

TennCare shall have such access at any time up to five (5) years following the date the Pharmaceutical Service was provided. Pharmacy shall provide records or copies of records requested by TennCare or their duly authorized agents within thirty (30) days from the date such request is made, or within shorter time [not less than fourteen (14) days] as may be required by applicable laws or regulations. Pursuant to Section 9, in the event of termination, Pharmacy shall immediately make available, to TennCare, or its designated representative, any or all records, whether medical, pharmacy, or financial, related to the provider's activities undertaken pursuant to the Agreement. The provision of such records shall be at no expense to TennCare.

Section 8.2: Compliance With Laws and Regulations. The federal, state, and local governments and any of their authorized representatives shall have access to, and TennCare and Pharmacy are authorized to release, in accordance with applicable laws and regulations, all information and records, or copies of such, within the possession of TennCare or Pharmacy, which are pertinent to and involve transactions related to this Agreement and access to which is necessary to comply with laws and regulations applicable to TennCare.

Section 8.3: Privacy of TennCare Enrollee's Records. TennCare and Pharmacy shall maintain the confidentiality of all information regarding TennCare enrollees in accordance with any applicable state and federal laws and regulations, including the standards and requirements of HIPAA.

Section 8.4: Confidential Business Information. TennCare and Pharmacy shall take all necessary steps to provide maximum protection to the other party's trade secrets and other confidential business information, to the extent possible under state and federal law.

Section 8.5: Confidentiality of Utilization Review Information. Any records, data or other information imparted to Pharmacy or any of its employees in connection with utilization review panels established by TennCare shall be maintained as strictly confidential. Such information shall be used solely in the exercise of the proper functions of said panel(s). Pharmacy and its employees shall not disclose said information to any person, firm or entity, and shall notify TennCare immediately of any demand or request for any such information from any third party.

Section 8.6: Maintenance of Medical Records-Access: Pharmacy shall maintain an adequate record system for recording services, servicing Pharmacy, charges, dates and all other commonly accepted information elements for services rendered to TennCare enrollees pursuant to the participation agreement (including but not limited to such records as are necessary for the evaluation of the quality, appropriateness, and timeliness of services performed under Pharmacy Agreement). This includes the maintenance of a signature log which will list the recipient's name, date the prescription(s) is/are picked up, and the prescription number(s). TennCare enrollees and their representatives shall be given access to their medical/pharmacy records, to the extent and in the manner provided by Tennessee Code Annotated §§63-2-101 and 63-2-102, and, be given copies thereof upon request.

Section 8.7: Maintenance of Medical Records – Duration: Pharmacy shall maintain any and all records for a period not less than five (5) years from the termination of the Participation Agreement and shall retain the records further if they are under review or audit until the review or audit is complete. Said records shall be made available for fiscal audit, medical audit, medical review, utilization review, and other periodic monitoring upon request of an authorized representative of TennCare.

Section 8.8: Right to Inspection by Government Entities: TennCare, the U.S. Department of Health and Human Services, and the Office of Inspector General Comptroller shall have the right to evaluate through inspection, whether announced or unannounced, or other means any records pertinent to the Participation Agreement including quality, appropriateness, and timeliness of services, and such evaluation, if performed, shall be performed with the cooperation of Pharmacy. Upon request, Pharmacy shall assist in such reviews including the provision of complete copies of pharmacy records.

Section 8.9: Report Submission: Pharmacy will submit all reports and clinical information required by TennCare.

Section 8.10: Safeguarding Information: Strict standards of confidentiality of records including, but not limited to, patient medical/pharmacy records and other similar records shall be maintained in accordance with all applicable state and federal laws and regulations.

Section 8.11: Monitoring of Services Rendered: Whether announced or unannounced, TennCare may monitor the services rendered to TennCare enrollees.

Section 8.12: External Review: Whether announced or unannounced, Pharmacy shall participate and cooperate in any internal and external quality review, audit, utilization review, peer review, TennCare Pharmacy Advisory Committee, TennCare DUR board, and appeal procedures established by TennCare.

