = \$12,000.00

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**Total Premium Holiday \$ 14,000.00**

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**RECAP**

Total RN's	\$ 236,457.00	2 Regular RN's & 6 EB3/Visa RN's - ***Pay Rates are different***
Total EB3 RN's	\$ 510,705.00	2 Regular RN & 6 EB3/Visa RN's - ***Pay Rates are different***
Total Premium Holiday Pay	\$ 14,000.00	
<b>Total FY 2012 Projected Expenditures</b>	<b>\$ 761,162.00</b>	

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Total Contract Amount	\$ 1,182,285.00
FY 11 projected Expenditures	\$ (710,000.00)
FY12 Projected Expenditures	\$ (761,000.00)
Projected Shortfall	\$ (288,715.00)

## NON-COMPETITIVE AMENDMENT REQUEST:

APPROVED

Commissioner of Finance &amp; Administration

1) RFS #	33912-10011	
2) Procuring Agency :	Western Mental Health Institute	
<b>EXISTING CONTRACT INFORMATION</b>		
3) Service Caption :	Nursing Services	
4) Contractor :	Guardian Healthcare Providers, Inc	
5) Contract #	FA1132405	
6) Contract Start Date :	July 1, 2010	
7) CURRENT Contract End Date : (if ALL options to extend the contract are exercised)	June 30, 2011	
8) CURRENT Maximum Cost : (if ALL options to extend the contract are exercised)	\$ 1,182,285.00	
<b>PROPOSED AMENDMENT INFORMATION</b>		
9) Amendment #	01	
10) Amendment Effective Date : (attached explanation required if < 60 days after F&A receipt)	July 1, 2011	
11) PROPOSED Contract End Date : (if ALL options to extend the contract are exercised)	June 30,2012	
12) PROPOSED Maximum Cost : (if ALL options to extend the contract are exercised)	\$ 1,471,000.00	
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 :	Permits WMHI to meet Staffing standards for Joint Commission, Centers for Medicare & Medicaid Service.	
15) Explanation of Need for the Proposed Amendment :	To utilize the option of extending the current contract for another year.	
16) Name & Address of Contractor's Current Principal Owner(s) : (not required for a TN state education institution)	Joel Williams, Chief Operating Officer – Guardian Healthcare Providers, Inc – 105 West Park Drive, Suite 100 – Brentwood, TN 37027	
17) Office for Information Resources Endorsement : (required for information technology service; n/a to THDA)	Documentation is ... <input checked="" type="checkbox"/> Not Applicable to this Request <input type="checkbox"/> Attached to this Request	
18) eHealth Initiative Endorsement : (required for health-related professional, pharmaceutical, laboratory, or imaging service)	Documentation is ... <input type="checkbox"/> Not Applicable to this Request <input checked="" type="checkbox"/> Attached to this Request	

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

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

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

The contract was an award of RFP 33912-10011 that began July 1, 2010.

21) Justification for the Proposed Non-Competitive Amendment :

WMHI has 2 options of obtaining registered nurses.

Recruit and hire registered nurses as state employees. This is an on going effort. However, it is documented by national studies that there is an acute nation-wide shortage of registered nurses. The other tool is to utilize contract registered nurses.

It takes both options to meet the required staffing standards of Joint Commission; Centers for Medicare & Medicaid Services and State of Tennessee Licensure

**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)

E. Douglas Varney, Commissioner:



DATE:

2/3/11



## CONTRACT AMENDMENT

<b>Agency Tracking #</b> 33912-10011	<b>Edison ID</b> 21459	<b>Contract #</b> FA1132405	<b>Amendment #</b> 01		
<b>Contractor Legal Entity Name</b> Guardian Healthcare Providers, Inc			<b>Edison Vendor ID</b> 0000083271		
<b>Amendment Purpose &amp; Effect(s)</b> To extend contract through Fiscal Year 2012			<b>FEIN or SSN (optional)</b> 62-1494290		
<b>Amendment Changes Contract End Date:</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<b>End Date:</b> June 30, 2012			
<b>Maximum Liability (TOTAL Contract Amount) Increase/Decrease per this Amendment:</b>			<b>\$288,715.00</b>		
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
2011	\$710,000.00				\$710,000.00
2012	\$761,000.00				\$761,000.00
<b>TOTAL:</b>	<b>\$1,471,000.00</b>				<b>\$1,471,000.00</b>
<b>American Recovery and Reinvestment Act (ARRA) Funding:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.			OCR USE		
<b>Speed Code (optional)</b>		<b>Account Code (optional)</b>			

