



STATE OF TENNESSEE
RFS # 34570-02110
AMENDMENT #1

January 8, 2010

THE SUBJECT SOLICITATION IS HEREBY AMENDED AS FOLLOWS.

1. The following Solicitation Schedule of Events updates or confirms scheduled Solicitation dates.

EVENT	TIME (central time)	DATE	UPDATED/CONFIRMED
1. State Issues Solicitation		1/7/10	CONFIRMED
2. RESPONSE DEADLINE	2:00 p.m.	1/14/10	CONFIRMED
3. State Identifies Responsive & Responsible Solicitation Responses		1/20/10	CONFIRMED
4. State Identifies the Best, Responsive & Responsible Cost Offer		1/21/10	CONFIRMED
5. State Releases Award Notification	2:00 p.m.	1/22/10	CONFIRMED
6. Contract Signing		2/3/10	CONFIRMED
7. Contractor Signature Deadline	2:00 p.m.	2/4/10	CONFIRMED
The state reserves the right, at its sole discretion, to amend or cancel this solicitation at any time.			

2. Delete Professional Services Solicitation RFS# 34570-02110 in its entirety and replace the document with Professional Services Solicitation RFS# 34570-02110, Release TWO (attached hereto).

NOTICE: ALL revisions from the previously released Professional Services Solicitation document are emphasized in the attached document as follows.

- The sentence or paragraph involving any revision in which text is replaced with new text or new text is added is highlighted in yellow.



STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES

SOLICITATION # 34570-02110

PROFESSIONAL SERVICE SOLICITATION FOR PHYSICIAN
SERVICES AT THE TENNESSEE REHABILITATION CENTER
(TRC)

1. INTRODUCTION

The State intends to award a contract for medical services to be provided by licensed physicians at the Tennessee Rehabilitation Center (TRC) in Smyrna, Tennessee. Respondents to this solicitation may be an individual or a company, and the contract awarded pursuant to the solicitation may be with either an individual or a company providing an individual(s) meeting the qualifications requirements recorded in Section 4.1 below and Attachment 1 (*pro forma* contract).

The TRC was established by the Tennessee General Assembly to provide a statewide, residential, comprehensive rehabilitation and training center for individuals with disabilities to enable them to become self sufficient, employable, and able to live as independently as possible in order to reduce dependency on government and family resources. The purpose of the Center is to provide specific service delivery programs to individuals with severe and multiple disabilities in order to meet their individualized rehabilitation needs in preparing them for employment and greater independence within their home community. Rehabilitation services provided include programs of Vocational Evaluation, Work Adjustment Training, Vocational Training, Vision Impairment Services, Physical Rehabilitation Services, Traumatic Brain Injury Services and Transitional Life Skills Training. In addition a variety of support services are provided as needed to include Drivers Education, Remedial Education, Recreation Services, Residential Living Services, Occupational Therapy, Speech Therapy, Physical Therapy, Psychological Services, Alcohol and Drug Support Services, and Medical/Student Health Services.

The TRC provides needed rehabilitation services to individuals with severe disabilities who would be unable to receive such services within their home community, especially in rural areas of the State. These services are delivered by a combination of full time state employees and contract service providers, who must work in concert as an interdisciplinary team to ensure clients receive timely, appropriate, and quality rehabilitation services that meet their unique and individual needs. Contract service providers must possess the necessary skills required to meet the identified needs of students receiving services at TRC, since continuity of care, services, and treatment are critical to the success of the clients receiving services.

The TRC provided rehabilitation services to over twelve hundred (1,200) individuals age 18 and over with severe disabilities this past fiscal year, eight hundred (800) of which received services on campus in a residential setting. Clients receiving services on the TRC campus have severe and multiple disabilities. Approximately one hundred and fifty (150) individuals with disabilities live in dormitories. There is constant turnover of clients on campus. Some are on campus from approximately one to two weeks, and others four to six months, depending on their individual needs. The campus population includes individuals who are low functioning (mental retardation), have significant problems with decision making and problem solving ability, significant emotional disorders, traumatic brain injury, blindness, and deafness, as well as clients with chronic medical problems and those with severe mobility deficits having spinal cord injuries, cerebral palsy, and spina bifida.

