



**STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE**

**REQUEST FOR PROPOSALS
FOR
PROVISION OF FINANCIAL ADMINISTRATION
AND SUPPORTS BROKERAGE FUNCTIONS FOR
CONSUMER DIRECTION OF HOME AND COMMUNITY
BASED SERVICES (HCBS)
RFP 31865-00477**

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1. INTRODUCTION

The State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration (HCFA), Bureau of TennCare, hereinafter referred to as the "State" or "HCFA" or "TennCare," issues this Request for Proposals (RFP) to define minimum contract requirements; solicit responses; detail response requirements; and, outline the State's process for evaluating responses and selecting a contractor to provide the needed goods or services.

Through this RFP, the State seeks to procure necessary goods or services at the most favorable, competitive prices and to give ALL qualified respondents, including those that are owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises, an opportunity to do business with the state as contractors, subcontractors or suppliers.

1.1. Statement of Procurement Purpose

The State intends to secure a single statewide contract for the purpose of performing Financial Administration and Supports Brokerage functions for Consumer Direction of Home and Community Based Services (HCBS) relevant to TennCare home and community based services provided across Medicaid programs and authorities, including the TennCare CHOICES in Long-Term Services and Supports Program (CHOICES) and the Employment and Community First CHOICES Program (ECF CHOICES), and Self-Direction of HCBS for Persons Supported in the Section 1915(c) HCBS Self-Determination Waiver Program (SDWP). These services have previously been procured separately for the CHOICES and ECF CHOICES MLTSS programs and the SDWP. The Contractor shall be able to perform all services described in the Scope of Services of the pro forma contract (RFP Attachment 6.6).

Upon contract signature, the winning respondent will be required to sign RFP Attachment 6.7, HIPAA Business Associate Agreement.

1.1.2. The maximum liability in RFP Attachment 6.6, Section C.1, will be populated based on the Cost Proposal rates and associated volumes as projected to complete the scope of work in the *pro forma* contract. The current contractor was paid \$5,143,440.00 for FY 2016 (July 1, 2015 through June 30, 2016) for Financial Administration and Supports Brokerage services in the CHOICES program. ECF CHOICES was implemented on July 1, 2016. Payments made to Consumer Direction workers for services provided to Members participating in Consumer Direction are paid by TennCare-contracted Managed Care Organizations (MCOs) and are not included in this amount. In a separate contract, the current contractor was paid \$1,010,614 for FY 2016 (July 1, 2015 through June 30, 2016) for Financial Administration and Supports Brokerage services in the SDWP. Payments made to Self-Directed workers for services provided to Persons Supported participating in Self-Direction are paid by TennCare through the MMIS, and are not included in this amount.

1.2. Scope of Service, Contract Period, & Required Terms and Conditions

The RFP Attachment 6.6., *Pro Forma* Contract details the State's requirements:

- Scope of Services and Deliverables (Section A);
- Contract Period (Section B);
- Payment Terms (Section C);
- Standard Terms and Conditions (Section D); and,
- Special Terms and Conditions (Section E).

The *pro forma* contract substantially represents the contract document that the successful Respondent must sign.

1.3. 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 RFP or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law. The Contractor pursuant to this RFP shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

1.4. RFP Communications

1.4.1. The State has assigned the following RFP identification number that must be referenced in all communications regarding this RFP:

RFP # 31865-00477

1.4.2. **Unauthorized contact about this RFP with employees or officials of the State of Tennessee except as detailed below may result in disqualification from consideration under this procurement process.**

1.4.2.1. Prospective Respondents must direct communications concerning this RFP to the following person designated as the Solicitation Coordinator:

Alma Chilton, Director of Contracts
Department of Finance and Administration
Division of Health Care Finance and Administration
310 Great Circle Road
Nashville, TN 37243
(615) 507-6384 (phone)
(615) 253-5414 (fax)
Alma.chilton@tn.gov

1.4.2.2. Notwithstanding the foregoing, Prospective Respondents may alternatively contact:

- a. staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, Tennessee service-disabled veteran owned, and small businesses as well as general, public information relating to this RFP (visit <http://www.tn.gov/generalservices/article/godbe-general-contacts> for contact information); and
- b. the following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, and associated federal regulations:

Talley A. Olson
Director, Office of Civil Rights Compliance
Division of Health Care Finance and Administration
310 Great Circle Road, 4 West
Nashville, TN 37243
Phone: 615- 507-6841
Email: Talley.A.Olson@tn.gov
Fax 615- 532-7322

1.4.3. Only the State's official, written responses and communications with Respondents are binding with regard to this RFP. Oral communications between a State official and one or more Respondents are unofficial and non-binding.

- 1.4.4. Potential Respondents must ensure that the State receives all written questions and comments, including questions and requests for clarification, no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.4.5. Respondents must assume the risk of the method of dispatching any communication or response to the State. The State assumes no responsibility for delays or delivery failures resulting from the Respondent's method of dispatch. Actual or digital "postmarking" of a communication or response to the State by a specified deadline is not a substitute for the State's actual receipt of a communication or response.
- 1.4.6. The State will convey all official responses and communications related to this RFP to the prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to RFP Section 1.8).
- 1.4.7. The State reserves the right to determine, at its sole discretion, the method of conveying official, written responses and communications related to this RFP. Such written communications may be transmitted by mail, hand-delivery, facsimile, electronic mail, internet posting, or any other means deemed reasonable by the State. For internet posting, please refer to the following website: <http://tn.gov/generalservices/article/request-for-proposals-rfp-opportunities>.
- 1.4.8. The State reserves the right to determine, at its sole discretion, the appropriateness and adequacy of responses to written comments, questions, and requests related to this RFP. The State's official, written responses will constitute an amendment of this RFP.
- 1.4.9. Any data or factual information provided by the State (in this RFP, an RFP amendment or any other communication relating to this RFP) is for informational purposes only. The State will make reasonable efforts to ensure the accuracy of such data or information, however it is the Respondent's obligation to independently verify any data or information provided by the State. The State expressly disclaims the accuracy or adequacy of any information or data that it provides to prospective Respondents.

1.5. **Assistance to Respondents With a Handicap or Disability**

Prospective Respondents with a handicap or disability may receive accommodation relating to the communication of this RFP and participating in the RFP process. Prospective Respondents may contact the Solicitation Coordinator to request such reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in the RFP Section 2, Schedule of Events.

1.6. **Respondent Required Review & Waiver of Objections**

- 1.6.1. Each prospective Respondent must carefully review this RFP, including but not limited to, attachments, the RFP Attachment 6.6., *Pro Forma* Contract, and any amendments, for questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively called "questions and comments").
- 1.6.2. Any prospective Respondent having questions and comments concerning this RFP must provide them in writing to the State no later than the Written Questions & Comments Deadline detailed in the RFP Section 2, Schedule of Events.
- 1.6.3. Protests based on any objection to the RFP shall be considered waived and invalid if the objection has not been brought to the attention of the State, in writing, by the Written Questions & Comments Deadline.

1.7. **Pre-Response Conference**

A Pre-response Conference will be held at the time and date detailed in the RFP Section 2, Schedule of

Events. Pre-response Conference attendance is not mandatory, and prospective Respondents may be limited to a maximum number of attendees depending upon overall attendance and space limitations.

The conference will be held at:

Division of Health Care Finance and Administration
TennCare Building
310 Great Circle Road
Nashville, TN 37243

The purpose of the conference is to discuss the RFP scope of goods or services. The State will entertain questions, however prospective Respondents must understand that the State's oral response to any question at the Pre-response Conference shall be unofficial and non-binding. Prospective Respondents must submit all questions, comments, or other concerns regarding the RFP in writing prior to the Written Questions & Comments Deadline date detailed in the RFP Section 2, Schedule of Events. The State will send the official response to these questions and comments to prospective Respondents from whom the State has received a Notice of Intent to respond as indicated in RFP Section 1.8 and on the date detailed in the RFP Section 2, Schedule of Events.

1.8. **Notice of Intent to Respond**

Before the Notice of Intent to Respond Deadline detailed in the RFP Section 2, Schedule of Events, prospective Respondents should submit to the Solicitation Coordinator a Notice of Intent to Respond (in the form of a simple e-mail or other written communication). Such notice should include the following information:

- the business or individual's name (as appropriate)
- a contact person's name and title
- the contact person's mailing address, telephone number, facsimile number, and e-mail address

A Notice of Intent to Respond creates no obligation and is not a prerequisite for submitting a response, however, it is necessary to ensure receipt of any RFP amendments or other notices and communications relating to this RFP.

1.9. **Response Deadline**

A Respondent must ensure that the State receives a response no later than the response Deadline time and date detailed in the RFP Section 2, Schedule of Events. The State will not accept late responses, and a Respondent's failure to submit a response before the deadline will result in disqualification of the response. It is the responsibility of the Respondent to ascertain any additional security requirements with respect to packaging and delivery to the State of Tennessee. Respondents should be mindful of any potential delays due to security screening procedures, weather, or other filing delays whether foreseeable or unforeseeable.

2. RFP SCHEDULE OF EVENTS

2.1. The following RFP Schedule of Events represents the State's best estimate for this RFP.

EVENT	TIME (central time zone)	DATE
1. RFP Issued		June 27, 2017
2. Disability Accommodation Request Deadline	2:00 p.m.	June 30, 2017
3. Pre-response Conference	2:00 p.m.	July 7, 2017
4. Notice of Intent to Respond Deadline	2:00 p.m.	July 10, 2017
5. Written "Questions & Comments" Deadline	2:00 p.m.	July 13, 2017
6. State Response to Written "Questions & Comments"		July 24, 2017
7. Response Deadline	12:00 p.m.	August 7, 2017
8. State Completion of Technical Response Evaluations		August 17, 2017
9. State Opening & Scoring of Cost Proposals	2:00 p.m.	August 18, 2017
10. State Notice of Intent to Award Released <u>and</u> RFP Files Opened for Public Inspection	2:00 p.m.	August 21, 2017
11. End of Open File Period		August 28, 2017
12. State sends contract to Contractor for signature		August 29, 2017
13. Contractor Signature Deadline		September 6, 2017
14. Contract Start Date		October 1, 2017

2.2. **The State reserves the right, at its sole discretion, to adjust the RFP Schedule of Events as it deems necessary.** Any adjustment of the Schedule of Events shall constitute an RFP amendment, and the State will communicate such to prospective Respondents from whom the State has received a Notice of Intent to Respond (refer to section 1.8).

3. RESPONSE REQUIREMENTS

3.1. Response Form

A response to this RFP must consist of two parts, a Technical Response and a Cost Proposal.

- 3.1.1. **Technical Response.** RFP Attachment 6.2., Technical Response & Evaluation Guide provides the specific requirements for submitting a response. This guide includes mandatory requirement items, general qualifications and experience items, and technical qualifications, experience, and approach items all of which must be addressed with a written response and, in some instances, additional documentation.

NOTICE: A technical response must not include any pricing or cost information. If any pricing or cost information amounts of any type (even pricing relating to other projects) is included in any part of the technical response, the state may deem the response to be non-responsive and reject it.

- 3.1.1.1. A Respondent must use the RFP Attachment 6.2., Technical Response & Evaluation Guide to organize, reference, and draft the Technical Response by duplicating the attachment, adding appropriate page numbers as required, and using the guide as a table of contents covering the Technical Response.
- 3.1.1.2. A response should be economically prepared, with emphasis on completeness and clarity. A response, as well as any reference material presented, must be written in English and must be written on standard 8 ½" x 11" pages (although oversized exhibits are permissible) and use a 12 point font for text. All response pages must be numbered.
- 3.1.1.3. All information and documentation included in a Technical Response should correspond to or address a specific requirement detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide. All information must be incorporated into a response to a specific requirement and clearly referenced. Any information not meeting these criteria will be deemed extraneous and will not contribute to evaluations.
- 3.1.1.4. The State may determine a response to be non-responsive and reject it if:
- a. the Respondent fails to organize and properly reference the Technical Response as required by this RFP and the RFP Attachment 6.2., Technical Response & Evaluation Guide; or
 - b. the Technical Response document does not appropriately respond to, address, or meet all of the requirements and response items detailed in the RFP Attachment 6.2., Technical Response & Evaluation Guide.
- 3.1.2. **Cost Proposal.** A Cost Proposal must be recorded on an exact duplicate of the RFP Attachment 6.3., Cost Proposal & Scoring Guide.

NOTICE: If a Respondent fails to submit a cost proposal exactly as required, the State may deem the response to be non-responsive and reject it.

- 3.1.2.1. A Respondent must only record the proposed cost exactly as required by the RFP Attachment 6.3., Cost Proposal & Scoring Guide and must NOT record any other rates, amounts, or information.

- 3.1.2.2. The proposed cost shall incorporate ALL costs for services under the contract for the total contract period, including any renewals or extensions.
- 3.1.2.3. A Respondent must sign and date the Cost Proposal.
- 3.1.2.4. A Respondent must submit the Cost Proposal to the State in a sealed package separate from the Technical Response (as detailed in RFP Sections 3.2.3., *et seq.*).

3.2. Response Delivery

- 3.2.1. A Respondent must ensure that both the original Technical Response and Cost Proposal documents meet all form and content requirements, including all required signatures, as detailed within this RFP, as may be amended.
- 3.2.2. A Respondent must submit original Technical Response and Cost Proposal documents and copies as specified below.

- 3.2.2.1. One (1) original Technical Response paper document labeled:

“RFP # 31865-00477 TECHNICAL RESPONSE ORIGINAL”

and five (5) digital copies of the Technical Response each in the form of one (1) digital document in “PDF” format properly recorded on its own otherwise blank, standard CD-R recordable disc or USB flash drive labeled:

“RFP # 31865-00477 TECHNICAL RESPONSE COPY”

The digital copies should not include copies of sealed customer references, however any other discrepancy between the paper Technical Response document and any digital copies may result in the State rejecting the proposal as non-responsive.

- 3.2.2.2. One (1) original Cost Proposal paper document labeled:

“RFP # 31865-00477 COST PROPOSAL ORIGINAL”

and one (1) copy in the form of a digital document in “PDF/XLS” format properly recorded on separate, blank, standard CD-R recordable disc or USB flash drive labeled:

“RFP # 31865-00477 COST PROPOSAL COPY”

In the event of a discrepancy between the original Cost Proposal document and the digital copy, the original, signed document will take precedence.

- 3.2.3. A Respondent must separate, seal, package, and label the documents and copies for delivery as follows:

- 3.2.3.1. The Technical Response original document and digital copies must be placed in a sealed package that is clearly labeled:

**“DO NOT OPEN... RFP # 31865-00477 TECHNICAL RESPONSE FROM
[RESPONDENT LEGAL ENTITY NAME]”**

- 3.2.3.2. The Cost Proposal original document and digital copy must be placed in a separate, sealed package that is clearly labeled:

“DO NOT OPEN... RFP # 31865-00477 COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”

- 3.2.3.3. The separately, sealed Technical Response and Cost Proposal components may be enclosed in a larger package for mailing or delivery, provided that the outermost package is clearly labeled:

“RFP # 31865-00477 SEALED TECHNICAL RESPONSE & SEALED COST PROPOSAL FROM [RESPONDENT LEGAL ENTITY NAME]”

- 3.2.4. A Respondent must ensure that the State receives a response no later than the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events at the following address:

Alma Chilton, Director of Contracts
Department of Finance and Administration
Division of Health Care Finance and Administration
310 Great Circle Road
Nashville, TN 37243

3.3. Response & Respondent Prohibitions

- 3.3.1. A response must not include alternate contract terms and conditions. If a response contains such terms and conditions, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.2. A response must not restrict the rights of the State or otherwise qualify either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal. If a response restricts the rights of the State or otherwise qualifies either the offer to deliver goods or provide services as required by this RFP or the Cost Proposal, the State, at its sole discretion, may determine the response to be a non-responsive counteroffer and reject it.
- 3.3.3. A response must not propose alternative goods or services (*i.e.*, offer services different from those requested and required by this RFP) unless expressly requested in this RFP. The State may consider a response of alternative goods or services to be non-responsive and reject it.
- 3.3.4. A Cost Proposal must be prepared and arrived at independently and must not involve any collusion between Respondents. The State will reject any Cost Proposal that involves collusion, consultation, communication, or agreement between Respondents. Regardless of the time of detection, the State will consider any such actions to be grounds for response rejection or contract termination.
- 3.3.5. A Respondent must not provide, for consideration in this RFP process or subsequent contract negotiations, any information that the Respondent knew or should have known was materially incorrect. If the State determines that a Respondent has provided such incorrect information, the State will deem the Response non-responsive and reject it.
- 3.3.6. A Respondent must not submit more than one Technical Response and one Cost Proposal in response to this RFP, except as expressly requested by the State in this RFP. If a Respondent submits more than one Technical Response or more than one Cost Proposal, the State will deem all of the responses non-responsive and reject them.
- 3.3.7. A Respondent must not submit a response as a prime contractor while also permitting one or more other Respondents to offer the Respondent as a subcontractor in their own responses. Such may result in the disqualification of all Respondents knowingly involved. This restriction does not, however, prohibit different Respondents from offering the same subcontractor as a part

of their responses (provided that the subcontractor does not also submit a response as a prime contractor).