**AMENDMENT ONE  
OF CONTRACT FA1132405**

This Amendment is made and entered by and between the State of Tennessee, Department of Mental Health, Western Mental Health Institute, (as amended herein) hereinafter referred to as the "State" and Guardian Healthcare Providers, Inc, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract section B.1. is deleted in its entirety and replaced with the following:
  - B.1. Contract Term. This contract shall be effective for the period commencing on July 1, 2010, and ending on June 30, 2012. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
  
2. Contract section C.1. is deleted in its entirety and replaced with the following:
  - C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Million, Four Hundred Seventy-One Thousand Dollars (\$1,471,000.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.  
  
The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.
  
3. The following is added as contract section E.23.:
  - E.23. Department Name. All references to "Tennessee Department of Mental Health and Developmental Disabilities" shall be deleted and replaced with "Tennessee Department of Mental Health."

The revisions set forth herein shall be effective July 1, 2011. All other terms and conditions not expressly amended herein shall remain in full force and effect.

**IN WITNESS WHEREOF,**

**GUARDIAN HEALTHCARE PROVIDERS, INC:**

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**SIGNATURE**

**DATE**

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**PRINTED NAME AND TITLE OF SIGNATORY (above)**

DEPARTMENT OF MENTAL HEALTH:

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E. DOUGLAS VARNEY, COMMISSIONER

DATE



# E-Health Pre-Approval Endorsement Request E-Mail Transmittal

**TO :** Lovel VanArsdale, Office of e-Health Initiatives  
Department of Finance & Administration

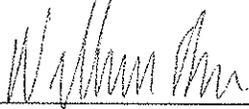
**E-mail :** [Lovel.Vanarsdale@tn.gov](mailto:Lovel.Vanarsdale@tn.gov)

**FROM :** Richard Taylor, Fiscal Director

**E-mail :** [Richard.B.Taylor@tn.gov](mailto:Richard.B.Taylor@tn.gov)

**DATE :** February 8, 2011

**RE :** Request for eHealth Pre-Approval Endorsement

<b>Applicable RFS #</b> 33912-10011 C – Guardian Healthcare Providers, Inc., Edison ID 21459, Contract # FA1132405
<b>Office of e-Health Initiatives Endorsement Signature &amp; Date:</b>
 <span style="float: right; margin-right: 100px;">3/7/2011</span>
<b>Office of e-Health Initiatives</b>

Office of e-Health Initiatives (eHealth) pre-approval endorsement appears to be required pursuant to professional service contracting regulations pertaining to procurements with medical/mental health-related professional, pharmaceutical, laboratory, or imaging type services as a component of the scope of service. This request seeks to ensure that eHealth is aware of and has an opportunity to review the procurement detailed below and in the attached document(s).

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

<b>Contracting Agency</b>	<b>Western Mental Health Institute</b>
<b>Agency Contact (name, phone, e-mail)</b>	<b>Richard Taylor 731-228-2044 Richard.B.Taylor@tn.gov</b>
<b>Required Attachments (as applicable – copies without signatures acceptable)</b>	
<input type="checkbox"/> RFP, Competitive Negotiation Request, Alternative Procurement Method Request, or Non-Competitive Contract/Amendment Request <input checked="" type="checkbox"/> proposed contract or amendment	
<b>Medical/Mental Health-Related Service Description</b>	
Nursing Services	

 <h2 style="text-align: center;">CONTRACT</h2> <p style="text-align: center;">(FA-type fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)</p>					
Agency Tracking # <b>33912-10011</b>			Edison ID <b>21459</b>		
Contractor <b>GUARDIAN HEALTHCARE PROVIDERS, INC</b>			Contractor Federal Employer Identification or Social Security # <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 62-1494290		
Service <i>Nursing Services</i>					
Contract Begin Date JULY 1, 2010		Contract End Date JUNE 30, 2011		Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA #(s)
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011	1,182,285.00				1,182,285.00
TOTAL:	1,182,285.00				1,182,285.00
American Recovery and Reinvestment Act (ARRA) Funding - <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
OCR USE FA		Agency Contact & Telephone # Gene Wood 12 <sup>th</sup> Floor, Andrew Johnson Tower 615-532-6676			
 <b>F&amp;A Secured Document</b> <b># FA1132405</b>		Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred)			
		Speed Code		Account Code	
Contractor Ownership/Control					
<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> Government	
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input checked="" type="checkbox"/> NOT Minority/Disadvantaged	<input checked="" type="checkbox"/> Other	
Contractor Selection Method					
<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"/> Other *				
*Procurement Process Summary					