2. SCOPE OF SERVICE, CONTRACT PERIOD, TERMS AND CONDITIONS

The *Pro Forma* Contract (Solicitation Attachment 1) represents the contract document that the contractor selected by the state must sign.

3. PROCUREMENT SCHEDULE

The state reserves the right, at its sole discretion, to adjust the procurement schedule as necessary. The following table represents the best estimate of the schedule that will be followed.

EVENT	TIME (central time)	DATE
1. State Issues Solicitation		January 7, 2010
2. RESPONSE DEADLINE	2:00 p.m.	January 14, 2010
3. State Identifies Responsive & Responsible Solicitation Responses		January 20, 2010
4. State Identifies the Best, Responsive & Responsible Cost Offer		January 21, 2010
5. State Releases Award Notification	2:00 p.m.	January 22, 2010
6. Contract Signing		February 3, 2010
7. Contractor Signature Deadline	2:00 p.m.	February 4, 2010
The state reserves the right, at its sole discretion, to amend or cancel this solicitation at any time.		

4. RESPONSE REQUIREMENTS

An offer in response to this solicitation must consist of two parts, *Qualifications Evidence* (including any supporting documentation) and *Cost Offer*, exactly as specified below.

4.1. **Qualifications Evidence.** The Qualifications Evidence and supporting documentation must detail responses or provide documentation as required to address each of the following requirements (of the potential contractor or potential contractor's employees as applicable):

- a. Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the contact person regarding the offer. Also, state whether the Offeror is an individual or a company.
- b. Submit a *Statement of Certifications and Assurances* document (Attachment 2) completed and signed by an individual empowered to bind the Offeror to the provisions of this solicitation and any resulting contract. The document must be signed without exception or qualification. **NOTE: If the signatory of this document is not the Offeror (if an individual) or the Offeror's President or Chief Executive Officer, evidence indicating the signatory's authority to bind the Offeror MUST BE ATTACHED to the document.**
- c. Submit a *Conflict of Interest Attestation* document (Attachment 3), signed by an individual empowered to bind the Offeror to the provisions of this solicitation and any resulting contract.
- d. (1) If the Offeror is an individual, provide a copy of a currently valid certificate of insurance indicating Professional Malpractice Liability insurance coverage in the amount of not less than one million dollars (\$1,000,000) per claim and three million dollars (\$3,000,000) aggregate.

(2) If the Offeror is a company, provide a copy of a currently valid certificate of insurance

indicating Comprehensive Commercial General Liability with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) aggregate.

NOTE: If the entity awarded the contract pursuant to this professional service solicitation is a company, any candidates referred in accordance with Section A.22. of the *pro forma* contract (reference Attachment 1) must document compliance with the insurance requirement stated in that section at the time of referral.

NOTE: Reference also the alternative clauses shown in Section E.6 of the *pro forma* contract (Attachment 1).

- 4.2. **Cost Offer.** The Cost Offer must be in the form of a completed, exact copy of the *Cost Offer* document (Attachment 4).

NOTICE: The Cost Offer must incorporate ALL costs for services under the contract for the total contract period, and it must record the proposed price of the subject service exactly as required by the Cost Offer document and must NOT record any other rates, amounts, or information.

5. RESPONSE SUBMISSION FORMAT AND DELIVERY

5.1. SUBMISSION FORMAT

- 5.1.1. The Qualifications Evidence outlined above in items 4.1.a-d. must be submitted to the State in the following form:
- 5.1.2. One (1) original and three (3) copies (appropriately labeled as “Original” and “Copy 1 of 3,” “Copy 2 of 3,” etc.) must be placed in one sealed envelope labeled “**Qualifications Evidence—Solicitation #: 34570-02110**” and stating the legal name of the entity submitting the solicitation response. **Do not include the hard copy Cost Offer or any cost information.**
- 5.1.3. One (1) completed, exact copy of the Cost Offer must be submitted in a **separate sealed envelope** labeled “**Cost Offer—Solicitation #: 34570-02110**” and stating the legal name of the entity submitting the solicitation response.
- 5.1.4. If the Offeror encloses the separately sealed Qualification Evidence and Cost Offer documents (as detailed above) in a larger package for mailing, the Offeror must clearly mark the outermost package:
“Contains Separately Sealed Qualification Evidence and Cost Offer for Solicitation # 34570-02110”
- 5.1.5. Any information in addition to that which is explicitly required in 4.1. and 4.2. above will be considered extraneous and not reviewed or evaluated.