SECTION 9 **TERM AND TERMINATION**

Section 9.1: Term. Unless earlier terminated in the manner provided below, this Agreement shall be in effect commencing on the date first above written of the current year and shall continue thereafter for successive periods of twelve (12) months until terminated by either party upon written notice to the other party not less than sixty (60) days prior to the initial or any subsequent expiration date.

Section 9.2: Termination by Pharmacy. This Agreement may be terminated at any time by Pharmacy upon sixty (60) days written notice to TennCare.

Section 9.3: Termination by TennCare. This agreement may be terminated at any time by TennCare upon written notice to Pharmacy:

- a) following written notice from TennCare that Pharmacy is in material breach of its obligations under this Agreement or any applicable agreement and the expiration, without cure of such material breach, of thirty (30) days after Pharmacy's receipt of such notice; or
- b) in the event Pharmacy willfully refuses to provide Pharmaceutical Services to a TennCare enrollee, except as provided in Section 4.2; or
- c) in the event Pharmacy's loss or suspension of licensure or loss of liability insurance required under this Agreement; or
- d) following TennCare's receipt from Pharmacy of an objection to a proposed amendment to this Agreement pursuant to Section 10.1(b); or
- e) the Pharmacy has been excluded from participation in the TennCare program by TennCare, a TennCare MCO, CMS, Federal OIG or HHS: or
- f) the Pharmacy has knowingly allowed a pharmacist who has been excluded from participation in the TennCare program by TennCare, a TennCare MCO, CMS, Federal OIG or HHS to provide pharmaceutical services to TennCare enrollees; or
- g) the Pharmacy has not complied with all of the emergency supply provisions contained in Section 2.9. above and any subsequent agreement amendments or revisions to court orders or consent decrees that pertain to the supply of emergency supply dispensings; or
- h) the Pharmacy refuses to provide pharmacy services to a TennCare member solely because the member is unable to pay any or all pharmacy co-payments.

Section 9.4: Continuation Provisions. Pharmacy shall continue as a Participating Pharmacy under this Agreement during the notice period specified in Sections 9.2 and 9.3 unless otherwise notified by TennCare in writing of the suspension of all or part of its rights and obligations as a Participating Pharmacy. Upon

termination of this Agreement, Pharmacy shall continue to perform the obligations of Participating Pharmacy under the Agreement in effect between TennCare and the Pharmacy at the time of termination which provide for continuation of such obligations, including those relating to continued provision of Pharmaceutical Services to TennCare enrollees, at the rates and for the period specified in such agreement, unless otherwise agreed by TennCare.

Section 9.5: Application of Pharmacy. It is the understanding of the parties that this Agreement shall be executed first by Pharmacy and upon such execution shall be an application by Pharmacy to become a party to this Agreement. As part of such application, Pharmacy shall complete the information in Exhibit A (Pharmacy Application). This signing of this Agreement by Pharmacy shall constitute an offer only, unless and until it is approved by TennCare in the State of Tennessee. This application by Pharmacy shall be accepted by TennCare only if Pharmacy meets all participation criteria established by TennCare and only at TennCare's sole discretion.

SECTION 10 **MISCELLANEOUS**

Section 10.1: Amendment. This Agreement may be amended by TennCare. TennCare may amend this Agreement (a) to comply with applicable court orders, consent decrees, laws or regulations or (b) to affect any necessary policy changes by giving thirty (30) days written notice of an amendment to Pharmacy.

Section 10.2: Assignment. TennCare may assign all or any of its rights or responsibilities under this Agreement to any entity controlling, controlled by, or under common control with TennCare. Pharmacy acknowledges that persons and entities under contract with TennCare may perform certain administrative services under this Agreement. Pharmacy may not assign any of its rights or responsibilities under this Agreement to any person or entity without the prior written consent of TennCare, which consent shall not be unreasonably withheld.

Section 10.3: Entire Agreement. This Agreement, the Pharmacy Application and the Pharmacy Manual constitute the entire Agreement between the parties with respect to its subject matter.