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF MENTAL HEALTH & DEVELOPMENTAL DISABILITIES  
WESTERN MENTAL HEALTH  
AND  
GUARDIAN HEALTHCARE PROVIDERS, INC.**

This Contract, by and between the State of Tennessee, Department of Mental Health and Developmental Disabilities, Western Mental Health Institute, hereinafter referred to as the "State" and Guardian Healthcare Providers, Inc., hereinafter referred to as the "Contractor," is for the provision of nursing services, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit corporation.

Contractor Federal Employer Identification or Social Security Number: 62-1494290

Contractor Place of Incorporation or Organization: Brentwood, Tennessee

**A. SCOPE OF SERVICES:**

A.1. The Contractor shall provide all services and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.

A.2. Service Definition:

- a. The State needs adequate nursing services for service recipients of Western Mental Health Institute (hereinafter Facility) when State positions are unable to provide the level of nursing services required. The nurses required are Registered Nurses (RNs). The level of nursing services required depends upon the shortage of Facility nursing services due to vacancies, illnesses, and personal emergencies; health condition; increase in the number of incoming service recipients; unpredictable emergencies that may arise; and general unpredictability of needs that the service recipients may require.
- b. The Contractor(s) shall provide nursing services as required and described in this Scope of Services, for the times and duration as described in this Scope of Services, and in accordance with all terms and conditions specified in this Contract. The State shall not be obligated to use any particular minimum number of personnel. Quality patient care, in accordance with standards specified in this Contract, is to be provided during the twenty-four hours per day/seven days per week/three hundred sixty-five days per year (24/7/365) operation of Facility.

A.3. Service Recipients:

Services shall be provided in Facility of approximately one hundred sixty two (162) beds for fifty (50) Acute Adults and one hundred twelve (112) Long Term Care Adults.

A.4. Staffing Needs:

- a. The State shall not be obligated to use a particular minimum number, or any number, of RNs to meet the needs of Facility.
- b. Facility's Nurse Executive shall base the need for RNs on a review of the patient load and available staff. Requests for services shall be coordinated between the Contractor(s) and his/her representative and Facility's Nurse Executive.
- c. The following numbers shall not create any rights, interests, or claims of entitlement in the Contractor(s), and shall not be construed as any type of volume guarantee or minimum

quantity. Additional information about coverage, work shifts, holidays, weekends, and general time and attendance is in Section A.6. Estimated numbers of RNs are as follows:

- (1) PRN (*Pro Re Nata*; as needed) RNs, up to thirty (30) shifts per week; maximum of nineteen thousand five hundred (19,500) work hours per year.

A.5. Structure:

- a. The Contractor agrees to provide appropriately licensed individuals to perform nursing services at Facility as described in this Scope of Services. Such individuals who are in the United States under the EB3 Visa program are acceptable at the State's discretion.
- b. The Contractor agrees that it shall not provide any services pursuant to this Contract until the following conditions are met:
  - (1) The Contractor shall screen all individuals expected to be assigned to perform nursing services at Facility under this Contract, and certify that such individuals are appropriately licensed to practice in the State of Tennessee. Copies of certifications, transcripts, licensure, and curriculum vitae; and professional references must be provided to Facility by the Contractor.
  - (2) The Contractor shall verify that all individuals expected to be assigned to perform nursing services at Facility are able to perform the duties as specified in this Contract and are able to communicate effectively in the English language.
  - (3) The Contractor acknowledges and understands that it is the responsibility of the Contractor and the Contractor must obtain the approval of both the U.S. Department of Labor (DOL) and the U.S. Citizenship and Immigration Services prior to providing individuals expected to be assigned to perform nursing services at Facility under the EB3 Visa program. The Contractor is responsible for complying with all Federal requirements of the EB3 Visa program and ensuring continued compliance with all Federal regulations related to the EB3 Visa program during the course of this Contract.
  - (4) The Contractor shall ensure that each individual expected to be assigned to perform nursing services at Facility has the appropriate current active license to practice in the State of Tennessee as well as the following:
    - i. At least one (1) year of nursing experience is required. Proof of experience in nursing must be validated in writing. Psychiatric nursing experience of one (1) year or more is preferred.
    - ii. Be qualified in cardio-pulmonary resuscitation (CPR) procedures. The Contractor must provide written verification that the individual expected to be assigned to perform nursing services at Facility is currently certified in CPR procedures, and the Contractor shall submit written verification of annual training. The initial and all subsequent verifications should include the effective date of certification. No nurse will be allowed to work under this Contract without a current CPR certification.
    - iii. Contractor must provide annual in-services on Infection Control and Fire and Safety for all staff members and provide proof to Facility.
    - iv. For all orientation, in-service, education, and other training provided by the Contractor to its staff, Facility requires the Contractor to provide an outline of educational content to Facility for Facility staff development files; and