3.3.8. The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this RFP:

3.3.8.1. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;

3.3.8.2. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and

3.3.8.3. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.

3.4. **Response Errors & Revisions**

A Respondent is responsible for any and all response errors or omissions. A Respondent will not be allowed to alter or revise response documents after the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events unless such is formally requested, in writing, by the State.

3.5. **Response Withdrawal**

A Respondent may withdraw a submitted response at any time before the Response Deadline time and date detailed in the RFP Section 2, Schedule of Events by submitting a written request signed by an authorized Respondent representative. After withdrawing a response, a Respondent may submit another response at any time before the Response Deadline. After the Response Deadline, a Respondent may only withdraw all or a portion of a response where the enforcement of the response would impose an unconscionable hardship on the Respondent.

3.6. **Additional Services**

If a response offers goods or services in addition to those required by and described in this RFP, the State, at its sole discretion, may add such services to the contract awarded as a result of this RFP. Notwithstanding the foregoing, a Respondent must not propose any additional cost amounts or rates for additional goods or services. Regardless of any additional services offered in a response, the Respondent's Cost Proposal must only record the proposed cost as required in this RFP and must not record any other rates, amounts, or information.

NOTICE: If a Respondent fails to submit a Cost Proposal exactly as required, the State may deem the response non-responsive and reject it.

3.7. **Response Preparation Costs**

The State will not pay any costs associated with the preparation, submittal, or presentation of any response.

4. GENERAL CONTRACTING INFORMATION & REQUIREMENTS

4.1. RFP Amendment

The State at its sole discretion may amend this RFP, in writing, at any time prior to contract award. However, prior to any such amendment, the State will consider whether it would negatively impact the ability of potential Respondents to meet the response deadline and revise the RFP Schedule of Events if deemed appropriate. If an RFP amendment is issued, the State will convey it to potential Respondents who submitted a Notice of Intent to Respond (refer to RFP Section 1.8). A response must address the final RFP (including its attachments) as amended.

4.2. RFP Cancellation

The State reserves the right, at its sole discretion, to cancel the RFP or to cancel and reissue this RFP in accordance with applicable laws and regulations.

4.3. State Right of Rejection

4.3.1. Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all responses.

4.3.2. The State may deem as non-responsive and reject any response that does not comply with all terms, conditions, and performance requirements of this RFP. Notwithstanding the foregoing, the State reserves the right to waive, at its sole discretion, minor variances from full compliance with this RFP. If the State waives variances in a response, such waiver shall not modify the RFP requirements or excuse the Respondent from full compliance, and the State may hold any resulting Contractor to strict compliance with this RFP.

4.4. Assignment & Subcontracting

4.4.1. The Contractor may not subcontract, transfer, or assign any portion of the Contract awarded as a result of this RFP without prior approval of the State. The State reserves the right to refuse approval, at its sole discretion, of any subcontract, transfer, or assignment.

4.4.2. If a Respondent intends to use subcontractors, the response to this RFP must specifically identify the scope and portions of the work each subcontractor will perform (refer to RFP Attachment 6.2., Section B, General Qualifications & Experience Item B.14.).

4.4.3. Subcontractors identified within a response to this RFP will be deemed as approved by the State unless the State expressly disapproves one or more of the proposed subcontractors prior to signing the Contract.

4.4.4. After contract award, a Contractor may only substitute an approved subcontractor at the discretion of the State and with the State's prior, written approval.

4.4.5. Notwithstanding any State approval relating to subcontracts, the Respondent who is awarded a contract pursuant to this RFP will be the prime contractor and will be responsible for all work under the Contract.

4.5. Right to Refuse Personnel or Subcontractors

The State reserves the right to refuse, at its sole discretion and notwithstanding any prior approval, any personnel of the prime contractor or a subcontractor providing goods or services in the performance of a contract resulting from this RFP. The State will document in writing the reason(s) for any rejection of personnel.

4.6. **Insurance**

The State will require the awarded Contractor to provide a Certificate of Insurance issued by an insurance company licensed or authorized to provide insurance in the State of Tennessee. Each Certificate of Insurance shall indicate current insurance coverages meeting minimum requirements as may be specified by this RFP. A failure to provide a current, Certificate of Insurance will be considered a material breach and grounds for contract termination.

4.7. **Professional Licensure and Department of Revenue Registration**

- 4.7.1. All persons, agencies, firms, or other entities that provide legal or financial opinions, which a Respondent provides for consideration and evaluation by the State as a part of a response to this RFP, shall be properly licensed to render such opinions.
- 4.7.2. Before the Contract resulting from this RFP is signed, the apparent successful Respondent (and Respondent employees and subcontractors, as applicable) must hold all necessary or appropriate business or professional licenses to provide the goods or services as required by the contract. The State may require any Respondent to submit evidence of proper licensure.
- 4.7.3. Before the Contract resulting from this RFP is signed, the apparent successful Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the Respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation. For purposes of this registration requirement, the Department of Revenue may be contacted at: TN.Revenue@tn.gov.

4.8. **Disclosure of Response Contents**

- 4.8.1. All materials submitted to the State in response to this RFP shall become the property of the State of Tennessee. Selection or rejection of a response does not affect this right. By submitting a response, a Respondent acknowledges and accepts that the full response contents and associated documents will become open to public inspection in accordance with the laws of the State of Tennessee.
- 4.8.2. The State will hold all response information, including both technical and cost information, in confidence during the evaluation process.
- 4.8.3. Upon completion of response evaluations, indicated by public release of a Notice of Intent to Award, the responses and associated materials will be open for review by the public in accordance with *Tenn. Code Ann. § 10-7-504(a)(7)*.

4.9. **Contract Approval and Contract Payments**

- 4.9.1. After contract award, the Contractor who is awarded the contract must submit appropriate documentation with the Department of Finance and Administration, Division of Accounts.
- 4.9.2. This RFP and its contractor selection processes do not obligate the State and do not create rights, interests, or claims of entitlement in either the Respondent with the apparent best-evaluated response or any other Respondent. State obligations pursuant to a contract award shall commence only after the contract is signed by the State agency head and the Contractor and after the Contract is approved by all other state officials as required by applicable laws and regulations.
- 4.9.3. No payment will be obligated or made until the relevant Contract is approved as required by applicable statutes and rules of the State of Tennessee.

- 4.9.3.1. The State shall not be liable for payment of any type associated with the Contract resulting from this RFP (or any amendment thereof) or responsible for any goods delivered or services rendered by the Contractor, even goods delivered or services rendered in good faith and even if the Contractor is orally directed to proceed with the delivery of goods or the rendering of services, if it occurs before the Contract Effective Date or after the Contract Term.
- 4.9.3.2. All payments relating to this procurement will be made in accordance with the Payment Terms and Conditions of the Contract resulting from this RFP (refer to RFP Attachment 6.6., *Pro Forma* Contract, Section C).
- 4.9.3.3. If any provision of the Contract provides direct funding or reimbursement for the competitive purchase of goods or services as a component of contract performance or otherwise provides for the reimbursement of specified, actual costs, the State will employ all reasonable means and will require all such documentation that it deems necessary to ensure that such purchases were competitive and costs were reasonable, necessary, and actual. The Contractor shall provide reasonable assistance and access related to such review. Further, the State shall not remit, as funding or reimbursement pursuant to such provisions, any amounts that it determines do not represent reasonable, necessary, and actual costs.

4.10. **Contractor Performance**

The Contractor who is awarded a contract will be responsible for the delivery of all acceptable goods or the satisfactory completion of all services set out in this RFP (including attachments) as may be amended. All goods or services are subject to inspection and evaluation by the State. The State will employ all reasonable means to ensure that goods delivered or services rendered are in compliance with the Contract, and the Contractor must cooperate with such efforts.

4.11. **Contract Amendment**

After Contract award, the State may request the Contractor to deliver additional goods or perform additional services within the general scope of the Contract and this RFP, but beyond the specified Scope, and for which the Contractor may be compensated. In such instances, the State will provide the Contractor a written description of the additional goods or services. The Contractor must respond to the State with a time schedule for delivering the additional goods or accomplishing the additional services based on the compensable units included in the Contractor's response to this RFP. If the State and the Contractor reach an agreement regarding the goods or services and associated compensation, such agreement must be effected by means of a contract amendment. Further, any such amendment requiring additional goods or services must be signed by both the State agency head and the Contractor and must be approved by other state officials as required by applicable statutes, rules, policies and procedures of the State of Tennessee. The Contractor must not provide additional goods or render additional services until the State has issued a written contract amendment with all required approvals.

4.12. **Severability**

If any provision of this RFP is declared by a court to be illegal or in conflict with any law, said decision will not affect the validity of the remaining RFP terms and provisions, and the rights and obligations of the State and Respondents will be construed and enforced as if the RFP did not contain the particular provision held to be invalid.

4.13. **Next Ranked Respondent**

The State reserves the right to initiate negotiations with the next ranked Respondent should the State cease doing business with any Respondent selected via this RFP process.

5. EVALUATION & CONTRACT AWARD

5.1. Evaluation Categories & Maximum Points

The State will consider qualifications, experience, technical approach, and cost in the evaluation of responses and award points in each of the categories detailed below (up to the maximum evaluation points indicated) to each response deemed by the State to be responsive.

EVALUATION CATEGORY	MAXIMUM POINTS POSSIBLE
General Qualifications & Experience (refer to RFP Attachment 6.2., Section B)	30
Technical Qualifications, Experience & Approach (refer to RFP Attachment 6.2., Section C)	40
Cost Proposal (refer to RFP Attachment 6.3.)	30

5.2. Evaluation Process

The evaluation process is designed to award the contract resulting from this RFP not necessarily to the Respondent offering the lowest cost, but rather to the Respondent deemed by the State to be responsive and responsible who offers the best combination of attributes based upon the evaluation criteria. ("Responsive Respondent" is defined as a Respondent that has submitted a response that conforms in all material respects to the RFP. "Responsible Respondent" is defined as a Respondent that has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.)

5.2.1. **Technical Response Evaluation.** The Solicitation Coordinator and the Proposal Evaluation Team (consisting of three (3) or more State employees) will use the RFP Attachment 6.2., Technical Response & Evaluation Guide to manage the Technical Response Evaluation and maintain evaluation records.

5.2.1.1. The State reserves the right, at its sole discretion, to request Respondent clarification of a Technical Response or to conduct clarification discussions with any or all Respondents. Any such clarification or discussion will be limited to specific sections of the response identified by the State. The subject Respondent must put any resulting clarification in writing as may be required and in accordance with any deadline imposed by the State.

5.2.1.2. The Solicitation Coordinator will review each Technical Response to determine compliance with RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A—Mandatory Requirements. If the Solicitation Coordinator determines that a response failed to meet one or more of the mandatory requirements, the Proposal Evaluation Team will review the response and document the team's determination of whether:

- a. the response adequately meets RFP requirements for further evaluation;
- b. the State will request clarifications or corrections for consideration prior to further evaluation; or,
- c. the State will determine the response to be non-responsive to the RFP and reject it.

- 5.2.1.3. Proposal Evaluation Team members will independently evaluate each Technical Response (that is responsive to the RFP) against the evaluation criteria in this RFP, and will score each in accordance with the RFP Attachment 6.2., Technical Response & Evaluation Guide.
 - 5.2.1.4. For each response evaluated, the Solicitation Coordinator will calculate the average of the Proposal Evaluation Team member scores for RFP Attachment 6.2., Technical Response & Evaluation Guide, and record each average as the response score for the respective Technical Response section.
 - 5.2.1.5. Before Cost Proposals are opened, the Proposal Evaluation Team will review the Technical Response Evaluation record and any other available information pertinent to whether or not each Respondent is responsive and responsible. If the Proposal Evaluation Team identifies any Respondent that does not meet the responsive and responsible thresholds such that the team would not recommend the Respondent for Cost Proposal Evaluation and potential contract award, the team members will fully document the determination.
- 5.2.2. **Cost Proposal Evaluation.** The Solicitation Coordinator will open for evaluation the Cost Proposal of each Respondent deemed by the State to be responsive and responsible and calculate and record each Cost Proposal score in accordance with the RFP Attachment 6.3., Cost Proposal & Scoring Guide.
- 5.2.3. **Clarifications and Negotiations:** The State reserves the right to award a contract on the basis of initial responses received, therefore, each response shall contain the Respondent's best terms and conditions from a technical and cost standpoint. The State reserves the right to conduct clarifications or negotiations with one or more Respondents. All communications, clarifications, and negotiations shall be conducted in a manner that supports fairness in response improvement.
- 5.2.3.1. **Clarifications:** The State may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those issues identified during one or multiple clarification rounds. Each clarification sought by the State may be unique to an individual Respondent, provided that the process is conducted in a manner that supports fairness in response improvement.
 - 5.2.3.2. **Negotiations:** The State may elect to negotiate with one or more Respondents by requesting revised responses, negotiating costs, or finalizing contract terms and conditions. The State reserves the right to conduct multiple negotiation rounds or no negotiations at all.
 - 5.2.3.3. **Cost Negotiations:** All Respondents, selected for negotiation by the State, will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other goods or services level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other methods that do not reveal individual Respondent pricing. During target price negotiations, Respondents are not obligated to reduce their pricing to target prices, but no Respondent is allowed to increase prices.
 - 5.2.3.4. If the State determines that it is unable to successfully negotiate a contract with the apparent best evaluated Respondent, the State reserves the right to bypass the apparent best evaluated Respondent and enter into contract negotiations with the next apparent best evaluated Respondent.

- 5.2.4. **Total Response Score.** The Solicitation Coordinator will calculate the sum of the Technical Response section scores and the Cost Proposal score and record the resulting number as the total score for the subject Response (refer to RFP Attachment 6.5., Score Summary Matrix).

5.3. **Contract Award Process**

- 5.3.1 The Solicitation Coordinator will submit the Proposal Evaluation Team determinations and scores to the head of the procuring agency for consideration along with any other relevant information that might be available and pertinent to contract award.
- 5.3.2. The procuring agency head will determine the apparent best-evaluated Response. To effect a contract award to a Respondent other than the one receiving the highest evaluation process score, the head of the procuring agency must provide written justification and obtain the written approval of the Chief Procurement Officer and the Comptroller of the Treasury.
- 5.3.3. The State will issue a Notice of Intent to Award identifying the apparent best-evaluated response and make the RFP files available for public inspection at the time and date specified in the RFP Section 2, Schedule of Events.

NOTICE: The Notice of Intent to Award shall not create rights, interests, or claims of entitlement in either the apparent best-evaluated Respondent or any other Respondent.

- 5.3.4. The Respondent identified as offering the apparent best-evaluated response must sign a contract drawn by the State pursuant to this RFP. The Contract shall be substantially the same as the RFP Attachment 6.6., *Pro Forma* Contract. The Respondent must sign the contract by the Contractor Signature Deadline detailed in the RFP Section 2, Schedule of Events. If the Respondent fails to provide the signed Contract by this deadline, the State may determine that the Respondent is non-responsive to this RFP and reject the response.
- 5.3.5. Notwithstanding the foregoing, the State may, at its sole discretion, entertain limited negotiation prior to Contract signing and, as a result, revise the *pro forma* contract terms and conditions or performance requirements in the State's best interests, PROVIDED THAT such revision of terms and conditions or performance requirements shall **NOT** materially affect the basis of response evaluations or negatively impact the competitive nature of the RFP and contractor selection process.
- 5.3.6. If the State determines that a response is non-responsive and rejects it after opening Cost Proposals, the Solicitation Coordinator will re-calculate scores for each remaining responsive Cost Proposal to determine (or re-determine) the apparent best-evaluated response.

RFP # 31865-00476 STATEMENT OF CERTIFICATIONS AND ASSURANCES

The Respondent must sign and complete the Statement of Certifications and Assurances below as required, and it must be included in the Technical Response (as required by RFP Attachment 6.2., Technical Response & Evaluation Guide, Section A, Item A.1.).

