CONTRACT #2
RFS # 344.02-745

Department of Finance & Administration Division of Mental Retardation Services

VENDOR:
Comcare, Inc.

STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF MENTAL RETARDATION SERVICES
ANDREW JACKSON BUILDING
500 DEADERICK STREET, SUITE 1500
NASHVILLE, TENNESSEE 37243

April 26, 2006

Jim White, Director
Fiscal Review Committee
8th Floor, Rachel Jackson Building
Nashville, Tennessee 37243

RECEIVED
APR 26 2006
FISCAL REVIEW

Attention: Leni Chick

Re: Comcare Inc.
RFS Number 344.02-745

Dear Mr. White:

Pursuant to Tennessee Code Annotated 12-4-109, a request for a non-competitive contract between the Department of Finance and Administration, Division of Mental Retardation Services (DMRS) and Comcare, Inc. for conservatorship/guardianship services is submitted for review by the Fiscal Review Committee.

DMRS has the responsibility to offer state funded conservatorship/guardianship services to DMRS service recipients that do not have any family members or other natural supports willing or able to serve as a conservator/guardian.

Comcare, Inc. is the existing court ordered conservator/guardian for approximately 700 individuals served by DMRS. Any conservator/guardian may only be removed or modified by court order(s), which would be an expensive and lengthy process for the State if all existing conservatorships/guardianships were to be removed from the existing contractor. Because of the cost involved, DMRS request to enter into a new contract with Comcare, Inc. for the continuation of services.

In addition, DMRS plans to enter into contracts with multiple providers of this service to offer service recipients, or any interested party of the disabled person utilizing this service, a choice of service providers. For FY 06 DMRS received approval to use the State "Alternative Procurement Method" to enter into multiple contracts for up to 5 years for conservatorship/guardianship services and is in the process of requesting approval for use of this method for FY 2007. To this date, only one other individual is willing to enter into a contract to provide this service.

The proposed contract with Comcare, Inc for FY 07 contains the following provisions:

Contract Term – July 1, 2006 through June 30, 2007

Term Extension – Allows for extensions of one (1) year increments and total contract term of four (4) years

Maximum Annual Liability Amount - $624,420.00

Total Contract (all four (4) years) - $2,497,680.00

Payment Methodology:

CONSERVATORSHIP/GUARDIANSHIP SERVICES	PAYMENT RATE PER HOUR			
	Year 1	Year 2	Year 3	Year 4
Developmental Center clients	35.00	36.00	37.00	38.00
Community Clients	36.00	37.00	38.00	39.00

* Funding for Years 2, 3, and 4 of this contract shall be contingent upon an approved amendment.

Reimbursement to the Contractor for actual cost of legal services provided on behalf and in the best interest of the disabled individual, provided that such reimbursable, actual cost may not exceed five percent (5%) of the annual maximum liability of this Contract and the Contractor presents to the State all required supporting documentation to evidence that such cost was incurred and paid in full by the Contractor.

A copy of the proposed contract and a copy of the request to use the non-competitive procurement method are attached. Please let me know if any additional information is required.

Your assistance for review of this proposed contract for approval is appreciated.

Sincerely,

Stephen H. Norris
Deputy Commissioner

SHN:DD

Attachments

STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF MENTAL RETARDATION SERVICES
ANDREW JACKSON BUILDING
500 DEADERICK STREET, SUITE 1500
NASHVILLE, TENNESSEE 37243

April 24, 2005

APPROVED
Commissioner of Finance & Administration Date:

M. D. Goetz, Jr., Commissioner
Department of Finance and Administration
State Capitol, 1st Floor
Nashville, Tennessee 37243-0285

Re: Request to use Non-Competitive Procurement Method
Conservatorship/Guardianship Services
RFS 344.02-745

Dear Commissioner Goetz:

1) Description of service to be acquired:

The Department of Finance and Administration, Division of Mental Retardation Services desires to use the Non-Competitive Procurement Method to enter into a contract with Comcare, Inc. for conservatorship/guardianship services.

2) Explanation of the need or requirement placed on the procuring agency to acquire the service:

DMRS has the responsibility to offer state funded conservatorship/guardianship services to DMRS service recipients that do not have any family members or other natural supports willing or able to serve as a conservator/guardian.

3) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used:

For FY 2006 - Non-Competitive Procurement Method was used to enter into a contract with Comcare, Inc. and the Alternative Procurement Method was used to enter into a contract with Kimela Wright.