- v. The Contractor shall provide a documented performance evaluation of each of its nurses at least annually.
- (5) The Contractor shall ensure that the immunization status of each individual expected to be assigned to perform nursing services at Facility includes the results of a current tuberculosis skin test, and documentation that immunization against hepatitis B, hepatitis A, and tetanus was offered and either accepted or rejected. The Contractor must provide written documentation of such at the time each such individual is assigned to Facility and must provide updated information for each such individual annually. The cost of tuberculosis testing and immunizations are to be paid by the Contractor.
- (6) Contractor has verified personal and professional references and conducted a criminal background check to insure that no individual expected to be assigned to perform nursing services at Facility has been convicted of a felony or has current charges outstanding which would constitute a felony in the State of Tennessee. In addition no such individual appears on the Tennessee Bureau of Investigation's (TBI's) Tennessee Sexual Offender Registry or the Elderly and Vulnerable Abuse Registry maintained by the Tennessee Department of Health. Further, the Contractor shall ensure that each such individual's file includes the results of a full background investigation that relates to such individual's employment history, and criminal history, including any confirmed history of sexual, physical, or mental abuse towards others. This investigation shall be conducted by the Contractor at its own expense for each such individual and the resulting information shall be provided to Facility's Human Resources Office, as allowed by law, two (2) weeks before such individual shall be permitted to work at Facility. The State must be immediately notified of any changes in the status of the above information when the Contractor becomes aware of such changes. Required Background Checks are to consist of the following:
- i. Fingerprints;
  - ii. Identity and Employment Eligibility verification as required by Form I-9 of the US Department of Justice;
  - iii. Check of the TBI's Tennessee Sexual Offender Registry; and
  - iv. Check of the Elderly and Vulnerable Abuse Registry maintained by the Tennessee Department of Health.
- (7) Contractor shall warrant that all individuals expected to be assigned to perform nursing services at Facility are drug-free at the point of initial assignment and Contractor shall ensure that such individuals are included in a random drug testing program conducted by the Contractor. The first set of test results shall be submitted to Facility's Human Resources Office two (2) weeks before such individual shall be permitted to work at Facility; subsequent test results shall be submitted annually thereafter. Contractor shall further warrant that no such individual is in the Nursing Peer Assistance Program. Facility will not accept any such individual who is in the Nursing Peer Assistance Program; and
- (8) The Contractor warrants that no individual expected to be assigned to perform nursing services at Facility who is a former employee of the State of Tennessee shall be referred within six (6) months of such individual's final separation from employment with the State of Tennessee. Further, no former employee shall be accepted who was dismissed for cause, or with or without cause during a probationary period, or resigned not in good standing from employment with the State of Tennessee.