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

1. The Respondent will comply with all of the provisions and requirements of the RFP.
2. The Respondent will provide all services as defined in the Scope of the RFP Attachment 6.6., *Pro Forma* Contract for the total Contract Term.
3. The Respondent, except as otherwise provided in this RFP, accepts and agrees to all terms and conditions set out in the RFP Attachment 6.6., *Pro Forma* Contract.
4. The Respondent acknowledges and agrees that a contract resulting from the RFP shall incorporate, by reference, all proposal responses as a part of the Contract.
5. The Respondent 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.
6. To the knowledge of the undersigned, the information detailed within the response submitted to this RFP is accurate.
7. The response submitted to this RFP was independently prepared, without collusion, under penalty of perjury.
8. 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 Respondent in connection with this RFP or any resulting contract.
9. Both the Technical Response and the Cost Proposal submitted in response to this RFP shall remain valid for at least 120 days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract pursuant to the RFP.
10. The Respondent affirms the following statement, as required by the Iran Divestment Act Tenn. Code Ann. § 12-12-111: "By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to §12-12-106." For reference purposes, the list is currently available online at: <http://www.tn.gov/generalservices/article/Public-Information-library>.

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

DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO BIND THE RESPONDENT

SIGNATURE:

PRINTED NAME & TITLE:

DATE:

**RESPONDENT LEGAL ENTITY
NAME:**

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION A: MANDATORY REQUIREMENTS. The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

The Solicitation Coordinator will review the response to determine if the Mandatory Requirement Items are addressed as required and mark each with pass or fail. For each item that is not addressed as required, the Proposal Evaluation Team must review the response and attach a written determination. In addition to the Mandatory Requirement Items, the Solicitation Coordinator will review each response for compliance with all RFP requirements.

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		The Response must be delivered to the State no later than the Response Deadline specified in the RFP Section 2, Schedule of Events.	
		The Technical Response and the Cost Proposal documentation must be packaged separately as required (refer to RFP Section 3.2., <i>et seq.</i>).	
		The Technical Response must NOT contain cost or pricing information of any type.	
		The Technical Response must NOT contain any restrictions of the rights of the State or other qualification of the response.	
		A Respondent must NOT submit alternate responses (refer to RFP Section 3.3.).	
		A Respondent must NOT submit multiple responses in different forms (as a prime and a sub-contractor) (refer to RFP Section 3.3.).	
	A.1.	Provide the Statement of Certifications and Assurances (RFP Attachment 6.1.) completed and signed by an individual empowered to bind the Respondent to the provisions of this RFP and any resulting contract. The document must be signed without exception or qualification.	
	A.2.	Provide a statement, based upon reasonable inquiry, of whether the Respondent or any individual who shall cause to deliver goods or perform services under the contract has a possible conflict of interest (e.g., employment by the State of Tennessee) and, if so, the nature of that conflict. NOTE: Any questions of conflict of interest shall be solely within the discretion of the State, and the State reserves the right to cancel any award.	
	A.3.	Provide a current bank reference indicating that the Respondent's business relationship with the financial institution is in positive	

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		standing. Such reference must be written in the form of a standard business letter, signed, and dated within the past three (3) months.	
	A.4.	Provide two current positive credit references from vendors with which the Respondent has done business written in the form of standard business letters, signed, and dated within the past three (3) months.	
	A.5.	Provide an official document or letter from an accredited credit bureau, verified and dated within the last three (3) months and indicating a satisfactory credit rating for the Respondent (NOTE: A credit bureau report number without the full report is insufficient and will <u>not</u> be considered responsive.)	
	A.6.	Provide written attestation that the Respondent does attest, certify, warrant, and assure that the Contractor shall not knowingly employ, in the performance of this Contract, employees who have been excluded from participation in the Medicare and/or Medicaid programs pursuant to Sections 1128 of the Social Security Act.	
	A.7.	Provide a brief statement attesting that your company has been performing fiscal employer agent services for a minimum of five (5) full federal tax years of experience for at least two (2) programs, including at least one (1) Medicaid program. Note: References submitted in compliance with RFP Section 6.4 must confirm this statement.	
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>			

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION B: GENERAL QUALIFICATIONS & EXPERIENCE. The Respondent must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below. Proposal Evaluation Team members will independently evaluate and assign one score for all responses to Section B— General Qualifications & Experience Items.

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
	B.1.	Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the response.
	B.2.	Describe the Respondent's form of business (<i>i.e.</i> , individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and business location (physical location or domicile).
	B.3.	Detail the number of years the Respondent has been in business.
	B.4.	Briefly describe how long the Respondent has been providing the goods or services required by this RFP.
	B.5.	Describe the Respondent's number of employees, client base, and location of offices.
	B.6.	Provide a statement of whether there have been any mergers, acquisitions, or change of control of the Respondent within the last ten (10) years. If so, include an explanation providing relevant details.
	B.7.	Provide a statement of whether the Respondent or, to the Respondent's knowledge, any of the Respondent's employees, agents, independent contractors, or subcontractors, involved in the delivery of goods or performance of services on a contract pursuant to this RFP, have been convicted of, pled guilty to, or pled <i>nolo contendere</i> to any felony. If so, include an explanation providing relevant details.
	B.8.	Provide a statement of whether, in the last ten (10) years, the Respondent has filed (or had filed against it) any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, trustee, or assignee for the benefit of creditors. If so, include an explanation providing relevant details.
	B.9.	Provide a statement of whether there is any material, pending litigation against the Respondent that the Respondent should reasonably believe could adversely affect its ability to meet contract requirements pursuant to this RFP or is likely to have a material adverse effect on the Respondent's financial condition. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it would impair the Respondent's performance in a contract pursuant to this RFP. NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions.
	B.10.	Provide a statement of whether there are any pending or in progress Securities Exchange Commission investigations involving the Respondent. If such exists, list each separately, explain the relevant details, and attach the opinion of counsel addressing whether and to what extent it will

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>impair the Respondent’s performance in a contract pursuant to this RFP.</p> <p>NOTE: All persons, agencies, firms, or other entities that provide legal opinions regarding the Respondent must be properly licensed to render such opinions. The State may require the Respondent to submit proof of license for each person or entity that renders such opinions.</p>
	B.11.	Provide a brief, descriptive statement detailing evidence of the Respondent’s ability to deliver the goods or services sought under this RFP (e.g., prior experience, training, certifications, resources, program and quality management systems, etc.).
	B.12.	Provide a narrative description of the proposed project team, its members, and organizational structure along with an organizational chart identifying the key people who will be assigned to deliver the goods or services required by this RFP.
	B.13.	Provide a personnel roster listing the names of key people who the Respondent will assign to meet the Respondent’s requirements under this RFP along with the estimated number of hours that each individual will devote to that performance. Follow the personnel roster with a resume for each of the people listed. The resumes must detail the individual’s title, education, current position with the Respondent, and employment history.
	B.14.	<p>Provide a statement of whether the Respondent intends to use subcontractors to meet the Respondent’s requirements of any contract awarded pursuant to this RFP, and if so, detail:</p> <p>(a) the names of the subcontractors along with the contact person, mailing address, telephone number, and e-mail address for each;</p> <p>(b) a description of the scope and portions of the goods each subcontractor involved in the delivery of goods or performance of the services each subcontractor will perform; <u>and</u></p> <p>(c) a statement specifying that each proposed subcontractor has expressly assented to being proposed as a subcontractor in the Respondent’s response to this RFP.</p>
	B.15.	<p>Provide documentation of the Respondent’s commitment to diversity as represented by the following:</p> <p>(a) <u>Business Strategy</u>. Provide a description of the Respondent’s existing programs and procedures designed to encourage and foster commerce with business enterprises owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises. Please also include a list of the Respondent’s certifications as a diversity business, if applicable.</p> <p>(b) <u>Business Relationships</u>. Provide a listing of the Respondent’s current contracts with business enterprises owned by minorities, women, Tennessee service-disabled veterans and small business enterprises. Please include the following information:</p> <p>(i) contract description;</p> <p>(ii) contractor name and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled);</p> <p>(iii) contractor contact name and telephone number.</p> <p>(c) <u>Estimated Participation</u>. Provide an estimated level of participation by business enterprises owned by minorities, women, Tennessee service-disabled veterans, and small business enterprises if a contract is awarded to the Respondent pursuant to this RFP. Please include the following information:</p> <p>(i) a percentage (%) indicating the participation estimate. (Express the estimated participation number as a percentage of the total estimated contract value that will be dedicated to business with subcontractors and supply contractors having such ownership characteristics only and DO NOT INCLUDE DOLLAR AMOUNTS);</p>

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<p>(ii) anticipated goods or services contract descriptions;</p> <p>(iii) names and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled veterans) of anticipated subcontractors and supply contractors.</p> <p>NOTE: In order to claim status as a Diversity Business Enterprise under this contract, businesses must be certified by the Governor’s Office of Diversity Business Enterprise (Go-DBE). Please visit the Go-DBE website at https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810 for more information.</p> <p>(d) <u>Workforce</u>. Provide the percentage of the Respondent’s total current employees by ethnicity and gender.</p> <p>NOTE: Respondents that demonstrate a commitment to diversity will advance State efforts to expand opportunity to do business with the State as contractors and subcontractors. Response evaluations will recognize the positive qualifications and experience of a Respondent that does business with enterprises owned by minorities, women, Tennessee service-disabled veterans and small business enterprises and who offer a diverse workforce.</p>
	B.16.	<p>Provide a statement of whether or not the Respondent has any current contracts with the State of Tennessee or has completed any contracts with the State of Tennessee within the previous five (5) year period. If so, provide the following information for all of the current and completed contracts:</p> <p>(a) the name, title, telephone number and e-mail address of the State contact knowledgeable about the contract;</p> <p>(b) the procuring State agency name;</p> <p>(c) a brief description of the contract’s scope of services;</p> <p>(d) the contract period; and</p> <p>(e) the contract number.</p> <p>NOTES:</p> <ul style="list-style-type: none"> ▪ Current or prior contracts with the State are <u>not</u> a prerequisite and are <u>not</u> required for the maximum evaluation score, and the existence of such contracts with the State will <u>not</u> automatically result in the addition or deduction of evaluation points. ▪ Each evaluator will generally consider the results of inquiries by the State regarding all contracts noted.
	B.17.	<p>Provide customer references from individuals who are <u>not</u> current or former State employees for projects similar to the goods or services sought under this RFP and which represent:</p> <ul style="list-style-type: none"> ▪ two (2) accounts Respondent currently services that are similar in size to the State; <u>and</u> ▪ three (3) completed projects. <p>References from at least three (3) different individuals are required to satisfy the requirements above, e.g., an individual may provide a reference about a completed project and another reference about a currently serviced account. The standard reference questionnaire, which <u>must</u> be used and completed, is provided at RFP Attachment 6.4. References that are not completed as required may be deemed non-responsive and may not be considered.</p> <p>The Respondent will be <u>solely</u> responsible for obtaining fully completed reference questionnaires and including them in the sealed Technical Response. In order to obtain and submit the completed reference questionnaires follow the process below.</p> <p>(a) Add the Respondent’s name to the standard reference questionnaire at RFP Attachment 6.4. and make a copy for each reference.</p> <p>(b) Send a reference questionnaire and new, standard #10 envelope to each reference.</p> <p>(c) Instruct the reference to:</p> <p>(i) complete the reference questionnaire;</p>

RESPONDENT LEGAL ENTITY NAME:		
Response Page # (Respondent completes)	Item Ref.	Section B— General Qualifications & Experience Items
		<ul style="list-style-type: none"> (ii) sign and date the completed reference questionnaire; (iii) seal the completed, signed, and dated reference questionnaire within the envelope provided; (iv) sign his or her name in ink across the sealed portion of the envelope; and (v) return the sealed envelope directly to the Respondent (the Respondent may wish to give each reference a deadline, such that the Respondent will be able to collect all required references in time to include them within the sealed Technical Response). <p>(d) <u>Do NOT open the sealed references upon receipt.</u></p> <p>(e) Enclose all <u>sealed</u> reference envelopes within a larger, labeled envelope for inclusion in the Technical Response as required.</p> <p>NOTES:</p> <ul style="list-style-type: none"> ▪ The State will not accept late references or references submitted by any means other than that which is described above, and each reference questionnaire submitted must be completed as required. ▪ The State will not review more than the number of required references indicated above. ▪ While the State will base its reference check on the contents of the sealed reference envelopes included in the Technical Response package, the State reserves the right to confirm and clarify information detailed in the completed reference questionnaires, and may consider clarification responses in the evaluation of references. ▪ The State is under <u>no</u> obligation to clarify any reference information.
	B.18.	<p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <ul style="list-style-type: none"> (a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency; (b) has within the past three (3) years, been convicted of, or had a civil judgment rendered against the contracting party 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) is presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed above; and (d) has within a three (3) year period preceding the contract had one or more public transactions (federal, state, or local) terminated for cause or default.
	B.19.	<p>Respondent shall describe how its background and experience will enable it to comply with the applicable federal and state civil rights laws. These laws prohibit discrimination based on a person's race, color, national origin, sex, age, religious, disability, or other status protected under federal and state laws. For example, describe Respondent's ability to provide language services to individuals who do not speak English and communication assistance services to individuals with disabilities.</p>
		<p>SCORE (for <u>all</u> Section B—Qualifications & Experience Items above): (maximum possible score = 30)</p>
<p>State Use – Evaluator Identification:</p>		

TECHNICAL RESPONSE & EVALUATION GUIDE

SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH. The Respondent must address all items (below) and provide, in sequence, the information and documentation as required (referenced with the associated item references). The Respondent must also detail the response page number for each item in the appropriate space below.

A Proposal Evaluation Team, made up of three or more State employees, will independently evaluate and score the response to each item. Each evaluator will use the following whole number, raw point scale for scoring each item:

0 = little value 1 = poor 2 = fair 3 = satisfactory 4 = good 5 = excellent

The Solicitation Coordinator will multiply the Item Score by the associated Evaluation Factor (indicating the relative emphasis of the item in the overall evaluation). The resulting product will be the item’s Raw Weighted Score for purposes of calculating the section score as indicated.

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
	C.1.	<p style="text-align: center;">Experience</p> <p>a. Provide a brief, descriptive statement indicating the Respondent’s credentials to deliver the services sought under this RFP, including Financial Administration as well as Supports Brokerage functions. Describe how long the Respondent has been performing Fiscal Employer Agent services and include the number of years in business.</p> <p>b. Describe the Respondent’s client base, including the number of states for which the Respondent is contracted to provide Fiscal Employer Agent services, the number of State Consumer Direction programs in each state, the target population(s) served in each program, total number of participants served in each population/program, as well as information pertaining to non-State programs and clients.</p> <p>c. Provide a narrative that describes the Respondent’s experience in performing Fiscal Employer Agent services for Consumer Directed-services in a managed care delivery system. Include the Respondent’s experience in working with multiple stakeholders, including for example, the State, Managed Care Organizations, etc.</p> <p>d. Provide a narrative that describes the Respondent’s experience in performing Fiscal Employer Agent services for Consumer-Directed services in a fee-for-service delivery system. Include the Respondent’s experience in working with multiple stakeholders, including, for example, the State Medicaid Agency, an Operating Agency, etc.</p> <p>e. Provide a narrative that describes the Respondent’s</p>		35	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
		experience in performing Fiscal Employer Agent services for Consumer Direction involving the use of verification of a web-based time keeping system for some or all of the services provided through Consumer Direction. Include, as applicable, a description of system capabilities, any challenges encountered in the implementation of such system, and any actions taken by the Respondent to accommodate or assist in the resolution of such challenges.			
	C.2.	<p align="center">Understanding of Consumer and Self-Direction Requirements</p> <p>a. Provide a narrative that illustrates the Respondent's understanding of Consumer Direction as it is implemented in the 1915(c) Self-Determination Waiver program, the managed long-term services and supports CHOICES and Employment and Community First CHOICES Programs, including the responsibilities of the Member/Person Supported, Representative, Workers, MCO, DIDD, and Fiscal Employer Agent.</p> <p>b. Provide a narrative that illustrates the Respondent's understanding of the scope of services to be performed.</p>		10	
	C.3.	<p align="center">Implementation</p> <p>a. Provide a narrative that illustrates how the Respondent will complete the scope of services, manage the project, accomplish required objectives, and meet the State's project schedule. This narrative should include a detailed explanation regarding how the Respondent will:</p> <ol style="list-style-type: none"> 1. Secure necessary federal and state approval to perform Fiscal Employer Agent functions 2. Participate in and complete transition of existing Participants to selected vendor 3. Process referrals for Consumer Direction and Self-Direction 4. Assign Supports Brokers 5. Communicate with Participants 6. Develop Participant and Worker enrollment packets 		30	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
		7. Assist in the development of a Back-up Plan 8. Participate in risk assessment and risk planning activities 9. Conduct background checks and consult with Participants on potential Workers who have criminal backgrounds 10. Verify that Workers meet specified qualifications and complete training requirements 11. Initiate Consumer-Directed and Self-Directed services 12. Process payroll 13. Process employer tax returns 14. Address changes in a Participants' needs or circumstances 15. Address problems and concerns regarding Consumer Direction and Self-Direction 16. Submit invoices for services delivered through Consumer Direction and Self-Direction 17. Resolve issues with submitted invoices 18. Comply with reporting requirements b. Provide a narrative that describes how the Respondent will perform Supports Brokerage functions, including a staffing plan, training plan, information pertaining to ratios of Supports Brokers to Participants, supervision, minimum contact requirements, documentation, etc.			
	C.4.	<p style="text-align: center;">Training and Education</p> a. Provide a narrative of the Respondent's training plan for Participants and Representatives, Workers, MCO Staff, DIDD Staff, including Self-Direction of Health care tasks. b. Provide a narrative of the Respondent's education plan for potential Participants not yet enrolled in Consumer Direction or Self-Direction		5	
	C.5.	<p style="text-align: center;">Quality and Compliance</p> a. Provide a narrative that describes the Respondent's plan for monitoring and quality assurance activities related to Financial Administration and Supports Brokerage functions.		20	