For FY 2002-2004 – Request for Qualified Providers procurement method was used (three contracts were awarded by this method)

4) Name and address of the proposed contractor's principal owner(s):

John T. Johnson, Ph.D., Executive Director
Comcare, Inc.
P. O. Box 1885
Greeneville, Tennessee 37744-1885

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

Comcare, Inc. has been one of four service providers for DMRS since July 1, 2001.

6) Documentation of Office for Information Resources Endorsement:

Not applicable.

7) Documentation of Department of Personnel endorsement:

Not applicable

8) Documentation of State Architect Endorsement:

Not applicable

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

DMRS desires to maintain multiple providers of this service to offer service recipients, or any interested party of the disabled person utilizing this service, a choice of service providers.

For FY 06 DMRS received approval to use the State's "Alternative Procurement Method" to enter into multiple contracts for up to 5 years for conservatorship/guardianship services and plans to request approval for use of this method for FY 2007.

10) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process:

A change of conservator/guardian may only be removed or modified by court order(s), which would be an expensive and lengthy process for the State if all existing conservatorships/guardianships were removed from the existing contractor. The State desires to maintain existing conservatorship/guardianship relationships that have been established by court orders until a request is submitted to DMRS from the individual served/disabled person or another interested party of the disabled individual that indicates a desire to change an individual's service provider.

Your consideration for approval of this request is appreciated.

Sincerely,

Stephen H. Norris

Stephen H. Norris
Deputy Commissioner
Division of Mental Retardation Services

SHN: DD
Attachment

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 #**	344.02-745
2) **State Agency Name :**	Department of Finance and Administration, Division of Mental Retardation Services
3) **Service Caption :**	Conservatorship/Guardianship
4) **Proposed Contractor :**	Comcare, Inc.
5) **Contract Start Date :** (attached explanation required if date is < 60 days after F&A receipt)	July 1, 2006
6) **Contract End Date IF all Options to Extend the Contract are Exercised :**	June 30, 2010
7) **Total Maximum Cost IF all Options to Extend the Contract are Exercised :**	$2,497,680.00
8) **Approval Criteria :** (select one)	☒ **use of Non-Competitive Negotiation is in the best interest of the state**
	☐ **only one uniquely qualified service provider able to provide the service**

9) Description of Service to be Acquired :

Conservatorship/guardianship services for individuals where conservatorships/guardianships have been established by court order between DMRS service recipients and Comcare, Inc.

10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service :

DMRS has the responsibility to offer state funded conservatorship/guardianship services to DMRS service recipients that do not have any family members or other natural supports willing or able to serve as a conservator/guardian.

11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :

For FY 2006 – Utilized a non-competitive procurement method to enter into a contract with Comcare, Inc. and utilized an alternative procurement method to enter into a contract with Kimela Wright.

For FY 2002-2004 – DMRS awarded three contracts upon receiving proposals for services through a method of requesting qualified providers.

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

John T. Johnson, Ph.D., Executive Director
Comcare, Inc.
P. O. Box 1885
Greeneville, Tennessee 37744-1885

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

Comcare, Inc. has been one of four (4) service providers for DMRS since July 1, 2001.

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 :

DMRS desires to maintain multiple providers of this service to offer service recipients, or any interested party of the disabled person utilizing this service, a choice of service providers.

For FY 06 DMRS received approval to use the State "Alternative Procurement Method" to enter into multiple contracts for up to 5 years for conservatorship/guardianship services and plans to request approval for use of this method for FY 2007.

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.)

A change of conservator/guardian may only be removed or modified by court order(s), which would be an expensive and lengthy process for the State if all existing conservatorships/guardianships were removed from the existing contractor. The State desires to maintain existing conservatorship/guardianship relationships that have been established by court orders until such time as a request is submitted to DMRS from the individual served/disabled person or another interested party of the disabled individual that indicates a desire to change an individual's service provider.

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	**Date** 5/02/06

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF MENTAL RETARDATION SERVICES
AND
COMCARE, INC.

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of Mental Retardation Services, hereinafter referred to as the "State" and Comcare, Inc., hereinafter referred to as the "Contractor", is for the provision of Conservatorship and Guardianship services to disabled persons with mental retardation, as further defined in the "SCOPE OF SERVICES".

The Contractor is a nonprofit corporation.

The Contractor's address is:

P.O. Box 1885
Greeneville, Tennessee 37744-1885

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

A. SCOPE OF SERVICES:

A.1. General Obligations of the Contractor.

a. The Contractor or its successor in interest shall provide conservatorship/guardianship services to maintain existing (as of September 30, 2005) conservatorship/guardianship relationships that have been established by court orders and managed by the Contractor until a request is submitted to DMRS from the individual served/disabled person or another interested party of the disabled individual that indicates a desire to change an individual's service provider of conservatorship/guardianship services.