- c. The Contractor's staff and the individuals expected to be assigned to perform nursing services at Facility shall not be deemed for any purpose to be employees of the State. With respect to the Contractor's staff and such individuals, the Contractor shall be responsible for payroll, benefits, workers compensation, withholding of all state and federal taxes, and depositing same at the appropriate times and places.
- d. The State shall be the sole judge of the performance of the individuals expected to be assigned, and those assigned, to perform nursing services at Facility. The Contractor agrees to remove and replace, at Contractor expense, any such individual judged by the State to be providing unsatisfactory services. The Contractor further agrees not to charge the State for any services performed which the State designates as being unacceptable.
- e. The Contractor agrees, and shall ensure that the individuals assigned to perform nursing services at Facility agree, to abide by all applicable federal, state, and local laws, statutes, rules, ordinances, policies, and procedures while providing services to service recipients at Facility and to fulfill any applicable requirements regarding treatment, service recipient confidentiality, and accreditation set forth by The Joint Commission. Further, all nursing services provided to service recipients at Facility shall be provided in a manner that meets or exceeds the following standards and laws:
  - (1) All applicable Medicare and Tennessee's Medicaid program, TennCare, standards and regulations;
  - (2) All standards required by The Joint Commission;
  - (3) Facility Policies and Procedures;
  - (4) Medical Staff Bylaws of Facility;
  - (5) Tennessee Nurse Practice Act;
  - (6) Title 33, Tennessee Code Annotated; and
  - (7) All Tennessee Department of Mental Health and Developmental Disabilities (TDMHDD) Rules as published in the official compilation of Tennessee Administrative Rules.
- f. The Contractor shall ensure that each individual assigned to perform nursing services in the role of a Registered Nurse (RN) at Facility is responsible for the delivery of continuous and comprehensive nursing services which are consistent with current standards of nursing practice and in accordance with current Facility policies and procedures as well as other policies and procedures specified in this Contract. The Contractor shall also ensure that each such individual is responsible for, and has the necessary skills to carry out, the following:
  - (1) Implement the nursing process:
    - i. Assess service recipients and identify their physical and psychiatric problems/needs;
    - ii. Plan and implement nursing interventions appropriate to the service recipient(s) problem/needs; and
    - iii. Evaluate the effectiveness of nursing interventions;
  - (2) Administer medication:

- i. Know the therapeutic dosage usage and effects of medication;
  - ii. Monitor and recognize the side effects of medications;
  - iii. Recognize and report adverse responses to medication;
  - iv. Recognize off-label use of prescribed medication;
  - v. Accurately documents medication administration, therapeutic responses, side effects and adverse reactions;
  - vi. Make appropriate notification to the physician, nurse practitioner, or physician assistant of any untoward service recipient response to medication; and
  - vii. Follow all Facility policies and procedures related to medications.
- (3) Transcribe and implement Physician Orders:
- i. Transcribe and implement Physicians' Orders according to Facility policies and procedures and accepted nursing practice standards; and
  - ii. Follow Facility policies and procedures related to Physicians' Order transcription and implementation, i.e., signatures, co-signatures, time frames and other documentation;
- (4) Therapeutically interact with and communicate with service recipients:
- i. Utilize therapeutic interventions and communication with service recipients;
  - ii. Treat service recipients with respect and dignity, and honor their rights and confidentiality according to federal and state law as well as Facility policies and procedures; and
  - iii. Participate in and document nursing interventions in both psychiatric and medical crises;
- (5) Provide supervision to Licensed Practical Nurses (LPN) staff:
- i. Provide clinical supervision to LPNs who are engaged in the performance of their assigned duties, including direct patient care; medication administration; carrying out the nursing plan of care or supporting the therapeutic environment; special patient observations such as one-to-one, fifteen (15)-minute checks; seclusion and restraint; according to Facility policies and procedures; and
  - ii. Provide administrative supervision to LPN staff regarding unit/service recipient assignments, breaks, and meeting service recipient needs;
- (6) Provide supervision to unlicensed staff:
- i. Provide clinical supervision to psychiatric technicians who are engaged in usual direct care activities, as well as in special patient observations such as one-to-one; fifteen (15)-minute checks; seclusion and restraint; according to Facility policies and procedures; and

- ii. Provide administrative supervision to unlicensed staff regarding unit/patient assignments, breaks, escorts, and meeting service recipient needs; and
- (7) Communicate and document pertinent clinical and administrative information:
- i. Notify the nursing supervisor and the physician, nurse practitioner, or physician assistant appropriately of clinical and administrative crises and documents these efforts;
  - ii. Document the pertinent nursing interventions and service recipient responses in the service recipient record;
  - iii. Complete Incident Reports and Tennessee Occupational Safety and Health Administration (TOSHA) reports as defined by law and Facility policies and procedures; and
  - iv. Utilize basic computer skills to research or enter required service recipient information into Facility's computer system.
- g. Facility shall provide a one-day orientation to each individual assigned to perform nursing services at Facility under this Contract. **There will be no payment to Contractor for this one (1) day of training.**
- h. All individuals assigned by the Contractor to perform nursing services at Facility must successfully complete an initial skills checklist and competency assessment required and conducted by Facility and following orientation before working at Facility. Such skills checklist and competency assessment is required annually thereafter. Such individuals must demonstrate the required knowledge and skills by completion of the class. Failure to meet the required standards may result in such individual being required to retake the orientation class, or in some cases, not being permitted to work at Facility.