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
		<ul style="list-style-type: none"> b. Provide a narrative that describes how the Respondent will provide customer service assistance for Participants/Representatives and workers, including staffing and training of the customer service line, and the provision of after-hours assistance. c. Provide a narrative that describes the Respondent's complaint resolution process. d. Provide a narrative that describes how the Respondent will handle the reporting and assistance with investigations of Critical Incidents, Reportable Events, and Reportable Incidents related to services provided through Consumer Direction and Self-Direction. e. Provide a narrative that describes how the Respondent will conduct an annual customer satisfaction survey for Participants in the Consumer Direction and Self-Direction programs. f. Provide a narrative that describes how the Respondent will identify and report potential fraud and abuse in the Consumer Direction and Self-Direction programs. g. Provide a narrative of the Respondent's internal audit controls related to the performance of Financial Administration functions. h. Provide a narrative of the Respondent's disaster plan, including: <ul style="list-style-type: none"> 1. Performance of Financial Administration and Supports Brokerage functions 2. Communication processes, including maintenance of customer service lines for Participants/Representatives and Workers 3. Maintenance of records 			
<p><i>The Solicitation Coordinator will use this sum and the formula below to calculate the section score. All calculations will use and result in numbers rounded to two (2) places to the right of the decimal point.</i></p>					<p>Total Raw Weighted Score: <i>(sum of Raw Weighted Scores above)</i></p>

RESPONDENT LEGAL ENTITY NAME:					
Response Page # (Respondent completes)	Item Ref.	Section C— Technical Qualifications, Experience & Approach Items	Item Score	Evaluation Factor	Raw Weighted Score
Total Raw Weighted Score					SCORE:
<hr/> Maximum Possible Raw Weighted Score <i>(i.e., 5 x the sum of item weights above)</i>		X 40 <i>(maximum possible score)</i>		=	
<i>State Use – Evaluator Identification:</i>					
<i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i>					

COST PROPOSAL & SCORING GUIDE

NOTICE: THIS COST PROPOSAL MUST BE COMPLETED EXACTLY AS REQUIRED

COST PROPOSAL SCHEDULE— The Cost Proposal, detailed below, shall indicate the proposed price for goods or services defined in the Scope of Services of the RFP Attachment 6.6., *Pro Forma* Contract and for the entire contract period. The Cost Proposal shall remain valid for at least one hundred twenty (120) days subsequent to the date of the Cost Proposal opening and thereafter in accordance with any contract resulting from this RFP. All monetary amounts shall be in U.S. currency and limited to two (2) places to the right of the decimal point.

NOTICE: The Evaluation Factor associated with each cost item is for evaluation purposes only. The evaluation factors do NOT and should NOT be construed as any type of volume guarantee or minimum purchase quantity. The evaluation factors shall NOT create rights, interests, or claims of entitlement in the Respondent.

Notwithstanding the cost items herein, pursuant to the second paragraph of the *Pro Forma* Contract section C.1. (refer to RFP Attachment 6.6.), "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."

This Cost Proposal must be signed, in the space below, by an individual empowered to bind the Respondent to the provisions of this RFP and any contract awarded pursuant to it. If said individual is not the *President* or *Chief Executive Officer*, this document must attach evidence showing the individual's authority to legally bind the Respondent.

RESPONDENT SIGNATURE:			
PRINTED NAME & TITLE:			
DATE:			
Cost Item Description	Proposed Cost	State Use Only	
		Evaluation Factor	Evaluation Cost (cost x factor)
January 1, 2018 – December 31, 2020			
Financial Administration	\$ _____ per Member/per month*	175,000	
Supports Brokerage	\$ _____ per Member/per month*	175,000	
Set-Up for New Consumer Direction Participant	\$ _____ per Member	2,000	
Set-Up for New Consumer Directed Worker	\$ _____ per Worker	12,000	

Cost Item Description	Proposed Cost	State Use Only	
		Evaluation Factor	Evaluation Cost (cost x factor)
January 1, 2021 – December 31, 2022			
Financial Administration	\$ _____ per Member/per month *	120,000	
Supports Brokerage	\$ _____ per Member/per month *	120,000	
Set-Up for New Consumer Direction Participant	\$ _____ per Member	2,000	
Set-Up for New Consumer Directed Worker	\$ _____ per Worker	9,000	
<p>*The Per Member per Month (PMPM) payment shall be based only on Participants enrolled in Consumer Direction of HCBS, defined as the number of CHOICES or ECF CHOICES Members with an active authorization for Consumer Direction services who are receiving Consumer-Directed services, or the number of SDWP Persons Supported with an active authorization for Self-Direction services who are receiving Self-Directed services.</p> <p>The set-up fee covers all applicable costs for processing paperwork, completing training, etc., for new CHOICES Members (including persons specified by TennCare who are not enrolled in CHOICES, but who may qualify for CHOICES only through receipt of Consumer-Directed services), ECF CHOICES Members, Persons Supported, Representatives and their identified Workers, including background checks. These fees may be billed only upon completion of all tasks associated with Participant or Worker enrollment, and shall not be billed when a Participant withdraws from Consumer Direction or Self Direction prior to completion of these tasks, and/or when a Worker decides not to proceed with employment prior to completion of these tasks, or is determined to not qualify for employment. Except for lapses in employment of a Worker, which warrant a new background check as specified in Section A. 28 above, the fee shall be applicable only once per lifetime for each Participant/Representative, and/or Worker, even if the Worker is employed by multiple Participants/Representatives and regardless of any lapses in the Participant's participation in Consumer Direction or Self Direction. Set-up fees for New Consumer Direction or Self-Direction Referral and for New Workers shall not be paid to the Contractor for Participants already enrolled in Consumer Direction or Self-Direction and transitioned to the Contractor at implementation of this Contract, or for the Workers already employed to provide services.</p>			
<p style="text-align: center;">EVALUATION COST AMOUNT (sum of evaluation costs above):</p> <p>The Solicitation Coordinator will use this sum and the formula below to calculate the Cost Proposal Score. Numbers rounded to two (2) places to the right of the decimal point will be standard for calculations.</p>			
<p>lowest evaluation cost amount from <u>all</u> proposals</p> <hr style="width: 50%; margin-left: 0;"/> <p>evaluation cost amount being evaluated</p>			<p style="text-align: center;">x 30 (maximum section score) = SCORE:</p>
<p><i>State Use – Solicitation Coordinator Signature, Printed Name & Date:</i></p>			

REFERENCE QUESTIONNAIRE

The standard reference questionnaire provided on the following pages of this attachment MUST be completed by all individuals offering a reference for the Respondent.

The Respondent will be solely responsible for obtaining completed reference questionnaires as required (refer to RFP Attachment 6.2., Technical Response & Evaluation Guide, Section B, Item B.17.), and for enclosing the sealed reference envelopes within the Respondent's Technical Response.

RFP # 31865-00477 REFERENCE QUESTIONNAIRE

REFERENCE SUBJECT: RESPONDENT NAME (completed by Respondent before reference is requested)

The “reference subject” specified above, intends to submit a response to the State of Tennessee in response to the Request for Proposals (RFP) indicated. As a part of such response, the reference subject must include a number of completed and sealed reference questionnaires (using this form).

Each individual responding to this reference questionnaire is asked to follow these instructions:

- complete this questionnaire (either using the form provided or an exact duplicate of this document);
 - sign and date the completed questionnaire;
 - seal the completed, signed, and dated questionnaire in a new standard #10 envelope;
 - sign in ink across the sealed portion of the envelope; and
 - return the sealed envelope containing the completed questionnaire directly to the reference subject.
-

(1) What is the name of the individual, company, organization, or entity responding to this reference questionnaire? If individual, please include the company, organization, or entity represented, if applicable.

(2) Please provide the following information about the individual completing this reference questionnaire on behalf of the above-named individual, company, organization, or entity.

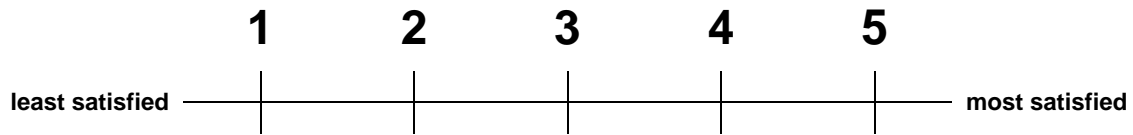
NAME:	
TITLE:	
TELEPHONE #	
E-MAIL ADDRESS:	

(3) What services does/did the reference subject provide to your company or organization? If fiscal employer agent services, please specify financial administration and/or supports brokerage functions, as applicable. Also specify the program funding source (e.g., Medicaid, state funded, grant, etc.), the service delivery system model (e.g., fee-for-service or managed care), and whether an electronic visit verification system was used by consumer-directed workers.

(4) Specify the dates during which the reference subject provided these services. Was the contract ever renewed or extended? If not, why?

(5) What is the level of your overall satisfaction with the reference subject as a vendor of the services described above?

Please respond by circling the appropriate number on the scale below.



RFP # 31865-00476 REFERENCE QUESTIONNAIRE — PAGE 2

If you circled 3 or less above, what could the reference subject have done to improve that rating?

- (6) If the services that the reference subject provided to your company or organization are completed, were the services provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.**

- (7) If the reference subject is still providing services to your company or organization, are these services being provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.**

- (8) How satisfied are you with the reference subject's ability to perform based on your expectations and according to the contractual arrangements?**

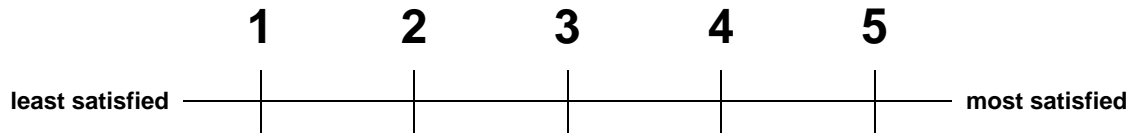
- (9) In what areas of service delivery does/did the reference subject excel?**

- (10) If reference subject was contracted to provide fiscal employer services, please specify the target populations served by the reference subject, and the number of persons in each population.**

- (11) In what areas of service delivery does/did the reference subject fall short? Were liquidated damages or monetary sanctions ever assessed due to poor performance, non-performance, or missed deadlines?**

(12) **What is the level of your satisfaction with the reference subject's project management structures, processes, and personnel?**

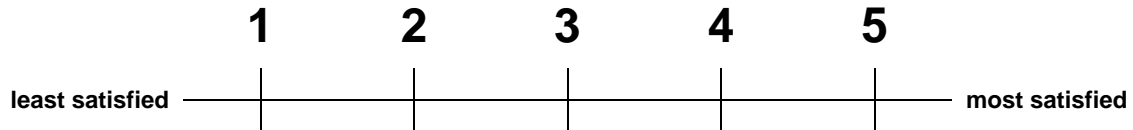
Please respond by circling the appropriate number on the scale below.



What, if any, comments do you have regarding the score selected above?

- (13) Considering the staff assigned by the reference subject to deliver the services described in response to question 3 above, how satisfied are you with the technical abilities, professionalism, and interpersonal skills of the individuals assigned?

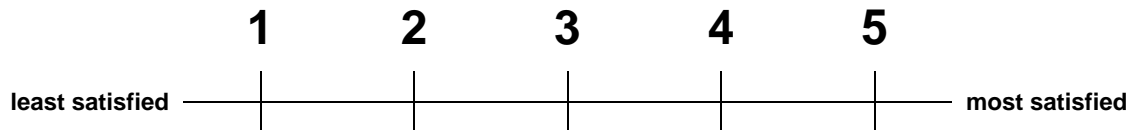
Please respond by circling the appropriate number on the scale below.



What, if any, comments do you have regarding the score selected above?

- (14) Would you contract again with the reference subject for the same or similar services?

Please respond by circling the appropriate number on the scale below.



What, if any, comments do you have regarding the score selected above?

REFERENCE SIGNATURE:

(by the individual completing this request for reference information)

_____ (must be the same as the signature across the envelope seal)

DATE:

SCORE SUMMARY MATRIX

	<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>		<i>RESPONDENT NAME</i>	
GENERAL QUALIFICATIONS & EXPERIENCE (maximum: 30)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE:		AVERAGE:		AVERAGE:	
TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH (maximum: 40)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	AVERAGE:		AVERAGE:		AVERAGE:	
COST PROPOSAL (maximum: 30)	SCORE:		SCORE:		SCORE:	
TOTAL RESPONSE EVALUATION SCORE: (maximum: 100)						

Solicitation Coordinator Signature, Printed Name & Date:

RFP # 31865-00477 *PRO FORMA* CONTRACT

The *Pro Forma* Contract detailed in following pages of this exhibit contains some “blanks” (signified by descriptions in capital letters) that will be completed with appropriate information in the final contract resulting from the RFP.

CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE
AND
CONTRACTOR NAME

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration (HCFA), Bureau of TennCare, ("State," "HCFA" or "TennCare") and **Contractor Legal Entity Name** ("Contractor"), is for the performance of Financial Administration and Supports Brokerage functions for Consumer Direction of Home and Community Based Services (HCBS) relevant to TennCare home and community based services provided across Medicaid programs and authorities, including the TennCare CHOICES in Long-Term Services and Supports Program (CHOICES) and the Employment and Community First CHOICES Program (ECF CHOICES), and Self-Direction of HCBS for Persons Supported in the Section 1915(c) HCBS Self-Determination Waiver Program (SDWP), as further defined in the "SCOPE." The State and the Contractor may be referred to individually as a "Party" or collectively as the "Parties" to this Contract.

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 Place of Incorporation or Organization: **Location**

Contractor Edison Registration ID # **Number**

A. SCOPE:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract. Attachment A contains definitions relevant to this Contract.
- A.2. For purposes of this Contract, when the term Participant is used, the provision applies to all individuals who Consumer Direct or Self-Direct, as applicable, in CHOICES, ECF CHOICES, and SDWP. When the term Member is used, the provision applies only to individuals who Consumer-Direct in CHOICES and ECF CHOICES. When the term Person Supported is used, the provision applies only to individuals who Self-Direct in the SDWP. When the term CHOICES Member or ECF CHOICES Member is used, the provision only applies to individuals in that particular program who Consumer Direct. In the absence of one of the preceding terms associated with a provision, the provision shall by default apply to all Participants, unless otherwise specified in writing by TennCare or The Tennessee Department of Intellectual and Developmental Disabilities (DIDD), as applicable. DIDD is the operating entity for the 1915c self-determination waiver pursuant to the interdepartmental agreement between TennCare and DIDD. Whenever any of these terms is used in this Contract it shall have the meaning as defined in Attachment A to this Contract.
- A.3. The Contractor shall perform the Financial Administration and Supports Brokerage functions for Consumer Direction and Self-Direction, as applicable, for Participants assessed by a Managed Care Organization (MCO) or DIDD, as applicable, to need Eligible CHOICES, ECF CHOICES, or SDWP HCBS, as applicable, and who choose to participate in Consumer Direction or Self-Direction, as applicable, for some or all needed eligible HCBS. Such functions for Participants shall include, but are not limited to:
- a. Participant/Representative education on Consumer Direction or Self Direction;
 - b. Training and enrollment into Consumer Direction or Self Direction;
 - c. Providing assistance in developing initial Back-up Plans;
 - d. Assistance in executing Service Agreements;
 - e. Assistance with Worker enrollment;
 - f. Assistance with Worker background checks; and

g. Assistance training Workers.