Section 10.4: Notices. Any notice or other communication required or permitted under this Agreement shall be in writing. The notice or communication shall be deemed to have been given when delivered in person; or if delivered by United States mail, on the date mailed, proper postage prepaid and properly addressed to the address set forth next to the appropriate party's name at the end of this Agreement or to another more recent address of which the sending party has received written notice. Notices may also be sent via facsimile and through a web-based bulletin board process and e-mail and posted on TennCare's website.

Section 10.5: Governing Law. This Agreement shall be construed in accordance with all applicable laws of the State of Tennessee.

Section 10.6: Indemnification – State of Tennessee: Pharmacy 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, bad faith, negligence, or willful misconduct on the part of the Pharmacy, its employees, or any other person acting for or on its or their behalf relating to this contract. Pharmacy further agrees that it shall be liable for the reasonable costs 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 Pharmacy to the State. In the event of any such suit or claim, Pharmacy 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 Pharmacy written notice of any such claim or suit and Pharmacy shall have the full right and obligation to conduct Pharmacy's own defense thereof. Nothing contained herein shall be deemed to accord to Pharmacy, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by Tenn. Code. Ann. § 8-6-106.

Section 10.7: Compliance with Appeals Process: Pharmacy agrees to comply with the appeal process including but not limited to assisting a TennCare enrollee by providing appeal rights, appeal forms and contact information including the appropriate address for submitting appeals for state level review.

Section 10.8: Displaying Notice of Appeal: Pharmacy agrees to display notices of TennCare enrollee's right to appeal adverse decisions affecting services and other applicable notices in public areas of their facility(ies) in accordance with TennCare rules, including TennCare Rules 1200-13-13-.11 and 1200-13-14-.12.

Section 10.9: Conflict of Interest: The Pharmacy warrants that during the term of this Agreement no payments shall be paid to the following:

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

The Pharmacy must certify annually by filing a TennCare Disclosure of Lobbying Activities Form (Attachment) with TennCare and the TennCare Oversight Committee that the Pharmacy is in compliance with all state and federal laws relating to conflicts of interest and lobbying, having made diligent inquiry of all subcontractors and/or persons receiving payment or gifts from Pharmacy pursuant to this Agreement. This form must be signed by the Chief Executive Officer of the Pharmacy or his/her designee and must be received by TennCare and the TennCare Oversight Committee no later than December 31 of each year beginning with December 31, 2005. The certification must include any and all subcontractors, vendors, agents, providers, representatives and others with verbal or written agreements with the Pharmacy which receive reimbursement through this Agreement from the Pharmacy. The Chief Executive Officer acknowledges that he/she is responsible for ensuring that internal controls are in place to prevent and detect potential conflicts of interest and that due diligence was performed before providing certification of compliance. Any changes by the Pharmacy relating to the disclosure of conflicts of interest or lobbying must be disclosed to TennCare within five (5) business days of the date of the change. (See Section 10.11 for definitions of lobbying activities)

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

Failure to comply with the provisions required herein shall result in liquidated damages in the amount of one-hundred ten percent (110%) of the total amount of compensation that was paid inappropriately and may be considered a breach of this Agreement as described in Section 10.11. and subject to termination of this Agreement.

The Pharmacy shall be responsible for maintaining adequate internal controls to detect and prevent conflicts of interest from occurring at all levels of the organization and include the substance of this clause in all agreements, subcontracts, provider agreements, and any and all agreements that result from this Agreement between Pharmacy and TennCare.

Section 10.10: Offer of Gratuities. By signing this Agreement, the Pharmacy signifies that no member of or a delegate of Congress, nor any elected or appointed official or employee of the State of Tennessee, the General Accounting Office, Department of Health and Human Services, CMS, or any other federal agency has or will benefit financially or materially from this procurement. This Agreement may be terminated by TennCare if it is determined that gratuities of any kind were offered to or received by any of the aforementioned officials or employees from the Pharmacy, his agent, or employees and may result in termination of the.