A.2. Specific Obligations of the Contractor:

a. Service as a Fiduciary. The Contractor will from time to time and as directed by the State and duly appointed by a court of appropriate jurisdiction, serve in the capacity of a Conservator/Guardian for the named disabled person under authority of such court and carry out its fiduciary obligations as directed by the court.

b. Other Duties. The Contractor will, in addition, have the following duties:

i. Exercise with due diligence the powers specifically removed from the disabled person and vested in the Conservator/Guardian by the appointing court. Prepare for and attend any court proceedings or hearings when its presence is ordered by the court or is otherwise necessary to support the disabled person.

ii. Ensure that the disabled person's best interests are being served in the areas for which the conservator/guardian is responsible as defined by the appointing court order and that no conflicts of interests exist between it and the disabled person.

iii. Such other, additional duties as ordered by the court during the course of the conservatorship/guardianship.

iv. When appropriate, timely prepare and file any reports and/or accountings as listed in Title 34 of the *Tennessee Code Annotated* and/or as so ordered by the court.

v. Meet standards for quality of services as identified in the Medicaid Standards for Intermediate Care Facilities for Persons with Mental Retardation.

vi. Meet the standards as identified by the Division of Mental Retardation

vii. Comply with any court orders or instructions issued for the disabled person.

viii. The Contractor agrees as necessary and appropriate for any person it is serving to attend all:

(1) Individual Support Planning meetings,

(2) Circle of Support meetings; as well as appropriate,

(3) Transition meetings,

(4) Psychopharmacology clinics,

(5) Quality of Life meetings,

(6) Team Building meetings,

(7) Agency meetings,

(8) Meetings with providers, as applicable, that are planned in consultation with the Contractor or regularly scheduled, and

(9) Court proceedings/hearings.

A.3. Qualifications of the Contractor: The Contractor, in the position of conservator/guardian, agrees to and meets the following conditions:

a. Be reasonably available for mail, telephone and personal contact. Furthermore, be familiar with the support needs and wishes of each person for whom conservator/guardianship is being requested.

b. During emergencies and, upon timely notice, attend Circle of Support meetings, as well as any other meetings, judicial proceedings, and conferences or discussions necessary to plan, assess, review or implement actions intended for the well being of the disabled person for whom conservatorship/guardianship has been granted.

c. Accept compensation under the contracts as payment in full for each incident of limited conservator/guardianship services and waive any claim upon the income or estate of the disabled individual.

d. Provide proof of adequate bond or surety as required by the appointing court.

e. Work in concert with and support of the disabled person's Individual Support Plan as well as the Division of Mental Retardation Services.

f. Assist the Circle of Support/Support Team, therapists and other professionals in determining the needs of the disabled person.

g. Be able to provide regularly scheduled and and/or periodic contact with the disabled person.

h. Have a working knowledge and understanding of the conservatorship/guardianship laws and regulations in the state of Tennessee.

i. Have adequate resources to retain an attorney and/or representation to provide legal services on behalf of or in the interest of the disabled person covered under this contract.

j. Have an accounting or financial system established that would properly maintain and/or manage any funds or assets for which the conservator/guardian becomes responsible on behalf of the disabled person.

k. Acquire and maintain suitable skills and training to properly execute its fiduciary duties under the law and in accordance with this contract.

A.4. Other Requirements. The Contractor warrants that its staff, representatives and volunteers who operate under this contract and provide direct service to the disabled person will have training and are knowledgeable about:

a. Applicable Tennessee Conservator/Guardianship laws, rules, regulations and guidelines, including but not limited to, those established by the Division of Mental Retardation.

b. Resources for people with disabilities and where to go for more information in support of meeting their requirements.

c. The support needs and wishes of each person receiving conservator/guardianship services.

A.5. Minimum Standards. Conservators/Guardians or their representatives providing services to a disabled person must meet the following minimum standards:

a. Must be at least 21 years of age.

b. Must be a high school graduate or possess the GED equivalent.

c. Must have one year of relevant work experience related to conservatorship or guardianship or one of the following:

i. A degree in a field related to conservatorship/guardianship.

ii. Completion of a course curriculum or training specifically related to conservatorship/guardianship and approved by the Division of Mental Retardation Services.

iii. One year of relevant MR/DD experience.

d. Must not have been convicted or plead *non contendre* to a felony or misdemeanor involving financial or physical harm to a person, and also including but not limited to: misappropriation of funds, fraud, breach of fiduciary duty, neglect, child abuse, assault, an act involving violence, physical harm to an individual, or sexual misconduct.