The Contractor shall not initiate Consumer Direction or Self-Direction, as applicable, until the Participant is enrolled in CHOICES, ECF CHOICES, or the SDWP, and in accordance with the terms set forth in this Contract and the TennCare Rules.

- A.4. In addition, the Contractor shall process referrals for persons specified by TennCare who are not yet enrolled in CHOICES or ECF CHOICES, but who may qualify for CHOICES or ECF CHOICES only through receipt of Consumer-Directed services, and shall perform functions necessary to facilitate such participation should the person ultimately be enrolled in CHOICES or ECF CHOICES and in Consumer Direction of Eligible CHOICES or ECF CHOICES HCBS.
- A.5. The Contractor shall provide the Financial Administration and Supports Brokerage functions for Participants who Consumer Direct or Self-Direct their HCBS.
- a. Financial Administration functions are functions related to the performance of payroll, employer taxes, and related tasks, which, for Persons Supported, include procedures for approving payment for services and obtaining necessary payroll and employment information.
 - b. Supports Brokerage functions are certain functions that assist a Participant/Representative with non-payroll-related employer tasks such as Consumer Direction or Self-Direction enrollment, hiring paperwork, and recruiting and training Workers.
 - c. Except as provided in Section A.4 pertaining to persons specified by TennCare who are not yet enrolled in CHOICES or ECF CHOICES, but who may qualify for CHOICES or ECF CHOICES only through receipt of Consumer-Directed services, the Contractor's Financial Administration and Supports Brokerage functions are available only to Participants who qualify for receipt of Consumer Directed or Self-Directed services. The use of the Contractor's Financial Administration and Supports Brokerage functions shall be mandatory for all Participants.
 - d. The Contractor shall maintain a physical office in Metropolitan-Davidson County, Tennessee, or a county contiguous to Metropolitan-Davidson County. All staff (employed or subcontracted) providing Supports Brokerage functions, including the Account Manager, a SDWP Project Lead, a CHOICES Project Lead, an ECF CHOICES Project Lead, and Support Brokerage Lead, shall be physically located within the State of Tennessee and be solely dedicated to the CHOICES, ECF CHOICES, and/or SDWP programs. While a single staff member may simultaneously perform the CHOICES, ECF CHOICES, and SDWP Project Lead functions (collectively referred to as the "Project Lead Functions"), the Contractor shall provide a minimum of three (3) separate staff members to perform the following duties: (i) Support Brokerage Lead, (2) Account Manager, and (3) Project Lead Functions. Staff (employed or subcontracted) providing customer service and Financial Administration functions are permitted to be located outside of the State of Tennessee, as long as the Contractor remains compliant with all contractual timelines and requirements, including payment. Customer service staff shall be solely dedicated to the CHOICES, ECF CHOICES, and/or SDWP programs. In addition to the Supports Brokerage staff identified above, the Contractor shall also employ at least one (1) Financial Administration Lead, whose responsibilities are specific to Financial Administration functions performed under this Contract, and who does not perform any Supports Brokerage duties.
- A.6. The Contractor's operating systems shall have the ability to implement the model of Consumer Direction or Self-Direction currently employed in CHOICES, ECF CHOICES, and the SDWP (including employer authority, budget authority, and modified budget authority), and the

flexibility to transition from an employer authority model to a budget authority or modified budget authority model if necessary to meet programmatic change requirements within timeframes specified by the State.

Federal and State Approval to be a Fiscal Employer Agent

- A.7. Before the Contractor may begin performing Financial Administration and Supports Brokerage functions as specified in this Contract, the Contractor shall have received federal and State approval to be the Fiscal Employer Agent (FEA) for that Participant. This shall include the following tasks and any others required by federal or State law or policy:
- a. File a Form SS-4 in order to obtain a separate Federal Employer Identification Number (FEIN) from the Internal Revenue Service (IRS) for the sole purpose of withholding, filing, and depositing certain federal employment tax forms and making federal tax payments. This FEIN should only be used for processing wages and federal forms and taxes for the individual employers (Participants or their Representatives, if applicable) it represents as the agent. The FEIN shall not be used for processing wages and related federal forms and taxes for Workers of a parent organization or sub-entity. A reporting agent uses this separate FEIN when performing FEA services on behalf of a Participant;
 - b. Have a system in place for obtaining and retiring a separate FEIN for each Participant it represents. The Contractor shall maintain the Participant's FEIN in the Participant's file;
 - c. Have a system in place for preparing and submitting a signed IRS Form 2678: Employer Appointment of Agent for each Participant it represents and maintaining all relevant documentation (copy of IRS Form 2678, Request for Approval Letter and IRS Notification of FEA Approval) for each Participant it represents on file;
 - d. Have a system in place for revoking IRS Form 2678 for each Participant it no longer represents in accordance with IRS requirements and for maintaining the relevant documentation in each Participant's file;
 - e. Have a system in place for obtaining and revoking State power of attorney (Form LB-0927, for State income tax, unemployment tax or both, as required by the State) from each Participant it represents, and for maintaining the relevant documentation in each Participant's file; and
 - f. Have a system in place for preparing and submitting Form LB-00441 concerning the report to determine status application for employer number.

Educational and Outreach Materials

- A.8. The Contractor shall, upon request or approval from TennCare or an MCO for Members, and upon request or approval from DIDD for Persons Supported, coordinate with TennCare, the MCO, or DIDD, as applicable, to conduct outreach activities for Participants, as specified herein. The outreach activities shall be targeted to Members for whom an MCO has determined eligibility for Consumer Direction, but the individuals have not yet chosen to participate in Consumer Direction, and to Persons Supported who have been identified as interested in Self-Direction in the SDWP, but have not yet chosen to participate in Self-Direction. The Contractor's outreach activities shall focus on providing information about the Consumer Direction or Self-Direction, as applicable (e.g., how the service delivery model works, including using a Representative, roles and responsibilities, program requirements, how to enroll, assistance provided to a Participant/Representative by the Contractor, coordination between the Contractor and the MCO or DIDD, as applicable, etc.).

- a. All educational and outreach materials relating to CHOICES and ECF CHOICES Members shall be submitted to TennCare in a manner communicated in writing to the Contractor by TennCare. All educational and outreach materials relating to Persons Supported in the SDWP shall be submitted to DIDD and TennCare in a manner communicated in writing to the Contractor by DIDD or TennCare. TennCare and DIDD, as applicable, shall review the submitted educational and outreach materials and either approve or deny them within fifteen (15) calendar days from the date of submission. In the event TennCare (and DIDD, as applicable) does not approve the materials, TennCare and DIDD, as applicable, may provide written comments, and the Contractor shall resubmit the materials. No educational or outreach materials shall be utilized until receipt of written approval from TennCare and DIDD, as applicable.
 - b. Prior to modifying any approved educational or outreach materials, the Contractor shall submit for written approval by TennCare (and DIDD, as applicable) a detailed description of the proposed modification. TennCare (and DIDD, as applicable) reserve the right to notify the Contractor to discontinue or modify educational or outreach materials after approval.
- A.9. The Contractor shall ensure that all Participant materials, including educational and outreach materials, meet the following specifications:
- a. All Participant educational or outreach materials shall in Plain Language in a manner and format that may be easily understood and is readily accessible by Participants and potential Participants, unless the State approves a different standard. Articles and/or informational material included in written materials such as newsletters, brochures, etc. shall be limited to approximately 200 words for purposes of readability unless otherwise approved in writing by TennCare;
 - b. All written materials shall be clearly legible and unless otherwise directed by TennCare must be written with a minimum font size of 12pt. with the exception of member I.D. cards and certain taglines that require a minimum font size of 18 pt. Any request from the Contractor for an exception to the written materials font size requirements shall be approved in writing by TennCare prior to use;
 - c. All written materials shall be printed with the notice of non-discrimination and taglines as required by TennCare and set forth in TennCare's tagline template. In addition to any other requirements specified in this section, the Contractor may also provide required Participant materials/information electronically or on its website pursuant to the specifications set forth in section A.97 Nondiscrimination Compliance Requirement's and TennCare's tagline template, and the following requirements: (1) the material/information must be placed on the Contractor's website in a location that is prominent and readily accessible for Participants and potential Participants to link to from Contractor's home page; (2) the material/information must be provided in a format that can be electronically saved and printed; and (3) if an individual requests that the Contractor mail them a copy of the material/information, the Contractor must mail free of charge the material/information to them within five (5) days of that request. To the extent that the Contractor and its providers and/or subcontractors are using electronic and information technology to fulfill its obligations under this Contract, the entities shall comply with section A.97 Nondiscrimination Compliance Requirement's;
 - d. All Participant materials shall be translated and available in Spanish within ninety (90) calendar days of notification by TennCare or DIDD, as applicable. All Contractor's Vital Documents shall be translated and available to each Limited English Proficiency group identified by TennCare, that constitutes five percent (5%) of the TennCare population, or one-thousand (1,000) enrollees, whichever is less;

- e. All written Participant materials shall inform enrollees and potential enrollees as how to obtain materials in alternative formats and how to access oral interpretation services and that both alternative formats and interpretation services are available at no expense to the individual. This information shall be considered a Vital Document and shall be available at a minimum in the English and Spanish languages;
- f. All written Participant materials shall ensure effective communication and be made available in alternative formats at the request of the Participant, potential Participant, or their representatives in an appropriate manner that takes into consideration the special needs of Participants or potential Participants with disabilities or limited English proficiency. These alternative formats shall be free of charge to the individual. Alternative formats may include, but are not limited to: Auxiliary aids or services, such as, Braille, large print, and audio; American Sign Language interpretation, written translations, and language assistance services and shall be based on the needs of the individual. The Contractor shall have processes in place to ensure that the individual is immediately accessed by its Nondiscrimination Compliance Coordinator for the need for an alternative format material. Should the assessment determine that the provision of the alternative format is reasonable the alternative format will be made available to the individual in a timely manner, (i.e. as-soon-as practicable). The Contractor and its providers and direct service subcontractors shall be required to comply with the applicable civil rights laws in the provision of free language and communication assistance services to enrollees, potential enrollees, or their representatives; and
- g. All written Participant material shall include notice of the right to file a discrimination complaint as set forth in Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Titles II and III of the Americans with Disabilities Act of 1990, 42 U.S.C. § 18116 (codified at 45 C.F.R. pt. 92), and the Age Discrimination Act of 1975. This notice shall be considered a Vital Document and shall be available at a minimum in the English and Spanish languages.

A.10. Distribution of Participant Materials. The Contractor shall distribute Participant materials as required by this Contract. The Participant material information shall be considered to be provided to individuals if the Contractor:

- (i) Mails a printed copy of the information to the Participant's or potential Participant's mailing address;
- (ii) Provides the information by email after obtaining the Participant's or potential Participant's agreement to receive the information by email;
- (iii) Posts the information on its website and advises the Participant or potential Participant in paper or electronic form that the information is available on the Internet and includes the applicable Internet address, provided that individuals with disabilities who cannot access this information online are provided auxiliary aids and services upon request at no cost; or
- (iv) Provides the information by any other method that can reasonably be expected to result in the Participant or potential Participant receiving that information.

A.11. The Contractor shall not include the following on any written materials, including but not limited to educational materials, without the written approval of TennCare and DIDD, as applicable:

- a. The Seal of the State of Tennessee;
- b. The DIDD or TennCare name, unless the initial "SM" denoting a service mark is superscripted to the right of the name (e.g., Department of Intellectual and Developmental DisabilitiesSM); or
- c. The word "free" unless the service is at no cost to all Participants. If Participants have cost sharing or patient liability responsibilities, the service is not free. Any conditions of payments shall be clearly and conspicuously disclosed in close proximity to the "free" good or service offer.

- d. The use of phrases to encourage enrollment such as “keep your provider or benefits” implying that Participants can keep all of their providers or must enroll in order to keep or not lose benefits. Enrollees in TennCare shall not be led to think that they can continue to go to their current provider, unless that particular provider is a contract provider with the Contractor;
- e. The Contractor’s Participant materials shall not mislead, confuse, or defraud Participants or the State;
- f. The Contractor shall provide written notice to Participants of any changes in policies or procedures described in written materials previously sent to Participants. The Contractor shall provide written notice at least thirty (30) days before the effective date of the change; and
- g. The Contractor shall notify Participants when it adopts a policy to discontinue coverage of a counseling or referral service based on moral/ethical or religious objections at least thirty (30) days prior to the effective date of the policy for any particular service.

Referrals for Consumer Direction and Self-Direction

- A.12. The Contractor shall exchange program referral transmissions daily with the MCOs related to Members in a manner determined by the Contractor and MCO in the State required business agreement, and shall exchange this information with DIDD for Persons Supported in a manner prescribed by DIDD.
- A.13. The Contractor shall, within two (2) business days of receipt of a referral from an MCO, TennCare, or DIDD, assign a Supports Broker to the Participant, notify the Participant's Care Coordinator, Support Coordinator, or DIDD Case Manager, as applicable, of the assignment, and provide the name and contact information of the Supports Broker. Within five (5) calendar days of receipt of the referral, the Contractor shall contact the Participant to inform the Participant of his/her assigned Supports Broker, provide contact information for the Supports Broker, and begin the process of initiating Consumer Direction or Self-Direction, as applicable.
- A.14. The Contractor shall, upon request, assist the MCO or DIDD, as applicable, in identifying and addressing any additional risk associated with each Participant’s decision to Consumer Direct or Self-Direct, as applicable, in the risk assessment and person-centered planning processes.
- A.15. The Contractor shall assist the Participant/Representative as needed in developing the initial Back-up Plan that adequately identifies how the Participant/Representative shall address situations when a scheduled Worker is not available or fails to show up as scheduled. The Participant/Representative shall have primary responsibility for the development of the Back-up Plan. The Participant/Representative shall not elect, as part of a Back-up Plan, to go without services.
 - a. The Back-up Plan shall be integrated into the Participant’s back-up plan for services provided by contracted providers, as applicable, and the Member’s Person-Centered Support Plan (PCSP) or Person Supported’s Individual Support Plan (ISP), as applicable.
 - b. The Back-up Plan shall include the names and telephone numbers of contacts (Workers, agency staff, organizations, natural supports) for alternate care, the order in which each shall be notified, and the services to be provided by each contact. Back-up Plan contacts may include paid and unpaid supports; however, it is the responsibility of the Participant/Representative to secure paid (as well as unpaid) Back-up Plan contacts who are willing and available to serve in this capacity. MCOs and DIDD shall not be expected or required to maintain Contract Providers “on standby” to serve in a back-up capacity for services a Participant has elected to receive through Consumer Direction or Self-Direction, as applicable.

- c. All persons and/or organizations noted in the Back-up Plan shall be contacted by the Participant/Representative to determine their willingness and availability to serve as back-up contacts. For the initial Back-up Plan, the Contractor shall confirm with these persons and/or organizations their willingness and availability to provide care when needed, document confirmation in the Participant's file and forward a copy of the documentation to the MCO or DIDD, as applicable. The Care Coordinator, Support Coordinator, or DIDD Case Manager, as applicable, shall be responsible for assistance as needed with implementing the Back-up Plan and for updating and verifying the Back-up Plan on an ongoing basis.
 - d. The Contractor, MCO, and DIDD, as applicable, shall each file a copy of the Back-up Plan in the Participant's file.
- A.16. The Participant's Care Coordinator, Support Coordinator, or DIDD Case Manager, as applicable, shall develop within the PCSP or ISP and/or update the PCSP or ISP to include a separate plan to help ensure the Participant's health and safety which takes into account the Participant's decision to participate in Consumer Direction or Self-Direction, and which identifies any additional risks associated with the Participant's decision to direct his/her services, the potential consequences of such risk, as well as strategies to mitigate these risks. The Participant/Representative shall participate in the risk assessment process. Once a referral has been made to the Contractor for Consumer Direction or Self-Direction, the Participant's Supports Broker shall be involved in risk assessment and risk planning activities, as appropriate. The new or updated PCSP or ISP shall be signed by the Care Coordinator, Support Coordinator, or DIDD Case Manager, as applicable, and the Participant/Representative. The MCO or DIDD, as applicable, and Participant/Representative, and Contractor shall receive a copy of the updated PCSP or ISP.
- A.17. The Contractor shall notify the Participant's Care Coordinator, Support Coordinator, or DIDD Case Manager, as applicable, immediately if the Contractor becomes aware of changes in the Participant's needs and/or circumstances which warrant a reassessment of needs and/or risk, or changes to the PCSP or ISP, as applicable.