5.2. RESPONSE DELIVERY

No later than the response deadline detailed in procurement schedule above, a potential contractor must deliver to the state ALL documentation required for both the *Qualifications Evidence* and the *Cost Offer* components of an offer in response to this solicitation. It must be delivered to:

Ella Carroll, Procurement Coordinator
Contract Performance and Administration
Tennessee Department of Human Services
400 Deaderick Street.
11th Floor, Citizen Plaza Building
Nashville, TN 37243-1403
RFX.DHS@tn.gov
Phone # (615) 313-4706
Fax # (615) 313-5356

Responses may not be submitted via e-mail or facsimile transmission.

6. EVALUATION PROCESS

A team of at least three procuring agency employees will review the *Qualifications Evidence* and any supporting documentation submitted with each offer. For an offer to be acceptable and eligible for contract award, the evaluators must determine that it documents that the Offeror meets minimum qualifications and requirements specified by the solicitation and is, at least, minimally acceptable as a contractor for the subject services. The procurement coordinator will review the *Cost Offer* submitted by each Offeror deemed acceptable for contract award by evaluators to assess whether it complies, without qualification, with solicitation instructions. The procurement coordinator will identify the responsive, responsible *Cost Offer* indicating the lowest cost to the state. The procuring agency will award the contract to the individual or entity making said offer indicating the lowest cost to the state. In the event that two or more *Cost Offers* indicate the same cost to the state, the procurement coordinator will request a best and final *Cost Offer* from the tied Offerors. Should a second tie result, the contract award shall be decided by chance.

7. GENERAL INFORMATION

- 7.1. **Nondiscrimination.** No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a contract pursuant to this solicitation 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 pursuant to this solicitation shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- 7.2. **Conflict of Interest.** For the purposes of applying these requirements, the state will deem an individual to be an employee or official of the State of Tennessee until such time as all compensation for salary, termination pay, and annual leave has been paid. This solicitation shall not result in a contract with:
- an individual who is, or within the past six months has been, an employee or official of the State of Tennessee;
 - a company, corporation, or any other contracting entity in which an ownership of two percent (2%) or more is held by an individual who is, or within the past six months has been, an employee or official of the State of Tennessee (this will not apply either to financial interests that have been placed into a “blind trust” arrangement pursuant to which the employee does not have knowledge of the retention or disposition of such interests or to the ownership of publicly traded stocks or bonds where such ownership constitutes less than 2% of the total outstanding amount of the stocks or bonds of the issuing entity); or,
 - a company, corporation, or any other contracting entity which employs an individual who is, or within the past six months has been, an employee or official of the State of Tennessee in a position that would allow the direct or indirect use or disclosure of information, which was obtained through or in connection with his or her employment and not made available to the general public, for the purpose of furthering the private interest or personal profit of any person.
- 7.3. **Disclosure of Response Contents.** All materials submitted to the state in response to this solicitation become the property of the State of Tennessee. Selection for award does not affect this right. Upon completion of evaluations, indicated by the award notification (refer to the Procurement Schedule), the full contents and associated documents submitted in response to this solicitation will be open for review by the public. By submitting a response to this solicitation, a potential contractor acknowledges and accepts that the full contents and associated documents submitted in response to this solicitation will become open to public inspection.
- 7.4. **Communication.** Any communication regarding this Professional Service Solicitation for Physician Services at the Tennessee Rehabilitation Center must be directed in writing to the procurement coordinator via e-mail at: RFX.DHS@tn.gov and reference RFS #: 34570-02110 in the subject line.