A.6. Process:

- a. Individuals assigned to perform nursing services at Facility may be scheduled to work on either of the shifts based on the staff needs as determined by Facility. Such individuals must be available within four (4) hours of call to Contractor. The Contractor must respond either affirming or passing its ability to provide the requested services in the required, four (4) hour, time frame. Failure to respond or a late response shall be deemed a denial. Detailed records of each contact shall be kept.
- b. Individuals assigned to perform nursing services at Facility who are scheduled in advance may be cancelled with a four (4) hour notice prior to the start of the shift without any charge to Facility. Notice to the Contractor of less than four (4) hours shall result in a maximum of four (4) hours being billed to the State.
- c. It shall be the Contractor's responsibility to provide replacement coverage if an individual assigned to perform nursing services at Facility calls in or fails to report for duty.
- d. Payment is authorized for twelve and one-half (12.5) hours per shift, as shown below, with the expectation that the individual assigned to perform nursing services at Facility will take a full meal break. The State does not pay for meal breaks. If such individual is late or leaves work early, the time cannot be made up by shortening or eliminating a meal break. In the event Facility needs such individual to work through a meal break, only Facility's Nurse Executive shall authorize such work and initial the particular time sheet signifying such authorization. Any partial shift work shall be at the sole discretion of the State. Only Facility's Shift Supervisor is authorized to sign the charge slip(s) of an individual assigned

to perform nursing services at Facility. Final approval is provided by Facility's Nurse Executive or designee.

<u>Shift</u>	<u>Time</u>	<u>Meal Break</u>	<u>Total Paid</u>
1	6:30 AM – 8:00 PM	1 hour	12.5 hours
2	5:30 PM – 7: 00 AM	1 hour	12.5 hours

- e. If the State has entered into more than one (1) Contract to meet the staffing needs for nursing services at Facility, the following is to be understood by the Contractor(s):
- (1) All proposals received were scored and ranked. After meeting the qualifications evidence, the proposer with the lowest evaluation cost amount was designated as Primary. The proposers with the next two lowest evaluation cost amounts were designated as Secondary and Alternate. This Contract shall be Alternate.
  - (2) When one or more individuals appropriately licensed to perform nursing services are needed at Facility, the Primary Contractor shall be contacted. Should the Primary Contractor be unable to supply the full-required coverage, the Secondary Contractor shall be contacted to supply any additional such individuals still required. Should the Secondary Contractor be unable to provide the total coverage necessary, then the Alternate Contractor shall be contacted to supply any additional such individuals still required. For example, should the State require ten (10) such individuals and the Primary Contractor is only able to provide eight (8) such individuals, the Secondary Contractor shall be contacted for the two (2) additional such individuals required. If the Secondary Contractor can provide only one (1) such individual, the Alternate Contractor shall be contacted for the remaining coverage.

**B. CONTRACT TERM:**

- B.1. This Contract shall be effective for the period commencing on July 1, 2010 and ending on June 30, 2011. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract, and shall be based upon payment rates provided for in the original Contract.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Million, One Hundred Eighty-Two Thousand, Two Hundred Eighty-Five Dollars (\$1,182,285.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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

Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
Registered Nurse	\$ 60.63 per HOUR

- c. The Contractor shall not be compensated for travel time to the primary location of service provision.
- d. Reimbursement for an EB3 Registered Nurse will be at a rate of seventy two percent (72%) of the rate established for a Non EB3 Registered Nurse.
- e. The State shall reimburse Contractor a holiday rate, at the rate of one and one-half (1.5) times the regular hourly rate, only when an individual works at Facility on any of the following state and federal holidays: New Years Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day.

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

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Richard Taylor, Fiscal Director  
Western Mental Health Institute  
Administration Building, 3<sup>rd</sup> Floor  
11100 Old Highway 64  
Bolivar, Tennessee 38008

- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the State to this Contract);

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

c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) not include any future work but will only be submitted for completed service; and
- (3) not include sales tax or shipping charges.