Service Authorization and Initiation

- A.18. To facilitate service authorization and initiation, the State shall, through DIDD Case Managers and MCOs, provide the Contractor access to Participants' ISPs and PCSPs, as applicable. Using these documents, the Contractor shall:
- a. For all Participants, ensure that Consumer-Directed or Self-Directed services begin as soon as possible, but no later than sixty (60) calendar days from the date of the referral to the Contractor by the MCO or DIDD, except due to circumstances beyond the Contractor's control, which shall be documented in writing and maintained in the Web Portal, as required in section A.45.e of this Contract. At a minimum, the documentation shall include: 1) the cause of the delay; and 2) efforts made to meet the timeframe. Such documentation shall be provided to the Member's MCO or to DIDD, as applicable, in a manner agreed upon between the Contractor and the Member's MCO or DIDD, as applicable.
 - b. If requested by the Participant/Representative, provide the required level of assistance needed to recruit, interview, and hire Workers, and;
 - c. If requested by the Participant/Representative, provide the required level of assistance needed, in developing job descriptions;
 - d. Provide updates to the Participant's MCO or to DIDD, as applicable, in the format agreed upon with the MCO or DIDD, regarding the status of completing required functions necessary to initiate Consumer Direction or Self-Direction, as applicable, including, but

not limited to, obtaining completed paperwork from the Participant/Representative, selecting Workers for each identified Consumer Directed or Self-Directed service, as applicable, completing Worker paperwork and training, and any anticipated timeframes by which qualified Workers will be secured and Consumer Directed or Self-Directed services, as applicable, may begin;

- e. Once potential Workers are identified, verify that a potential Worker meets all applicable qualifications, which includes but is not limited to, in relation to Members, confirming that the potential Worker is not a family member prohibited by TennCare Rules from providing services, and does not reside (or has not resided) with the Member as specified in TennCare Rules, and that any potential Worker for a Person Supported is not excluded based on laws and rules applicable to these programs;
- f. Ensure that a Service Agreement, using the template approved by TennCare, is signed between the Participant/Representative and his/her Worker within five (5) business days following the Contractor's verification that a Worker meets all qualifications, except due to circumstances beyond the Contractor's control, which shall be documented in writing and maintained in the Contractor's files;
- g. Ensure that a Service Agreement is updated within five (5) business days anytime there is a change in any of the terms or conditions specified in the Service Agreement, including but not limited to, a change in the applicable services to be provided by a Worker, Worker pay rates, etc.;
- h. Ensure that new Representatives, if applicable, sign all Service Agreements within five (5) business days of the Contractor's notification that a Participant has a new Representative;
- i. Provide a copy of each Service Agreement to the Participant/Representative, Worker, and Member's MCO or DIDD, as applicable, and maintain a copy in the Contractor's files;
- j. Notify the Participant's MCO or notify DIDD, as applicable, within one (1) business day when all requirements have been fulfilled, including the date that the Participant is ready to begin Consumer Direction or Self-Direction, as applicable;
- k. Input the Participant/Representative's assignment of individual Workers into the Timekeeping System in accordance with the Member's PCSP and MCO's service authorization or Person Supported's ISP, as applicable. The Contractor shall ensure ongoing maintenance of daily operations of the Timekeeping System management for Workers including: 1) authorization changes; and 2) verification of time. Additionally, the Contractor shall maintain adequate staff for management of the Timekeeping System to ensure timesheets are consistent with current authorizations, timesheets are verified for each pay period and payroll is provided accurately and on time;
- l. Ensure that services provided via Consumer Direction or Self-Direction, as applicable, are not initiated until the following activities, at a minimum, are completed:
 - 1. The Contractor verifies that the Participant's enrollment (including employer) paperwork and related documentation is complete;
 - 2. The Contractor verifies that Worker(s) meet all qualifications, including completion of background/registry checks, participation in required training and completion of required paperwork;
 - 3. The Contractor secures a signed Service Agreement, specific to each Worker as applicable;
 - 4. The Contractor secures a Medicaid ID for each Worker; and
 - 5. For Members, the MCO issues to the Contractor an authorization for each service to be delivered through Consumer Direction, and for Persons Supported

DIDD issues to the Contractor an approved ISP for services to be delivered through Self-Direction; and

- m. If initiation of Consumer-Directed or Self-Directed services, as applicable does not begin within sixty (60) calendar days from the date of the referral to the Contractor by the MCO or DIDD, as applicable, the Contractor shall contact the MCO or DIDD, as applicable, regarding the cause of the delay and provide appropriate documentation to demonstrate efforts to meet the timeframe.
- A.19. The Contractor shall have a system in place for receiving and maintaining Participant-specific information received from an MCO or DIDD, as applicable, including a Member's PCSP for the authorized Consumer-Directed services or a Person Supported's ISP for authorized Self-Directed services, as applicable, via the format agreed to with the MCO or DIDD, as applicable. Additionally, the Contractor shall maintain a system and process for receiving authorization changes from the MCO and shall update the Timekeeping System to reflect such changes within the timeframe necessary to ensure Members are receiving the appropriate services, timesheets can be verified, and Workers shall be paid for authorized services provided per the established payroll schedule.
- A.20. The Contractor shall have a comprehensive information system in place to receive and disburse Consumer-Direct and Self-Directed funds and track funds disbursed. The Contractor shall only submit claims to the MCO or DIDD, as applicable, and pay Workers for those services that have been authorized by the MCO or DIDD and satisfactorily performed by Workers, as applicable.
- A.21. The Contractor shall provide a web-based interface for MCOs and DIDD and Participants/Representatives to review information on the Consumer-Directed or Self-Directed services, as applicable, authorized, performed and reimbursed.
- A.22. The Contractor, in conjunction with the MCOs and DIDD, as applicable, shall facilitate a seamless transition for Participants transitioning between: (1) MCOs; (2) Consumer Direction or Self-Direction and Contract Providers, or vice versa, as applicable; (3) Workers; or (4) CHOICES, ECF CHOICES, or the SDWP, to ensure that there are no interruptions or gaps in services for the Participant and payment to Workers remains accurate and timely.

Participant Enrollment Packet

- A.23. The Contractor shall develop and distribute an enrollment packet to each Participant. The enrollment packet shall be pre-populated with required data and made available for the MCO and DIDD, as applicable, and Participants/Representatives to access on-line; however, it shall also be available in hard copy format. The enrollment packet shall contain, at a minimum, the following:
 - a. An introductory letter;
 - b. Information about the Contractor's services and operations (e.g., roles and responsibilities of the Contractor, hours of operation, contact information, customer service toll-free number, and Complaint System);
 - c. Information regarding the role of the Supports Broker;
 - d. Federal forms that the Participant/Representative must complete, sign and return (e.g., IRS Forms SS-4, 2678, LB-00441, etc.)
 - e. Any applicable State forms the Participant/Representative must complete, sign and return;
 - f. Instructions regarding the process for completing and submitting the required forms to the Contractor; and

- g. State power of attorney form(s) as applicable.
- A.24. The Contractor shall assist the Participant/Representative, as appropriate, in completing the enrollment packet. The Contractor shall have a system in place for collecting and processing all required forms and information contained in the enrollment packet and for maintaining copies in each Participant's file. Once the Contractor has received a complete enrollment packet from the Participant/Representative, the Contractor shall process all required forms and other information required for a Participant/Representative to begin Consumer-Directing or Self-Directing services, as applicable, within three (3) business days of receipt. Sufficient copies of enrollment packet materials shall be available and provided to the State upon request.

Participant Education and Training

- A.25. The Contractor shall provide education and training activities, as specified herein, to Participants and persons specified by TennCare who are not yet enrolled in CHOICES or ECF CHOICES, but who may qualify for CHOICES or ECF CHOICES only through receipt of Consumer-Directed services. All Participant education and training materials shall meet TennCare specifications and be prior approved by TennCare
- A.26. The Contractor shall be responsible for providing or arranging for initial and ongoing training of Participants/Representatives. Ongoing training shall be provided upon request of the Participant/Representative, or if a Care Coordinator, Support Coordinator, or DIDD Case Manager, as applicable, determines that additional training is warranted. When training is not directly provided by the Contractor, the Contractor shall validate completion of training. Initial training shall be completed prior to initiation of Consumer-Directed or Self-Directed services, as applicable. At a minimum, training for Participants/Representatives shall address the following issues:
- a. Understanding the role of Participants/Representatives in Consumer Direction or Self-Direction, as applicable;
 - b. Understanding the role of the FEA, including as it relates to the Care Coordinator, Support Coordinator, or DIDD Case Manager, as applicable;
 - c. Selecting Workers;
 - d. Training, including abuse, neglect and exploitation prevention and reporting, on Critical Incidents for CHOICES Members, Reportable Events for ECF CHOICES Members, and Protection from Harm for Persons Supported;
 - e. Being an employer, evaluating Worker performance, and managing Workers;
 - f. Medicaid fraud and abuse prevention and reporting, which shall be ongoing and occur at least annually;
 - g. Training Participants on the Contractor's Timekeeping System and the role of the Participant/Representative in ensuring Workers' proper use of the Timekeeping System;
 - h. Training the Participant/Representative on the responsibility of verifying Worker's time for accurate and timely payroll;
 - i. Training the Participant/Representative on the Contractor's web portal;
 - j. Scheduling Workers and Back-up Planning;

- k. For ECF CHOICES Members, training on how to manage the delivery of each Eligible ECF CHOICES HCBS within the authorized budget for that service; and
 - l. For CHOICES Members, training on how to manage the delivery of each Eligible CHOICES HCBS within the authorized budget of hours for that service and to ensure that no Worker is working more than forty (40) hours total for the same Employer of Record, including Workers that serve more than one (1) CHOICES Member.
- A.27. The Contractor shall assist the Participant/Representative in determining to what extent the Participant/Representative shall be involved in training referenced in Section A.37 of this Contract. The Participant/Representative shall provide additional training to the Worker regarding the Participant's individualized service needs and preferences, and shall be responsible for providing additional training to Workers regarding the Self-Direction of Health Care Tasks, as applicable.

Worker Qualifications and Enrollment

- A.28. The Contractor shall ensure that Workers meet all of the requirements specified herein and in TennCare Rules and policies and DIDD Rules and policies prior to delivering Consumer-Directed or Self-Directed services, as applicable. The Contractor shall ensure that the Worker(s):
- a. Be at least eighteen (18) years of age or older;
 - b. Complete a background check, which includes a criminal background check (including fingerprinting), or, as an alternative, a background check from a licensed private investigation company, verification that the person's name does not appear on the State abuse registry, verification that the person's name does not appear on the State and national sexual offender registries, and verification that the person has not been excluded from participation in Medicare, Medicaid, SCHIP, or any federal health care programs (as defined in Section 1128B(f) of the Social Security Act as determined by appearance on the Health and Human Services Office of Inspector General (HHS-OIG) List of Excluded Individuals and Entities (LEIE), the General Services Administration (GSA) System for Award Management (SAM), the Social Security Death Master File, and other exclusion and/or other professional board databases, as applicable.). A background check is required prior to a Worker's initial employment, and not again thereafter, unless an individual ceases to be a Worker for a period of one (1) year or more, in which case such an individual would need to undergo a new criminal background check, including checks of the required registries above, before restarting as a Worker. A Participant/Representative cannot waive a background check for a potential Worker. A background check may reveal a potential Worker's past criminal conduct that may pose an unacceptable risk to the Participant. The following findings may place the Participant at risk and may disqualify a person from serving as a Worker:
 - (1) Conviction of an offense involving: physical, sexual, or emotional abuse; neglect; financial exploitation or misuse of funds; misappropriation of property; theft from any person; violence against any person; or manufacture, sale, possession or distribution of any drug; and
 - (2) Entering of a plea of nolo contendere or when a jury verdict of guilty is rendered but adjudication of guilt is withheld with respect to a crime reasonably related to the nature of the position sought or held.
 - c. Complete all required training (refer to Section A.37 of this Contract);
 - d. Complete all applicable required applications to become a TennCare or DIDD provider, as applicable;

- e. Sign an abbreviated Medicaid provider agreement;
 - f. Make application for and be assigned a Medicaid provider ID number;
 - g. Sign a Service Agreement, using the TennCare and DIDD, as applicable, approved template; and
 - h. If the Worker will be transporting the Participant, a valid driver's license and proof of insurance shall also be provided.
- A.29 If a potential Worker for a Person Supported has a criminal background, and the Person Supported/Representative wishes to hire this potential Worker, the Contractor shall submit the criminal background information to DIDD for consideration of an exemption pursuant to DIDD policy. Any such potential Worker submitted to DIDD for exemption consideration shall only begin providing services if DIDD provides prior approval of the exemption request.
- A.30. If a potential Worker for a Member has a background check that includes past criminal conduct, the Member/Representative shall review the past criminal conduct with the help of the Contractor. The Member /Representative, with the assistance of the FEA, shall consider the following factors:
- a. Whether or not the evidence gathered during the potential Worker's individualized assessment shows that the criminal conduct is related to the job in such a way that could place the Member/Representative at-risk;
 - b. The nature and gravity of the offense or conduct, such as whether the offense is related to physical or sexual or emotional abuse of another person, if the offense involves violence against another person or the manufacture, sale or distribution of drugs; and
 - c. The time that has passed since the offense or conduct and/or completion of the sentence.
- After considering the above factors and any other evidence submitted by the potential Worker, the Member/Representative shall decide whether to hire the potential Worker. If a Member/Representative decides to hire the potential Worker, the Contractor shall assist the Member/Representative in notifying the Member's MCO of this decision and shall collaborate with the MCO and amend the Member's PSCP to reflect that the Member voluntarily chose to take on the risk associated with hiring an individual with a criminal history and is solely responsible for any negative consequences stemming from that decision
- A.31 The MCO or DIDD, may, pursuant to Section A.72, with appropriate assistance from the Contractor, initiate action to involuntarily disenroll the Participant from Consumer Direction or Self-Direction if the MCO or DIDD, as applicable, determines that the Participant/Representative's decisions or actions constitute unreasonable risk such that the Participant's needs can no longer be safely and effectively met in the community while participating in Consumer Direction or Self-Direction, as applicable, including instances in which it is determined that a Worker with a criminal background poses an unacceptable risk to the Participant's health and safety.
- A.32. The Contractor shall have a system in place to process criminal background checks on prospective Workers, and for maintaining copies of the documentation in the Worker's file.
- A.33. The Contractor shall provide a copy of the Service Agreement to the Participant/Representative and Worker, and maintain a copy in the Contractor's files consistent with A.93.c record keeping requirements.
- A.34. The Contractor shall develop and produce for Workers an employment packet that shall be partially populated in advance, where appropriate, in order to assist in accurate completion, and for obtaining signatures on all relevant forms and documents (including required IRS forms). The

Contractor shall assist Workers in completing the forms (as appropriate), collect and process all required information contained in the Worker employment packet, and maintain copies in each Worker's file. The Contractor shall maintain at a minimum weekly contact with the Participant/Representative and Worker until such time that the Worker's employment packet is complete. The Contractor shall notify the Member/Representative when the Worker has completed the enrollment packet. The employment packet should include at a minimum:

- a. Form that collects Worker information (e.g. name, social security number, etc.);
 - b. U.S. Citizenship and Immigration and Naturalization Services (USCIS) Form I-9: Employment Eligibility Verification Form;
 - c. IRS Form W-4: Employee's Withholding Allowance Certificate;
 - d. Worker payroll schedule;
 - e. Notice about option for direct deposit and instructions for how to request direct deposit;
 - f. Change of address/contact form;
 - g. Information about how to receive assistance, including the Contractor's toll-free number; and
 - h. Information about the customer service and Complaint Systems.
- A.35. For Participants, the Contractor shall develop a process to request and receive from Worker Medicaid provider ID numbers from TennCare, using the TennCare prescribed format, and shall include Medicaid provider ID numbers on all submitted claims.
- A.36. The Contractor shall conduct monthly screenings of the U.S. Department of Health and Human Services-Office of Inspector General List of Excluded Individuals and Entities and General Services Administration System for Award Management databases, the Social Security Death Master File, and other exclusion and professional board databases as applicable, to determine if Workers have been excluded from participation in Medicare, Medicaid, SCHIP, or any Federal health care programs (as defined in Section 1128B(f) of the Social Security Act) and not employ or contract with an individual or entity that has been excluded. If a Worker has been excluded, the Contractor shall notify the Participant/Representative regarding the Worker's status and work with the Participant/Representative to find a replacement Worker. The Contractor shall also notify the MCO or DIDD, as applicable, regarding the Worker status.
- A.37. The Contractor's Supports Brokers shall be responsible for providing or arranging for initial and ongoing training of all Workers, except that Participants shall be responsible for training the Worker(s) regarding individualized service needs and preferences of the Participant, and shall be responsible for providing additional training to Workers regarding the Self-Direction of Health Care Tasks, as applicable. The Contractor shall verify to TennCare or DIDD, as applicable, that Workers have successfully completed training prior to service initiation and payment. When training is not directly provided by the Contractor, the Contractor shall validate completion of training. Initial training shall be completed prior to initiation of services and payment for services. At a minimum, training provided by the Contractor shall consist of the following required elements:
- a. Overview of Consumer Direction in CHOICES or ECF CHOICES, or Self-Direction in SDWP, as applicable, including additional training on Self-Direction of Health Care Tasks and the Participant/Representative's responsibility for training and oversight of Workers performing Self-Direction of Health Care Task;

- b. Providing services and supports to elderly and disabled populations, including individuals with intellectual and developmental disabilities;
 - c. Training, including abuse, neglect and exploitation prevention and reporting, on identifying and reporting concerning Critical Incidents for CHOICES Members, Reportable Events for ECF CHOICES Members, and Protection from Harm for Persons Supported;
 - d. Training on Cardiopulmonary Resuscitation (CPR) and first aid certification;
 - e. Training on universal precautions, blood borne pathogens, infection control, medication, and chronic diseases;
 - f. Training on Medicaid fraud and abuse identification and reporting, which shall be ongoing and occur at least annually;
 - g. Training on Submission of required documentation and withholdings;
 - h. Use of Timekeeping System;
 - i. Use of the Contractor's web portal for payment;
 - j. Person-Centered Practices; and
 - k. Employment and community integration.
- A.38. The Contractor shall verify that Workers have successfully completed CPR and first aid certification and all required training prior to service initiation and payment for services. The Contractor shall also ensure that Workers maintain CPR and first aid certification and receive required refresher training as a condition of continued employment. The Contractor shall develop and maintain a process for notifying the Participant/Representative, the Worker, and the Member's MCO or DIDD, as applicable, of an expiring CPR and/or first aid certification a minimum of ninety (90) calendar days prior to the expiration date and shall continue to track and notify the Participant/Representative and Worker until the new certification is obtained.
- A.39. Additional training components may be provided by the Supports Broker to a Worker to address issues identified by the Care Coordinator, Support Coordinator, or DIDD Case Manager, as applicable, or by the Participant/Representative, or at the request of the Worker. Refresher training may be provided more frequently if determined necessary by the Contractor, Care Coordinator, Support Coordinator, or DIDD Case Manager, as applicable, or by the Participant/Representative or at the request of the Worker.