7.5 Supplemental Information. Please see Attachment 5-*Supplemental Information* for information relating to the provision of the services solicited at the Tennessee Rehabilitation Center. Provided are:

- *2009-10 TRC Closure Schedule*
- *Sample Schedule for Physician Services*

**SOLICITATION # 34570-02110
ATTACHMENT 1 –PRO FORMA CONTRACT**

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF HUMAN SERVICES
AND
CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, Department of Human Services, hereinafter referred to as the "State" and CONTRACTOR LEGAL ENTITY NAME, hereinafter referred to as the "Contractor," is for the provision of Physician Services for the Clients of the Tennessee Rehabilitation Center (TRC), as further defined in the "SCOPE OF SERVICES."

The Contractor is A/AN INDIVIDUAL, FOR-PROFIT CORPORATION, NON-PROFIT CORPORATION, SPECIAL PURPOSE CORPORATION OR ASSOCIATION, PARTNERSHIP, JOINT VENTURE, OR LIMITED LIABILITY COMPANY.

Contractor Federal Employer Identification or Social Security Number: ID NUMBER

Contractor Place of Incorporation or Organization: LOCATION

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The Contractor shall provide health care services to Tennessee Rehabilitation Center (TRC) clients. These clients possess a wide variety of physical, mental, and emotional disabilities.
- A.3. The Contractor shall prepare a comprehensive medical history evaluation and perform a physical examination for each new TRC client in order to determine the client's functional capacities and limitations. Results of said evaluation shall be provided by the Contractor in a form and substance acceptable to the State within twenty-four (24) hours of the evaluation. Failure to provide said evaluation in a timely manner may subject the Contractor to the payment of Liquidated Damages, as specified in Attachment A—Breaches and Associated Liquidated Damages.
- A.4. The Contractor shall review, at the request of the State, medical records and charts of clients pending admission to the TRC programs to determine the appropriateness of accepting them into a program.
- A.5. The Contractor shall offer student health clinic services according to a schedule prescribed by the State, evaluating new clients and treating ill clients presenting acute medical conditions, including prescription of medications. The State may impose liquidated damages for the Contractor failure to report as scheduled for student health clinic services. (Reference Attachment A—Breaches and Associated Liquidated Damages).
- A.6. The Contractor shall evaluate and treat acute illnesses of the TRC clients and monitor chronic medical conditions, treating these as appropriate.
- A.7. In providing services to the TRC clients, the Contractor shall work independently when appropriate, and request assistance from nursing staff when necessary.
- A.8. The Contractor shall provide legibly written documentation of all examinations, treatments, and visits in each client's chart at the time of their visit. The Contractor shall maintain chart documentation for all TRC clients in a form and substance acceptable to the State. Failure to provide said documentation in each client's chart at the time of their visit may subject the

Contractor to the payment of Liquidated Damages, as specified in Attachment A—Breaches and Associated Liquidated Damages.

- A.9. The Contractor shall be available for consultation by pager or phone twenty-four (24) hours per day, seven (7) days per week and shall respond to a page or phone call by TRC staff within thirty (30) minutes of receipt. The Contractor shall be compensated for said telephone consultation, in accordance with the payment rate described in Section C.3.d. Failure to be available/responsive may subject the Contractor to the payment of Liquidated Damages, as specified in Attachment A—Breaches and Associated Liquidated Damages. The State may, when good cause is evident, waive said penalties at its sole discretion.
- A.10. The Contractor shall provide ongoing verbal case consultation to TRC and field staff regarding individual clients, including recommending services requisite to improving a client's outcomes for successful employment.
- A.11. The Contractor shall consult, as appropriate, with TRC staff, private physicians, specialty physicians, other health care providers, and/or parents/conservators to advise regarding a client's medical needs.
- A.12. The Contractor shall work with an interdisciplinary team of rehabilitation and medical professionals to communicate, plan, coordinate, and deliver needed individualized services to clients in a manner that adheres to current standards of medical practice, and conveys respect and professionalism.
- A.13. The Contractor shall communicate directly with other physicians providing services to TRC clients when there is a conflict or concern with the client's medication or treatment plan and/or when there are specific medical issues which require clarification.
- A.14. The Contractor shall work in cooperation with the TRC Director of Nursing and/or their designee to resolve any nursing concerns or problems.
- A.15. The Contractor shall be responsible for providing International Classification of Diseases (ICD-9) Codes for all orders written which require an ICD-9 code for proper billing.
- A.16. The Contractor shall cooperate with and assist the State in billing third parties for medical services rendered.
- A.17. In instances where TRC clients require new supplies and/or equipment necessary for their successful outcome, the Contractor shall complete all justification letters and/or related forms necessary to acquire said supplies and equipment.
- A.18. The Contractor shall, at the request of the State, review current policies described in the TRC Policy Manual and medical protocols regarding nursing and medical care of clients as described in the Student Health Protocol Manual, to ensure that these policies and protocols are consistent with current standards of medical practice.
- A.19. The Contractor shall, at the request of the State, develop and present health-related professional development training activities, as needed to address client's needs, including those concerning the implementation of new policies and procedures, for TRC nursing and program staff.
- A.20. The Contractor shall review and sign the physician copy of the Medication Administration Records (MAR) of each client for accuracy of orders by the 10th of each month.
- A.21. The Contractor shall prescreen physicians before making referrals to the State, in order to determine that candidates possess qualifications and competencies, including those specified below in Section A.22., appropriate to meet the unique needs of clients of the TRC.