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

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

C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of

Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

**D. STANDARD TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least Thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize

the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.

D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.

D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

**E. SPECIAL TERMS AND CONDITIONS:**

E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

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

The State:

Richard Taylor, Fiscal Director  
Western Mental Health Institute  
Administration Building, 3<sup>rd</sup> Floor  
11100 Old Highway 64  
Bolivar, Tennessee 38008  
Richard.B.Taylor@tn.gov  
Telephone # 731-228-2044  
FAX # 731-658-9822

The Contractor:

Joel Williams, Chief Operating Officer  
Guardian Healthcare Providers, Inc.  
105 West Park Drive, Suite 100  
Brentwood, TN 37027  
jwilliams@guardianhealthcare.com  
Telephone # 615-377-9140 Ext 218  
FAX # 615-661-6011

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

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.
- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.

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

E.6. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.

- a. The Contractor shall maintain, at minimum, the following insurance coverage:
  - (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
  - (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
  - (3) Professional Malpractice Liability with a limit of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.
- b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

E.7. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without

restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

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

- E.8. 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.9. Rule 2 Compliance. The State and the Contractor shall comply with obligations under Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations as codified at 42 CFR § 2.1 et seq.
- a. The Contractor warrants to the State that it is familiar with the requirements of Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations, and will comply with all applicable requirements in the course of this Contract.
  - b. The Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its regulations, in the course of performance of the Contract so that both parties will be in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records.
  - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and that are reasonably necessary to keep the State and the Contractor in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, or if Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.10. 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.11. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.
- E.12. 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; and
  - 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.13. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.
- E.14. Public Accountability. If the Contractor is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor shall display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this Contract, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:
- NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454
- E.15. 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.16. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or

an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

E.17. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

E.18. 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.

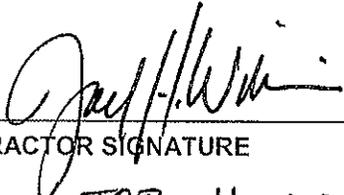
In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and

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.19. Unencumbered Personnel. All persons assigned by the Contractor to perform services for the State under this Contract, whether they are employees, agents, subcontractors, or principals of the Contractor, shall not be subject to any employment contract or restrictive covenant provisions which would preclude those persons from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State. If the Contractor provides the State with the services of any person subject to a restrictive covenant or contractual provision in violation of this provision, any such restrictive covenant or contractual provision will be void and unenforceable, and the Contractor will pay the State and any person involved all of its expenses, including attorneys fees, caused by attempts to enforce such provisions.
- E.20. Drug-Free Workplace. The Contractor agrees that it shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, Title 41 of the United States Code (41 USC) §§ 701 et seq., and the regulations in Title 45 of the Code of Federal Regulations (45 CFR) Part 82.
- E.21. Professional Practice. The Contractor shall assure that there is a code of conduct in place and applicable to all employees that covers, at minimum, business practices, clinical practices, and service recipient/staff interaction/fraternization. Further, Contractor's personnel shall conduct their practice in conformity with all applicable statutes, rules and regulations, and recognized ethical standards of their profession. Procedures for reporting violations of the ethical standards shall be developed and communicated to staff upon hire and annually thereafter, which shall include a non-reprisal approach for persons reporting suspected violations, as well as a description of possible sanctions for violating the standards. Failure to implement a code of conduct in accordance with this section and to adequately address suspected violations of the code of conduct may be cause for termination of this Grant Contract.
- E.22. Additional Subcontracting Requirements. If subcontracts are approved by the State, they shall contain, in addition to those sections identified in D.5., sections on "Confidentiality of Records", "HIPAA Compliance," and "Rule 2 Compliance" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

IN WITNESS WHEREOF,

GUARDIAN HEALTHCARE PROVIDERS, INC.:

	6/21/0
CONTRACTOR SIGNATURE	DATE
JOEL H. WILLIAMS	COO

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES:

*Virginia Trotter Betts*

VIRGINIA TROTTER BETTS, MSN, JD, RN, FAAN, COMMISSIONER

*06-28-10*  
DATE

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	GUARDIAN HEALTHCARE PROVIDERS, INC.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	62-1494290

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.



CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

JOE H. WILLIAMS COO

PRINTED NAME AND TITLE OF SIGNATORY

6/21/10

DATE OF ATTESTATION