Supports Brokerage Functions

Support Brokerage Functions for Members in CHOICES or ECF CHOICES

- A.40. The Contractor shall provide directly, or through a subcontractor, Supports Brokerage functions. The Contractor shall assign a Supports Broker to each Member, and ensure that each Supports Broker provides the following services to each Member:
- a. Collaborate with the Member's Care Coordinator or Support Coordinator, as applicable;
 - b. Within ten (10) business days of being assigned to a Member, conduct a face-to-face visit with that Member, unless the Member/Representative requests a meeting outside of this timeframe;

- c. Submit a completed enrollment packet to the Contractor within one (1) business day of completing the face-to-face visit with the Member;
 - d. Participate in development of the Member's PCSP, including the risk assessment process as appropriate and if requested by the Care Coordinator or Support Coordinator or Member/Representative;
 - e. Assist the Member/Representative, if requested, in developing (as part of the on boarding process for new Workers) a schedule for the Member's Workers that comports with the schedule at which services are needed by the Member as reflected in the PCSP;
 - f. Assist the Member in developing the initial Back-up Plan in accordance with the requirement in Section A.15 of this Contract;
 - g. Assist the Member/Representative in managing and monitoring payments to Workers;
 - h. Assist the Member/Representative, if requested, in identification of new Workers through tasks including but not limited to helping drafting job descriptions and working with Members/Representatives to determine necessary Worker skills specific to Members;
 - i. Train new Workers pursuant to Contract Section A.37, and assist with training refreshers as needed;
 - j. Provide intensive, hands-on assistance to the Member/Representative and their Workers in completing all required Consumer Direction paperwork. Such assistance shall include but not be limited to making weekly phone calls to the Member/Representative and/or Worker, as applicable, if completed paperwork is not received and is preventing the initiation of services. Such calls shall begin five (5) business days from the Contractor's submission of the paperwork to the Member/Representative and/or Worker, and shall continue until all required paperwork is completed or the Member or Worker are no longer involved in Consumer Direction;
 - k. Assist the Member/Representative with training in a manner that meets the service authorization and initiation timelines specified in this Contract in Section A.18, and meets the requirements for training the Member/Representative provided in Section A.26 of this Contract;
 - l. When it is necessary for a Member to employ new or additional Workers, the Supports Broker shall assist with the completion of all required employment paperwork and provide all required training to the Worker in accordance with Section A.37 of this Contract; and
 - m. If a Participant transitions between the CHOICES, ECF CHOICES or SDWP, the Supports Broker shall track the Participant across all applicable programs as necessary to assist the Participant with the transition and ensure: 1) there are no interruptions or gaps in services for the Participant; 2) Workers also transition efficiently across the programs (the one the Participant is transitioning from and the one the Participant is transitioning to); and 3) payment to Workers remains accurate and timely.
- A.41. The Contractor shall provide access for Supports Brokers to the Contractor's financial management system for review of Member transactions, ensure that an adequate number of Supports Brokers are available and that sufficient Supports Broker-to-Member ratios are maintained to complete the enrollment process of Members and Workers in a timely manner, and to meet all requirements specified in this Contract. The Contractor shall monitor and adjust Support Broker ratios as necessary to ensure that Supports Brokers are able to meet the requirements of this Contract.

Support Brokerage Functions for Persons Supported

A.42. The Contractor shall provide directly, or through a subcontractor, Supports Brokerage functions. The Contractor shall assign a Supports Broker to each Person Supported referred by DIDD for Self-Direction and ensure that each Supports Broker provides the following to Persons Supported:

- a. Facilitate the linkage between the Person Supported/Representative, Workers, and the Contractor;
- b. Maintain contact with the Person Supported/Representative to ensure that needed services are being provided;
- c. Participate in development of the Person Supported's ISP and the risk assessment if requested by the Person Supported.
- d. Review voluntary/involuntary procedures of leaving the SDWP with the Person Supported;
- e. Work closely with the Contractor to troubleshoot payroll issues;
- f. Assist Persons Supported/Representatives in identifying back-up supports;
- g. Conduct monthly voice-to-voice contact calls, and open enrollment/family sessions and document the type of contact and concerns discussed;
- h. Conduct semi-annual in-person visits; at least one (1) of which has to be in the home;
- i. Ensure all services and items outlined in the ISP remain within SDWP parameters, service maximums, and waiver limits established by DIDD;
- j. Work with DIDD Case Manager to calculate the budget allotment for the ISP;
- k. Collaborate with the DIDD Case Manager and the Contractor regarding Person Supported/Representative concerns, missing documentation, calculate budget allotments and review ISPs for errors that may delay payment or interruption of services;
- l. Report any instances of abuse, neglect, exploitation to DIDD and review regulations with Person Supported/Representative and provider during an investigation;
- m. Assist in accessing community resources such as aid in obtaining conservatorship, provider trainings, certification courses, social security limits, and human service agencies for financial, recreational and leisure assistance;
- n. Furnish program binder, which is reviewed at each home visit for daily notes, under-utilization forms, and individual specific training;
- o. Assist in compliance with audit requests from TennCare, DIDD, and other State entities;
- p. Stay up-to-date on changes in Self-Direction, SDWP, DIDD administration, and the DIDD Provider Manual;
- q. Identify problem areas for those Persons Supported who are not successful at Self-Direction. Work with the DIDD Case Manager on how to support the Persons Supported's family or Representative to become successful;
- r. Assist Persons Supported with bilingual services/translation services, culturally diverse and hearing/sight impaired services; and

- s. Train new Workers pursuant to Section A.37, and assist with training refreshers as needed.
- A.43. The Contractor shall provide access for Supports Brokers to the Contractor's financial management system for review of Person Supported transactions; ensure that an adequate number of Supports Brokers are available and that sufficient Supports Broker-to-Person Supported ratios are maintained to address the needs of Persons Supported and to meet all requirements specified in this Contract. Support Broker ratios shall be monitored and ratios adjusted as necessary to ensure that Supports Brokers are able to meet the requirements of this Contract and address Persons Supported needs.
- A.44. Supports Broker caseloads for Persons Supported shall not exceed a 50:1 ratio.

Monitoring and Oversight

- A.45. The Contractor shall:
- a. Develop and monitor a web-based Timekeeping System that is capable of tracking service utilization for each individual Participant. The web-based Timekeeping System shall allow each Participant/Representative to access their usage and remaining hours or dollars as applicable. The service utilization and remaining hours or dollars, as applicable, shall reflect the status of the Participant's utilization at the point in time it is accessed by the Participant/Representative.
 - b. Monitor assignment of Workers by the Participant/Representative, including the Contractor's entry of such assignment into the Timekeeping System, to ensure service utilization in accordance with the units or monthly or annual budget, as applicable, of Consumer-Directed or Self-Directed services specified in the PCSP or ISP, as applicable, and in the service authorization, and notify the Member's Care Coordinator or Support Coordinator, or Person Supported's Case Manager, as applicable, when a Participant's needs have changed;
 - c. Monitor service utilization and Worker payments and ensure that the web portal, outlined in Contract Section A.45.e below, actively reflects the service utilization for a Participant;
 - d. Monitor to ensure compliance with the Fair Labor Standards Act and all other applicable federal and state laws and regulations, as well as TennCare and DIDD policies and/or protocols, regarding Worker compensation, overtime, and overtime pay, including services delivered in a back-up capacity. The Contractor shall work with the Participant/Representative, as appropriate to support the Participant/Representative in developing an adequate supply of reliable Workers;
 - e. Provide a web portal for MCOs and DIDD to review and monitor Participant status at any time;
 - f. Establish and maintain a system for tracking and monitoring information, including, but not limited to:
 1. Adherence to timeframes for initiation of services;
 2. Name of Care Coordinator, Support Coordinator, DIDD Case Manager, as applicable, and their contact information;
 3. Authorizations for Consumer Direction and Self-Direction, as applicable;
 4. Supports Broker visits and outcomes;
 5. Results of monitoring activities;
 6. Service Agreements;
 7. Supports Broker assignments;

- 8. Notification to the MCO or DIDD, as applicable of Supports Broker assignment;
 - 9. Information received from and transmitted to an MCO or DIDD, as applicable; and
 - 10. Service utilization;
- g. As requested by the Care Coordinator, Support Coordinator, or DIDD Case Manager, as applicable, or the Participant/Representative, assist the Participant/Representative in monitoring and evaluating the performance of Workers;
 - h. Assist the Participant/Representative in managing and monitoring payments to Workers;
 - i. Ensure that new Representatives sign Service Agreements within five (5) business days of the Contractor's notification that a Participant has a new Representative;
 - j. Communicate with the MCOs or DIDD, as applicable, any concerns regarding Participant health, safety, and welfare, and/or change in condition, and concerns regarding Workers; and
 - k. Within three (3) business days of becoming aware, notify the MCO or DIDD, as applicable, of changes to Representative contact information.
- A.46. For Persons Supported, the Contractor shall conduct a semi-annual face-to-face visit in the Person Supported's place of residence and conduct at least monthly phone contacts. These visits and contacts shall supplement and not supplant the minimum DIDD Case Manager contacts. The Contractor shall document the dates of each visit, the purpose and outcome in the Person Supported's files and the Contractor shall use these visits to monitor the quality of service delivery including, at a minimum: Identifying any service delivery issues regarding services being Self-Directed; and Determining the adequacy and appropriateness of documentation of service delivery.
- A.47. For Members, the Contractor shall track the number of hours each Worker works for Members in CHOICES and ECF CHOICES per work week, as the term *work week* is defined in the Service Agreement. In CHOICES, the Contractor shall ensure that no Worker is working more than forty (40) hours total for the Member. If the Contractor determines that a Worker has exceeded such hours, the Contractor shall be responsible for ensuring that the Worker is paid any overtime pay owed at time and a half by the Member, or if necessary, by the Contractor and the Contractor shall notify the Member/Representative to discuss hours with the Worker. If a Worker repeatedly exceeds forty (40) hours per work week, the Contractor shall assess the appropriateness of that Member's continued participation in Consumer Direction. In ECF CHOICES, a Member's Worker(s) may provide services in excess of forty (40) hours per work week, if such services are provided in accordance with the Member's PCSP and Consumer Direction budget and conditions specified in the Contractor Risk Agreement regarding the authorization of these Consumer-Directed services are met. If services meeting these criteria are provided in excess of forty (40) hours per work week, the Contractor shall ensure that any hours worked in excess of forty (40) hours per work week are paid at time and a half, and deducted from the available funds in the Member's budget.
- A.48. For Persons Supported with family members serving as Workers, the Contractor shall track the number of hours per week such Workers provide services, and shall ensure that no such Worker is working more than forty (40) hours total per week. If a Worker for a Person Supported works more than forty (40) hours total per week, the Contractor shall be responsible for ensuring that the Worker is paid any overtime pay owed at time and a half, by the Person Supported, or if necessary, by the Contractor, and shall notify the Person Supported/Representative to discuss hours with the Worker.

- A.49. The Contractor shall, at a minimum, conduct quarterly reports of expenditures for each Participant and monthly reviews and reports of hours billed for services across all Participants, by each Worker.
- A.50. The Contractor shall establish and maintain a Complaint System for responding to and tracking complaints from Participants/Representatives and Workers regarding the Contractor. For the purpose of this Section, complaint shall mean any verbal or written notice to the Contractor regarding dissatisfaction with any action taken by the Contractor or the Contractor's staff. In response to a complaint, the Contractor shall:
- a. Within five (5) business days of receipt of the complaint, provide written notice to the Participant that the complaint has been received and the expected date of resolution. However, if the Contractor resolved the complaint and verbally informed the Participant of the resolution within five (5) business days of receipt of the complaint, the Contractor shall not be required to provide written acknowledgement of the complaint. All responses to complaints, both verbal and written shall be documented in the Complaint System, regardless of whether written notice acknowledging receipt of the complaint to the Participant was required;
 - b. Resolve and notify the Participant/Representative in writing of the resolution of each complaint as expeditiously as possible, but no later than thirty (30) days from the date the complaint is received by the Contractor. The notice shall include the resolution and the basis for the resolution. However, if the Contractor resolved the complaint and verbally informed the Participant/Representative of the resolution within five (5) business days of receipt of the complaint, the Contractor shall not be required to provide written notice of resolution. All responses to complaints, both verbal and written shall be documented in the Complaint System, regardless of whether written notice acknowledging receipt of the complaint to the Participant was required;
 - c. Assist Participants with the complaint process, including but not limited to completing forms; and
 - d. Track any trends and patterns in verbal or written complaints received by the Contractor, which shall be reported to TennCare and DIDD quarterly as specified in Section A.71(d) of this Contract.
- A.51. The Contractor shall identify and report, as appropriate, potential instances of Medicaid fraud and abuse. The Contractor shall report all tips of confirmed or suspected fraud and abuse, by the Contractor's Staff, including Supports Brokers, whether employed or contracted, Participant/Representative or the Workers, to the TennCare Office of Program Integrity (OPI) and the MCO or DIDD on the 1st and 15th of each month.
- A.52. The Contractor shall develop and implement a fraud and abuse compliance plan for ensuring protections against actual or potential fraud and abuse. The detailed fraud and abuse compliance plan shall define how the Contractor will adequately identify and report suspected fraud and abuse by Participants/Representatives, Workers, and employees. An electronic copy of the plan shall be provided to OPI within ninety (90) calendar days of Contract execution and annually thereafter. TennCare shall provide notice of approval, denial, or modification of the fraud and abuse compliance plan to the Contractor within thirty (30) calendar days of receipt. The Contractor's fraud and abuse compliance plan shall address, at a minimum, the following requirements:
- a. Written Policies and Procedures. The Contractor shall develop written policies, procedures, and standards of conduct that articulate the Contractor's commitment to comply with all applicable federal and state standards for the identification and reporting of incidents of potential fraud and abuse by Participants/Representatives, Workers, and the Contractor and its employees.