e. Must attest that he or she has not been administratively or civilly liable in an action that involved fraud, misrepresentation, material omission, misappropriation, moral turpitude, theft, or conversion, assault, an act involving violence, physical harm to an individual or sexual misconduct.

f. Must attest that he or she has not been removed, substituted for or relieved of responsibilities as a conservator/guardian by a court, employer, or client for actions involving fraud, moral turpitude, misrepresentation, material omission, misfeasance, misappropriation, theft or conversion, breach of fiduciary duty, assault, an act involving violence, physical harm to an individual, or sexual misconduct.

g. Must attest that an insurance or bond agent has not found him or her liable in a subrogation action for any of the reasons found in section A.6.(f).

h. Must not be related by blood or marriage to the disabled person for whom he or she will serve as conservator/guardian unless specifically approved by the appointing court.

i. Must be of reputable and responsible character as defined in TCA 33-2-402(7) *i.e* The Conservator/Guardian can be trusted with responsibility for persons who are particularly vulnerable to abuse, neglect, and financial or sexual exploitation.

A.6. Training. The Contractor and/or its representatives will attend training as specified in the Operations Manual For Clinical Service Providers and/or the Division's Provider Manual.

A.7. Back up and Contingency System. The Contractor or its representative will have an emergency back-up system so that they may be reached 24 hours per day or have a primary and secondary conservator/guardian assigned for each person receiving conservatorship/guardianship services.

A.8. Code of Ethics. The Contractor will develop and submit to the State a code of ethics.

A.9. Conflict of Interest. The Contractor and its representative will be free from any conflict of interest concerning the disabled person.

A.10. Assessments, Plans & Reports. As requested in writing by DMRS on an individual basis, the Contractor will complete assessments, have a written plan consistent with these assessments, complete such report(s) of its operations and functions and make these documents available to the State for review, duplication, and evaluation per its instruction.

A.11. Licensed Attorney and Certification. The Contractor will assure that at least one conservator/guardian in the organization (which may include but is not limited to its governing board/authority) is a licensed attorney or is certified as a Registered Conservator/Guardian by the National Conservator/Guardianship Association.

A.12. Replacement of the Conservator/Guardian. The Contractor will consider the views and suggestions of disabled persons and their Circles of Support in selection or replacement of a conservator/guardian. If the disabled person or his or her Circle of Support requests in writing that a conservator/guardian other than the Contractor and such conservator/guardian appear willing and appropriate to fulfill the duties of the appointment, the Contractor will not oppose a petition to change conservator/guardian. In all other instances, the Contractor will report the request to the appointing Court and ask the Court to determine the appropriate conservator/guardian. The Contractor agrees that payment for conservatorship/guardianship services for the service recipient will be discontinued upon court appointment of a conservator/guardian other than the Contractor.

A.13. Annual Compensable Hours. The Contractor agrees to provide and the State will pay for, based upon the submission of appropriate documentation in one-quarter (¼) hour increments and requests, up to a maximum of the following:

a. Twenty (20) hours of conservator/guardianship services during a 12-month period per client in a stable placement.

b. Thirty (30) hours of conservator/guardianship services during a 12-month period per client in transition to a community placement.

c. Thirty (30) hours of conservator/guardianship services during a 12-month period per client with significant medical or behavioral problems.

d. Additionally, the State shall reimburse the Contractor to retain an attorney and/or representation to provide legal services on behalf of and in the interest of the disabled person covered under this Contract, provided further that the Contractor must present to the State all required supporting documentation to show such cost was incurred and paid in full by the Contractor.

e. The time provided by the conservator/guardian as listed above may exceed these maximum hours entitled to compensation under this contract with the prior approval of

the Deputy Commissioner of the State of Tennessee, Department of Finance and Administration, Division of Mental Retardation Services or his/her designee.

f. The maximum liability to the State in Section C.1. of this Contract includes all costs for legal fees incurred by the Contractor under this Contract.

B. CONTRACT TERM:

B.1. Contract Term. This Contract shall be effective for the period commencing on July 1, 2006 and ending on June 30, 2007. 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 four (4) years, provided that the State notifies the Contractor in writing of its intention to do so at least thirty (30) days prior to the contract expiration date. An extension of the term of this Contract will be effected through an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract and shall be based upon rates provided for in the original contract.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed six hundred twenty four thousand, four hundred twenty dollars ($624,420.00). 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, profit, 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 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 in Section C.3 and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to increase 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. The Contractor shall be compensated based upon the following Payment Rates:

CONSERVATORSHIP/GUARDIANSHIP SERVICES	PAYMENT RATE PER HOUR			
	Year 1	Year 2	Year 3	Year 4
Developmental Center clients	35.00	36.00	37.00	38.00
Community Clients	36.00	37.00	38.00	39.00

* Funding for Years 2, 3, and 4 of this contract shall be contingent upon an approved amendment.