- A.22. No later than February 19, 2010, and subsequently throughout the contract term as requested by the State, the Contractor shall provide to the State, for each candidate referred:
- a. A resume;
 - b. A list of three professional references, including company name and address, name of a contact person, phone number, and e-mail address;
 - c. A valid license in good standing (no disciplinary action) to practice as a physician, in Tennessee
 - d. Documentation confirming:
 - 1) a minimum of five (5) years clinical experience in the evaluation and treatment of individuals with traumatic brain injury, and/or the evaluation and treatment of individuals with spinal cord injury, cognitive and/or other neurological injuries and/or impairments.
 - 2) a statement confirming or denying the existence of any malpractice judgments or settlements and of any unresolved investigations. If any of these exist, additional information regarding the status and disposition shall be fully disclosed.
 - e. A current Drug Enforcement Administration (DEA) certificate
 - f. A current certificate of insurance detailing Professional Malpractice Liability coverage of not less than \$1,000,000 per incident and \$3,000,000 aggregate.
 - g. Documentation of current cardiopulmonary resuscitation (CPR) certification.

The Contractor shall coordinate with the State to schedule interviews for each candidate referred.

The State will notify the Contractor of each candidate's acceptability. Until a sufficient number of candidates have been deemed acceptable by the State, the Contractor shall refer additional candidates.

- A.23. The State, at its sole discretion, reserves the right to refuse any personnel for use in the performance of this Contract.
- A.24. The Contractor shall maintain a current, full and unrestricted valid Tennessee medical license in good standing and provide the State a copy of each license renewal, within five (5) business days of receipt. Failure of the Contractor to comply with this requirement shall result in the State invoking its right to refuse unlicensed personnel. (Reference Section A.23.)
- A.25. The Contractor shall maintain a current DEA registration and certificate and provide the State a copy of each certificate renewal, within five (5) business days of receipt. Failure of the Contractor to comply with this requirement shall result in the State invoking its right to refuse unregistered/uncertified personnel. (Reference Section A.23.)
- A.26. The Contractor shall maintain a current CPR certification and provide the State a copy of each certificate renewal, within five (5) business days of receipt. Failure of the Contractor to comply with this requirement shall result in the State invoking its right to refuse unregistered/uncertified personnel. (Reference Section A.23.)
- A.27. The Contractor shall ensure that an adequate number of qualified Physicians are available at all times to work an established schedule of hours, as prescribed by the State, to meet the needs of the TRC clients served. Notwithstanding the foregoing, the Contractor shall identify, subject to approval of the State, up to two physicians who will provide these services, in order to ensure continuity of treatment and care and the success of an ongoing multi-disciplinary approach with each client.