Section 10.11: Lobbying

a) Definitions

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

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

- 1) No appropriated funds may be expended by the recipient of this Agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, an elected or appointed official or employee of the State of Tennessee, the General Accounting Office, Department of Health and Human Services, CMS or any other federal agency in connection with this Agreement or subcontractors, vendors, agents, providers, representatives and others with verbal or written agreements with the Pharmacy which receive reimbursement through this Agreement from the Pharmacy.

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

Section 10.12: Fraud Investigations: Pharmacy shall immediately report to the TennCare Pharmacy Director or the Tennessee Bureau of Investigation Medicaid Fraud Control Unit ("TBI MFCU") any suspicion or knowledge of fraud and/or abuse, including but not limited to the false or fraudulent filings of claims and/or the acceptance or failure to return monies allowed or paid on claims known to be false, incorrect, inaccurate or fraudulent. The reporting entity shall not attempt to investigate or resolve the reported suspicion, knowledge or action without informing the TennCare Pharmacy Director or the TBI MFCU and must cooperate fully in any investigation by the TennCare Pharmacy Director or the TBI MFCU or subsequent legal action that may result from such an investigation. Pharmacy, shall, upon request, make available to the TennCare Pharmacy Director or the TBI MFCU any and all administrative, financial and medical records relating to the delivery of items or services for which TennCare monies are expended. Additionally, the TennCare Pharmacy Director or the TBI MFCU shall be allowed access to place of business and to all records of the Pharmacy, during normal business hours, except under special circumstances when after-hour admission shall be allowed. Special circumstances shall be determined by the TennCare Pharmacy Director or the TBI MFCU.

Section 10.13: Debarment and Suspension:

To the best of its knowledge and belief, the Pharmacy certifies by its signature to this Agreement that the Pharmacy 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 Pharmacy;
- b) have not within a three (3) year period preceding this Agreement been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, State, or Local) transaction or grant under a public transaction; violation of federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property; and
- 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 Agreement had one or more public transactions (federal, State, or Local) terminated for cause or default.

The Pharmacy's signature on the Agreement shall serve as certification of compliance with this policy. If any doubt exists, officials may check a list maintained by the General Services Administration which lists persons who have been debarred, suspended or proposed for debarment under 45 CRF Part 76 or 48 CFR Part 9, Subpart 9.4. The list can be found at: <http://epls.arnet.gov/>

If a person is debarred, suspended or proposed for debarment during the term of the Agreement or if the State determines that an agency has misrepresented its status, a decision as to the type of termination action, if any, will be made after a thorough review to ensure the propriety of the proposed action. In this event, the

Agreement will not be renewed or extended (other than no-cost time extensions).

Pharmacy has read the TennCare Pharmacy Agreement, completed the Pharmacy Application, executed and delivered this offer the date written below:

Pharmacy Name: _____

NCPDP#: _____

Signature: _____

Printed name: _____

Phone number: _____

Date: _____

Return this fully completed signature page and all required application forms to:


TennCare Pharmacy Program

310 Great Circle Road

Nashville, Tennessee 37228

or fax it to TennCare toll-free: 888.298.4130

ATTACHMENT

<h3 style="margin: 0;">LOBBYING DISCLOSURE</h3> <p style="margin: 0;">Complete this form to disclose TennCare-related* lobbying relationships entered into or existing in the previous fiscal year. Each lobbying relationship/contract requires a separate form.</p>		 State of Tennessee Bureau of TennCare
1. Type of Relationship: <i>(e.g., ongoing, one-time)</i>	2. Stated Purpose of the Relationship:	3. Report Type: a. Initial Filing b. Material Change For Material Change Only: Year _____ Quarter _____ Date of last Report _____
4. Name and Address of Reporting Entity:	5. Total Reimbursement Paid to Lobbyist: \$ _____	
6. Name and Address of Lobbying Registrant: <i>(If individual, last name, first name, MI)</i>	7. Individuals Performing Services: <i>(Including address if different from No. 6)</i>	
8. List of Individuals Lobbied: <i>(Including name, job title, subject matter of lobbying activity(ies) and total value of all gifts/remuneration received)</i>		
9. "I hereby affirm that to the best of my knowledge my organization and its sub-contractors remain in compliance with state contractual requirements barring payment to state officials." Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		

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

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