Additionally, the State shall reimburse the Contractor for the actual cost of legal services provided on behalf and in the best interest of the disabled individual, provided that such reimbursable, actual cost may not exceed five percent (5%) of the annual maximum liability of this Contract and the Contractor presents to the State all required supporting documentation to evidence that such cost was incurred and paid in full by the Contractor.

The Contractor shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed units of service or project milestones for the amount stipulated.

Such invoices shall, at a minimum, include the name of each individual, the individual's job title, the number of hours worked during the period, the applicable Payment Rate, the total compensation requested for the individual, and the total amount due the Contractor for the period invoiced.

The Contractor shall not be compensated for travel time to the primary location of service provision.

C.4. Travel Compensation. Compensation to the Contractor for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations", as they are amended from time to time.

C.5. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this contract, not to constitute proper remuneration for compensable services.

C.7. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.

C.8. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.

D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least 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 pertaining to "Conflicts of Interest" and "Nondiscrimination" (sections D.6. and D.7.). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.

D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, 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. Records. The Contractor shall maintain documentation for all charges against the State under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

D.9. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

D.10. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.

D.11. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

D.12. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint 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.13. State Liability. The State shall have no liability except as specifically provided in this Contract.

D.14. Force Majeure. The obligations of the parties to this contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

D.15. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

D.16. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under ***Tennessee Code Annotated***, Sections 9-8-101 through 9-8-407.

D.17. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.18. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.

D.19. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

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

E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below or to such other party, facsimile number, or address as may be hereafter specified by written notice.

The State:

Stephen H. Norrris, Deputy Commissioner
Department of Finance and Administration
Division of Mental Retardation Services
500 Deaderick Street
Nashville, Tennessee 37243
Telephone Number 615-532-6538
Facsimile Number 615-532-9940

The Contractor:

John T. Johnson Ph.D., Executive Director
Comcare, Inc.
P.O. Box 1885
Greeneville, Tennessee 37744-1885
Telephone Number 423-638-3926
Facsimile Number 423-638-1105

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

E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

E.4. Annual Report and Audit. The Contractor shall prepare and submit, within nine (9) months after the close of the reporting period, an annual report of its activities funded under this Contract to the commissioner or head of the contracting agency, the Tennessee Comptroller of the Treasury, and the Commissioner of Finance and Administration. The annual report for any Contractor that receives five hundred thousand dollars ($500,000) or more in aggregate federal and state funding for all its programs shall include audited financial statements. All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Contractor may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit contract between the Contractor and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the *Audit Manual for Governmental Units and Recipients of Grant Funds* published by the Tennessee Comptroller of the Treasury. The Contractor shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Contractor shall be subject to the provisions relating to such fees contained in the prescribed contract form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the State Contracting

Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.

E.5. 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.6. Public Funding Notice. All notices, informational pamphlets, press releases, research reports, signs, and similar public notices prepared and released by the Contractor relative to this Contract shall include the statement, "This project is funded under an agreement with the State of Tennessee." Any such notices by the Contractor shall be approved by the State.

E.7. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed.

E.8. 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.9. 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.10. Date/Time Hold Harmless. As required by ***Tennessee Code Annotated***, Section 12-4-118, the contractor shall hold harmless and indemnify the State of Tennessee; its officers and employees; and any agency or political subdivision of the State for any breach of contract caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort or otherwise process dates or times.

E.11. 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.12. 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, provides that if a retired member returns to 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 the Tennessee Consolidated Retirement System the amount of retirement benefits the Contractor received from the Retirement System during the period of this Contract.

E.13. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it and its principals:

a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State department or agency;

b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining attempting to obtain, or performing a public (Federal, State, or Local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or Local) with commission of any of the offenses detailed in section b. of this certification; and

d. have not within a three (3) year period preceding this Contract had one or more public transactions (Federal, State, or Local) terminated for cause or default.

E.14. 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.

IN WITNESS WHEREOF:

COMCARE, INC.:

John T. Johnson, Ph.D., Executive Director Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF MENTAL RETARDATION SERVICES:

M. D. Goetz, Jr., Commissioner Date

APPROVED:

DEPARTMENT OF FINANCE AND ADMINISTRATION:

M. D. Goetz, Jr., Commissioner Date

DEPARTMENT OF PERSONNEL:

Randy C. Camp, Commissioner Date

COMPTROLLER OF THE TREASURY:

John G. Morgan, Comptroller of the Treasury Date