- A.28. The Contractor shall notify the State at least twenty-four (24) hours in advance if someone other than the Physician assigned to the TRC will be providing services. If the Contractor opts not to supply an alternate physician to provide temporary services, the State may designate a physician to provide temporary services and costs incurred by the State in doing so will be assessed against the Contractor, in accordance with Attachment A—Breaches and Associated Liquidated Damages. Failure to provide said notification may subject the Contractor to the payment of Liquidated Damages, as specified in Attachment A—Breaches and Associated Liquidated Damages. Likewise, failure of the alternate Physician to report as scheduled may subject the Contractor to the payment of Liquidated Damages, as specified in Attachment A—Breaches and Associated Liquidated Damages. Any Alternate Physicians who are assigned to substitute for the primary Physician are subject to prior State approval as outlined in Sections A.22. through A.23. The State, at its sole discretion, may waive the requirements of this section.
- A.29. The Contractor shall routinely work a minimum of twenty-three (23) hours per week according to a schedule prescribed by the State. The State reserves the right to modify a weekly schedule to accommodate a larger or smaller patient workload, with notice of the schedule modification provided to the Contractor no less than twenty-four (24) hours prior. The State may impose liquidated damages for the Contractor failure to report as scheduled (Reference Attachment A—Breaches and Associated Liquidated Damages).
- A.30. The Contractor shall obtain prior approval(s) /authorization(s) for prescription drug benefits within forty-eight (48) hours of identification of a need for indicated medication(s). (Reference Attachment A—Breaches and Associated Liquidated Damages).
- A.31. The Contractor shall attend pertinent meetings at the request of State staff.
- A.32. The Contractor shall be appropriately attired in a manner that contributes to projecting an image of quality and professionalism, and shall wear an identification nametag.

B. CONTRACT TERM:

This Contract shall be effective for the period commencing on February 4, 2010 and ending on November 30, 2014. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed WRITTEN DOLLAR AMOUNT (\$NUMBER). 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:

Cost Item Description	2/22/2010-2/21/2011	2/22/2011-2/21/2012	2/22/2012-2/21/2013	2/22/2013-2/21/2014	2/22/2014-11/30/2014
Physician Services	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour	\$ _____ per hour

- c. The Contractor shall not be compensated for travel time to the primary location of service provision.
- d. The Contractor shall be compensated for telephone consultation (Reference Section A.9.) in amounts based on quarter-hour increments of the amount shown in the table above. The number of minutes for which compensation is due shall be rounded to the next quarter-hour.
- e. The Contractor shall utilize the period from February 4, 2010 to February 19, 2010 as a candidate referral period. However, no compensation shall be paid to the Contractor until actual service delivery begins February 22, 2010.

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:

Toddra Liddell, Director of Nursing
Tennessee Rehabilitation Center
460 Ninth Avenue
Smyrna, TN 37167

- 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: Tennessee Department of Human Services Division of Rehabilitation Services;

- (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 B, 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:

NAME & TITLE OF STATE CONTACT PERSON
STATE AGENCY NAME
ADDRESS
EMAIL ADDRESS
Telephone # NUMBER
FAX # NUMBER

The Contractor:

NAME & TITLE OF CONTRACTOR CONTACT PERSON
CONTRACTOR NAME
ADDRESS
EMAIL ADDRESS
Telephone # NUMBER
FAX # NUMBER

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

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

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

NOTE: If the resultant contract from this procurement is awarded to an individual, the following clause will be used:

- 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) Professional Malpractice Liability with a limit of not less than one million dollars (\$1,000,000) per claim and three million dollars (\$3,000,000) 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.

NOTE: If the resultant contract from this procurement is awarded to a company, the following clause will be used:

- 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) Comprehensive Commercial General Liability with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) 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. 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.9. 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 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 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.10. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:
- failure to perform in accordance with any term or provision of the Contract;
 - partial performance of any term or provision of the Contract;

- any act prohibited or restricted by the Contract, or
- violation of any warranty.

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

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

- (1) In event of a Breach by Contractor, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity.
- (2) Liquidated Damages— In the event of a Breach, the State may assess Liquidated Damages. The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Contractor’s obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced, Attachment A and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or other section of this Contract.

The State may continue to withhold the Liquidated Damages or a portion thereof until the Contractor cures the Breach, the State exercises its option to declare a Partial Default, or the State terminates the Contract. The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Contractor shall receive a credit for said Liquidated Damages previously withheld except in the event of a Partial Default.

- (3) Partial Default—In the event of a Breach, the State may declare a Partial Default. In such case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

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

The declaration of a Partial Default prior to the State’s assessment of Liquidated Damages does not preempt the State’s right to withhold Liquidated Damages for the period during which the Contractor has failed to perform the services in question. Upon Partial Default, 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. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

(4) Opportunity to Cure—

(a) At the State's option, the Contractor shall have the opportunity to cure a breach of contract resulting in failure to perform. The request for a cure period must be submitted in writing within three (3) business days of Contractor being notified of, or becoming aware of, a failure to perform the services as outlined within this Contract.

(b) The cure period granted under subsection (a) shall not exceed fifteen (15) business days. The Contractor may submit a written request for a cure period longer than fifteen (15) days, setting forth the reasons for such request.

(c) This opportunity to cure shall not be available in circumstances in which the Contractor intentionally withholds its services or otherwise refuses to perform. The State will not consider a request to cure contract performance where there have been repeated problems with respect to identical or similar issues, if a cure period would unreasonably delay completion of the Contract, or if State operations dependent on the Contract would be adversely impacted.

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

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

E.11. 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.12. Limitation of Liability. The parties agree that the Contractor's liability under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this section limit the liability of the Contractor for intentional torts, criminal acts, or fraudulent conduct.
- E.13. 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.14. 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 Response to the Solicitation;
 - c. The Professional Service Solicitation and any associated amendments
 - d. The Contractor's Response to the Solicitation

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.15. 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.16. Public Exigency Service Provision Extension. At the option of the State, the Contractor agrees to continue services for the Department when the Department determines there is a public exigency that requires the contracted services to continue. Continuation of services pursuant to this subsection shall be effected via a non-competitive contract amendment, and shall be in six (6) month increments and the total of all public exigency extensions shall not exceed twelve (12) months. Thirty (30) days notice shall be given by the Department before this option is exercised. The Contractor reimbursement rate during emergency periods shall be the established payment rate in effect during the last year of this Contract.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF HUMAN SERVICES:

VIRGINIA T. LODGE, COMMISSIONER

DATE

ATTACHMENT A

BREACHES AND ASSOCIATED LIQUIDATED DAMAGES

1.	Failure to provide the evaluation results of new TRC clients within twenty-four (24) hours of completing the evaluation. (Reference Section A.3.)	\$20.00	Per occurrence
2.	Failure of a Physician to arrive promptly for work according to the schedule prescribed by the State. (Reference Sections A.5. and A.29.)	An amount equal to two (2) times the applicable rate for the service, as shown in Section C.3.	Per scheduled hour, commencing after the first half- hour scheduled
3.	Failure of the Contractor to provide written documentation of all examinations, treatments, and visits in each client's chart at the time of their visit. (Reference Section A.8.)	\$25.00	Per occurrence
4.	Failure of the designated on call Physician to respond to the State within thirty (30) minutes of being phoned/paged. (Reference Section A.9.)	\$50.00	Per occurrence
5.	Failure to communicate to the State twenty-four (24) hours in advance of providing an alternate Physician (Reference Section A.28.)	\$150.00	Per occurrence
6.	Failure to provide to the State an alternate Physician to provide services. (Reference Section A.28.)	\$1,000.00	Per business day that the State is required to utilize temporary services of another vendor
7.	Failure to obtain prior approval(s) / authorization(s) for prescription drug benefits within forty-eight (48) hours of identification of a need for indicated medication(s). (Reference Section A.30.)	\$20.00	Per occurrence

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

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.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

SOLICITATION # 34570- 02110
ATTACHMENT 2 – STATEMENT OF CERTIFICATIONS AND ASSURANCES

The Offeror does, hereby, expressly affirm, declare, confirm, certify, and assure ALL of the following:

1. The Offeror will provide all services as defined in the of the solicitation's *pro forma* contract scope of services for the total contract period.
2. The Offeror accepts and agrees to all terms and conditions set out in the solicitation's *pro forma* contract.
3. The Offeror acknowledges and agrees that a contract resulting from the solicitation may incorporate, by reference, all information provided in response to the solicitation as a part of the contract.
4. The Offeror will comply with:
 - (a) the laws of the State of Tennessee;
 - (b) Title VI of the federal Civil Rights Act of 1964;
 - (c) Title IX of the federal Education Amendments Act of 1972;
 - (d) the Equal Employment Opportunity Act and the regulations issued there under by the federal government; and,
 - (e) the Americans with Disabilities Act of 1990 and the regulations issued there under by the federal government.
5. To the knowledge of the undersigned, the information detailed within the information submitted in response to the solicitation is accurate.
6. The information submitted in response to the solicitation was independently prepared, without collusion, under penalty of perjury.
7. No 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 Offeror in connection with the solicitation or any resulting contract.

By signing this Statement of Certifications and Assurances, below, the signatory also certifies legal authority to bind the Offeror to any contract awarded pursuant to the solicitation. If the signatory is not the Offeror (if an individual) or the Offeror's President or Chief Executive Officer, this document must attach evidence showing the individual's authority to bind the Offeror.

DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO BIND THE INDIVIDUAL OR ENTITY MAKING AN OFFER IN RESPONSE TO THE SUBJECT SOLICITATION

OFFEROR SIGNATURE:

PRINTED NAME & TITLE:

DATE:

OFFEROR LEGAL ENTITY NAME:

OFFEROR FEDERAL EMPLOYER IDENTIFICATION NUMBER (or SSN):

SOLICITATION # 34570-02110
ATTACHMENT 3-CONFLICT OF INTEREST ATTESTATION

Based upon reasonable inquiry, neither the Offeror nor any individual who shall perform work under a contract resulting from this solicitation has a possible conflict of interest (e.g., employment by the State of Tennessee).

Signature

Date

If a perceived conflict of interest exists, such that the attestation above should not be made, detail the nature of that conflict below.

**SOLICITATION # 34570-02110
ATTACHMENT 4 – COST OFFER**

NOTICE: This Cost Offer MUST be completed EXACTLY as required.

The Cost Offer, detailed below, shall indicate the proposed price for providing all services as defined in the *Pro Forma Contract Scope of Services* for the total contract period. The Cost Offer shall remain valid for at least 120 days subsequent to the date of the Cost Offer opening and thereafter in accordance with any contract resulting from this procurement. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

OFFEROR SIGNATURE:	
PRINTED NAME & TITLE:	
DATE:	
OFFEROR LEGAL ENTITY NAME:	

NOTE: This document must be signed, in the space above, by an individual empowered to bind the Offeror to the provisions of any contract awarded pursuant to this solicitation.

	Offered Cost					Sum of Offered Costs (shaded areas for State Use Only)
	2/22/2010- 2/21/2011	2/22/2011- 2/21/ 2012	2/22/2012- 2/21/ 2013	2/22/2013- 2/21/ 2014	2/22/2014- 11/30/2014	
Cost Item Description						
Physician Services	\$ _____ Per hour	\$ _____ Per hour	\$ _____ Per hour	\$ _____ Per hour	\$ _____ Per hour	
The state will use this sum to determine the Cost Offer reflecting the lowest cost to the state. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.				Evaluation Cost Amount: (sum of all offered cost amounts above)		

State Use – Procurement Coordinator Signature, Printed Name and Date:

**SOLICITATION # 34570-02110
ATTACHMENT 5**

2009-10 TRC CLOSURE SCHEDULE

The TRC operates a year round schedule with closures during the summer near the 4th of July, during November near Thanksgiving, and during December and January near Christmas and New Year's Day. While the actual closure dates will vary from year to year, the following table provides closure dates for the 2009-2010 year.

DATE
July 2009
July 1 through July 4
November 2009
November 22 through November 28
December 2009
December 20 through December 31
January 2010
January 1 through January 3

SAMPLE TRC PHYSICIAN SCHEDULE

PHYSICIAN	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
A	5:30 TO 9:30 p.m.		5:30 TO 9:30 p.m.		
B		10:00 to 5:30 p.m.		10:00 to 5:30 p.m.	

NOTE: The above schedule provides a representation of the current schedule for the Physicians at the TRC. However, this schedule is only a sample and is subject to change at the State's discretion, with advance written notice to the Contractor.