- b. Training and Education. The Contractor shall establish effective program integrity training and education for Participants/Representatives, Workers, and employees.
 - c. Effective Lines of Communication. The Contractor shall establish effective lines of communication with its Participants/Representatives, Workers, and employees to ensure compliance with program integrity standards.
 - d. Well-Publicized Disciplinary Guidelines. The Contractor shall enforce program integrity standards through well-publicized disciplinary guidelines.
 - e. Process for Reporting Potential or Actual Fraud and Abuse. The Contractor shall provide information and a procedure for Participants/Representatives, Workers, and employees to report incidents of potential or actual fraud and abuse to the Contractor and to TennCare, in a manner and format required by TennCare.
 - f. Development of Corrective Action Initiatives. The Contractor's fraud and abuse compliance plan shall include provisions for corrective action initiatives.
 - g. Cooperation with Fraud and Abuse Investigations. The Contractor's fraud and abuse compliance plan shall include provisions for cooperating with all fraud and abuse investigation efforts by the MCOs, TennCare, and/or other state and federal offices.
- A.53. The Contractor shall report any concerns regarding health, safety and welfare and the Participant's ability to participate in Consumer Direction or Self-Direction, as applicable, to the MCO or DIDD, as applicable, as well as concerns regarding Representatives.
- A.54. On an annual basis, the Contractor shall conduct a survey of Participants/ Representatives to determine satisfaction with the Contractor and participation in Consumer Direction or Self-Direction, as applicable. These survey responses shall represent a statistically valid sample size as specified by TennCare of the existing Participants enrolled in Consumer Direction or Self-Direction, as applicable. The survey instrument shall be prior approved by TennCare. A comprehensive report of results shall be provided to TennCare, Members' MCOs, and DIDD using the TennCare-specified process and format approved by TennCare. Copies of survey results shall be provided to DIDD, Members' MCOs, and TennCare.
- A.55. The Contractor shall make available to TennCare or its representative and other authorized State and federal personnel, all records, books documents, and other evidence pertaining to this Contract at no cost to the requesting entity, as well as appropriate administrative and/or management personnel who administer the services provided by the Contractor. The monitoring shall occur periodically during the Contract period and may include announced or unannounced visits, or both.
- A.56. The Contractor shall prepare and maintain a policies and procedures manual that describes the policies, procedures, and internal controls for all tasks related to the requirements of this Contract. The policies and procedures manual should also address how the Contractor shall stay current with federal and State tax, labor, Workers compensation insurance and program rules and regulations. The manual shall be updated at least annually and made available to TennCare upon request.
- A.57. The Contractor shall implement internal auditing processes to demonstrate compliance with requirements of this Contract and keep current with all federal and State laws and regulations related to fiscal employer agents. The Contractor shall be subject to scheduled audits by the State.

Responding to Critical Incidents and Reportable Events to Members

- A.58. The Contractor shall report all Critical Incidents occurring to CHOICES Members to the Member's MCO within twenty-four (24) hours of witnessing or discovering such incident, and shall also contact Adult Protective Services (APS) or law enforcement in accordance with State law. Critical Incidents shall include, but not be limited to, the following incidents when they occur in an HCBS delivery setting to a CHOICES Member:
- a. Any unexpected death of a CHOICES Member, regardless of whether the death occurs during the provision of HCBS;
 - b. Suspected physical or mental abuse of a CHOICES Member;
 - c. Theft against a CHOICES Member;
 - d. Financial exploitation of a CHOICES Member;
 - e. Severe injury sustained by a CHOICES Member;
 - f. Medication error involving a CHOICES Member;
 - g. Sexual abuse and/or suspected abuse and neglect of a CHOICES Member; and
 - h. Abuse and neglect and/or suspected abuse and neglect of a CHOICES Member.
- A.59. The Contractor shall report all Reportable Events, as those events are specified in the Contractor Risk Agreement, occurring to ECF CHOICES Members to DIDD and/or the Member's MCO within the timeframes specified within the Contractor Risk Agreement upon witnessing or discovering such events, and shall also report such events to APS, Child Protective Services (CPS), or law enforcement in accordance with State law.
- A.60. The notification of a Critical Incident or Reportable Event, as applicable, to a Member's MCO or DIDD, as applicable, shall be completed in accordance with TennCare protocol.
- A.61. The Contractor shall respond to allegations of Critical Incidents and Reportable Events after reporting as follows:
- a. If the allegation is in reference to a Worker, the Contractor shall contact the Member/Representative to determine whether the Member/Representative chooses to remove the Worker during the course of the investigation. The Contractor shall notify the Member's MCO regarding the Member/Representative's decision. If the Member needs a new Worker, the Care Coordinator or Support Coordinator, as applicable, shall support the Member/Representative, if requested in helping the Member/Representative find a suitable replacement Worker.
 - b. If the allegation is in reference to a Member's Representative, the Contractor shall contact the Member to determine whether the Member chooses to remove the Representative from his/her duties during the investigation. The Contractor shall notify the MCO regarding the Member's decision. If the Member needs a new Representative, the Care Coordinator or Support Coordinator, as applicable, shall support the Member in identifying a new Representative.
 - c. In the event a Representative of a Member who does not have decision-making capacity is alleged to have committed abuse, neglect, or exploitation against the Member, the Contractor shall immediately remove the Representative from his or her Representative capacity during the investigation. During such removal, the Member's participation in Consumer Direction shall be suspended. If the investigation concludes the allegations against the Representative are unsubstantiated, both the Member's and the Representative's participation in Consumer Direction shall be reinstated. However, if the

allegations against the Representative are substantiated, the Member's MCO, with assistance from the Contractor, as needed, shall work with the Member to identify a replacement Representative. If a replacement Representative cannot be identified within ten (10) business days from completion of the investigation, the Member shall be disenrolled from Consumer Direction.

- A.62. As the Employer of Record, the Member/Representative shall ultimately determine the appropriate corrective action(s) for the Worker, including when such actions relate to a Worker who is responsible for a Critical Incident or Reportable Event against the Member. However, the Contractor may offer recommendations and/or assistance to the Member/Representative in making the determination for corrective action, if requested by the Member/Representative. The Contractor shall report corrective actions determined by the Member/Representative to the Member's MCO.
- A.63. If Critical Incident or Reportable Event allegations are substantiated against a Representative or Worker as a result of an investigation, the Representative or Worker shall no longer be allowed to participate in CHOICES or ECF CHOICES in any capacity. Further, the Contractor shall collaborate with DIDD or TennCare, as applicable, if placement on a State abuse registry is appropriate. If the investigation is unsubstantiated, the Member/Representative may elect to retain the Worker or the Member may elect to retain the Representative. The Member's MCO, with appropriate assistance from the Contractor, shall make any updates to the PCSP, including assessed risks based on this decision, deemed necessary to help ensure the Member's health and safety.
- A.64. The Member's MCO, with appropriate assistance from the Contractor, may initiate action to involuntary disenroll the Member from Consumer Direction at any time the MCO determines that the Member/Representative's decisions or actions constitute unreasonable risk such that the Member's needs can no longer be safely and effectively met in the community while participating in Consumer Direction, including a Member/Representative's decision to retain a Worker either during or after an investigation when such Worker is alleged to have committed a Critical Incident or Reportable Event, as applicable, and retaining such a Worker poses a risk to the Member's health and safety.

Responding to Reportable Incidents for Persons Supported

- A.65. The Contractor shall follow reporting requirements outlined in the DIDD Provider Manual, including but not limited to, the requirement to contact the DIDD investigator hotline within four (4) hours of specified incidents. The Contractor shall report all incidents outlined in the DIDD Provider Manual within twenty-four (24) hours of the Contractor becoming aware of the incident, of Worker identification of reportable incidents in accordance with DIDD's incident reporting process, including the form to be used to report all incidents and reporting timeframes. Reportable incidents shall include, but may not be limited to, the following incidents when they occur in an HCBS setting in accordance with the DIDD Provider Manual:
- a. Unexpected death of a Person Supported;
 - b. Suspected physical or mental abuse of a Person Supported;
 - c. Theft or financial exploitation of a Person Supported;
 - d. Severe injury sustained by a Person Supported;
 - e. Medication error involving a Person Supported who Self-Directs medication administration; and
 - f. Sexual abuse and/or suspected abuse and neglect of a Person Supported.
- A.66. The notification of a reportable incident shall include at a minimum:
- a. The Person Supported's name;
 - b. The date the allegation was reported and/or identified;
 - c. A description of the issue;

- d. Measures taken to mitigate risk to the Person Supported; and
 - e. Whether the incident or event was reported to APS, CPS, or law enforcement, as appropriate.
- A.67. If the allegation is physical or sexual abuse in reference to a Worker or Representative, at the time that the Contractor reports the incident to DIDD, DIDD shall inform the DIDD Case Manager and Support Broker to place the Worker on administrative leave until the investigation is complete, and shall also inform the Worker and Participant/Representative of the process to ask for an exception from placing the person on administrative leave. The Contractor shall assist the Person Supported to identify a new Representative, if applicable, or the Contractor shall assist the Person Supported/Representative, if requested, to find a suitable replacement Worker, if applicable.
- A.68. The Contractor shall refer all instances of suspected abuse, neglect, or exploitation as defined in Tenn. Code Ann. § 71-6-103 to APS for investigation.
- A.69. The Supports Broker shall report to DIDD all reportable incidents identified in the DIDD Provider Manual, including incidents referred to APS, corrective actions determined by the Person Supported/Representative, and any concerns regarding the Person Supported's health and safety, including updates to the ISP.
- A.70. If the allegations are substantiated as a result of the investigation, the Representative or Worker, as applicable shall no longer be allowed to participate in the SDWP in any capacity. If the investigation is inconclusive, the Person Supported may elect to retain the Worker or Representative. A Worker shall not continue providing services for a Person Supported if the Worker is placed on any abuse registry listed in A.28.

Reporting

Reports Due to TennCare

- A.71. The Contractor shall develop and submit the following reports in the manner instructed by TennCare. The Contractor shall develop reports that are capable of sorting by selected date ranges as specified by the requestor at TennCare. Unless otherwise indicated, all reports shall include data for Participants in all programs (i.e., CHOICES, ECF CHOICES, and SDWP). Data shall be stratified by program for all reports, and shall be further stratified in individual reports as specified below.
- a. *A weekly Pre-Enrollment Referral and Enrollment Report.* For individuals not yet enrolled in CHOICES or ECF CHOICES who, without the receipt of Consumer-Directed services, may not enroll in CHOICES or ECF CHOICES, the Contractor shall work with TennCare enrollment to ensure timely and seamless transition to Consumer-Directed services. On a weekly basis, the Contractor shall submit to TennCare a report tracking the enrollment process for each prospective Member. At a minimum, the report shall include, but is not limited to:
 - 1. The Member's name;
 - 2. Date of referral;
 - 3. Supports Broker's name;
 - 4. Status of required paperwork, home visit, Back-up Plan, and training; and
 - 5. Status of Worker identification and readiness.
 - b. *A monthly Consumer Direction and Self-Direction Count Report,* due on the 1st of the month. At a minimum, the report shall include the following information, separated by program, geographic region, and MCO (if applicable):

1. The total number of active referrals for Consumer Direction and Self-Direction (i.e., anyone currently in CHOICES, ECF CHOICES, or SDWP referred to the Contractor for the initiation of Consumer-Directed or Self-Directed services, who is actively working toward, but is not yet receiving, Consumer-Directed or Self-Directed services);
 2. The total number of Participants with active authorizations for Consumer-Directed or Self-Directed services;
 3. The total number of Members with active authorizations for companion care;
 4. The total number of Participants who noted on their Service Agreement that they will be engaging in the Self-Direction of Healthcare Tasks, including the type of healthcare tasks being self-directed;
 5. The total number of Participants with eligible family members hired as Worker(s); and
 6. The total number of ECF CHOICES Members who are participating in Consumer-Directed transportation benefits, as applicable, by program.
- c. A monthly *Supports Broker Report* (electronic copy), due on the 20th of the following month (e.g., February 20th for the month of January). At a minimum, the report shall include:
1. The tenure for Supports Brokers;
 2. The Supports Broker-to-Participant ratio;
 3. The number of Participants reassigned to a different Supports Broker (broken down by those changes requested by the Participant, and those initiated by the Contractor/subcontractor); and
 4. For Members, the current status of the Member's case (i.e., new enrollment, on-going support, or turnover/transition assistance as those terms are defined immediately below).
 - i. New enrollment – those Members who are enrolling in Consumer Direction for the first time or re-enrolling after more than three hundred sixty-five (365) days out of Consumer Direction.
 - ii. On-going support – those Members who have been enrolled in Consumer Direction and have an Employer of Record and all the necessary Workers in place.
 - iii. Turnover/transition assistance – those Members who are enrolled in Consumer Direction and are experiencing a change in one or more of their Workers and/or their Employer of Record.
- d. The following quarterly reports, due on the 30th of the month following the end of each quarter (e.g., due April 30th for January - March data), using a format prescribed by TennCare:
1. *Complaint Report* by month and cumulative for the quarter, on the complaints received from Participants/Representatives, Workers, DIDD Case Managers, Care Coordinators, and Support Coordinators regarding the Contractor, and the resolution and timeframe for resolution of reported complaints. For Members, the Contractor shall stratify this data by program (i.e., CHOICES or ECF CHOICES), by MCO, and by type of issue.
 2. *Fraud and Abuse Report* by month and cumulative for the quarter, on the issues identified and tracked through the Contractor's fraud and abuse system and the resolution and timeframes for resolution of identified issues by program, including whether the Contractor took any action on fraud and abuse tips submitted during the quarter or provided any education on the incidents relating to the tips.

3. *Referral and Enrollment Report* by program that provides the following information, at a minimum, by MCO and/or TennCare or DIDD referral, as applicable, by month and cumulative for the quarter:
 - a. Total number of referrals received;
 - b. Total number of Participants enrolled in Consumer Direction or Self-Direction (defined as having an authorization in place for Consumer-Directed or Self-Directed services and services initiated);
 - c. Total number of withdrawals from Consumer Direction or Self-Direction with an indication if withdrawal occurred prior or subsequent to service initiation, and the reason of withdrawal; and
 - d. How many days transpired from Consumer Direction or Self-Direction referral by the MCO or DIDD (date of referral upload, or as otherwise defined by TennCare) to initiation of services (date of service authorization, or as otherwise defined by TennCare) for Consumer-Directed or Self-Directed Participants:
 - i. Average number of days from referral to initiation of services;
 - ii. Range of days from referral to initiation of services (least to greatest);
 - iii. Summary of the foregoing for the last four (4) quarters on every quarterly submission; and
 - iv. Listing of each Participant for whom services have not been initiated within sixty (60) days and an explanation as to why these services have not been initiated.

4. *Customer Service Report* that provides, by program, month, and cumulative for the quarter, the following information:
 - a. Number of calls received;
 - b. Average length of time on hold;
 - c. Average length of time on each call;
 - d. Number of voice messages received;
 - e. Number and percent of voice messages returned within one (1) business day;
 - f. Number of dropped calls; and
 - g. List of reasons for each call and number of calls per reason, which shall be categorized by program (i.e., CHOICES, ECF CHOICES, or SDWP, and if CHOICES or ECF CHOICES, by MCO).

5. *Participant Utilization Report* by month and cumulative for each quarter, as well as annually (cumulative for each calendar year due ninety (90) calendar days after the last day of each calendar year) that provides the following information, at a minimum:
 - a. Name and identification number of each Participant during the reporting period and indicating, if applicable, the date of withdrawal from Consumer Direction or Self-Direction;
 - b. Services authorized and rate per service for each Worker and if Worker is a family member;
 - c. Total units of each service provided and amount of payments made on each Participant's behalf;
 - d. Total authorized units or budget amount, as applicable, of each service remaining for each Participant; and

- e. Identification of Participants enrolled in Consumer Direction or Self-Direction who incur no utilization of Consumer-Directed or Self-Directed services for a period of at least thirty (30) consecutive calendar days.
6. *Tennessee Tax Liabilities Report* by month and cumulative for the quarter that provides the following information, at a minimum:
- a. Name and identification number of each Participant having a tax liability to the State of Tennessee Department of Labor; and
 - b. Accounting for any payments made by the Contractor on behalf of these Participants during the reporting period, including the amount(s) owed, the amount(s) paid, the due date for said payment(s), and the actual date of said payment(s).
7. *Participant Advocacy Group Report* quarterly that provides the following:
- a. Names of each person participating in the Contractor's Participant Advocacy Group and their respective roles (i.e., Participants currently receiving Consumer-Directed or Self-Directed services, Representative of Participant currently receiving Consumer-Directed or Self-Directed services, family member of Participant currently receiving Consumer-Directed or Self-Directed services, Worker currently providing Consumer-Directed or Self-Directed services, or advocate);
 - b. Description of date, time, and location of the most recent quarterly meeting that occurred; and
 - c. Brief narrative description of the items discussed at the meeting, including all questions and concerns discussed, including recommendations for improvement to TennCare regarding either the Consumer Direction or Self-Direction programs, who was responsible for responding to each respective inquiry or concern, how each item will be addressed, and timeframes for addressing all items raised at the meeting.
8. *A Critical Incident, Reportable Event, and Reportable Incident Report* by month and cumulative for the quarter that provides the following information, at a minimum:
- a. For CHOICES Members:
 - 1. The number of Members in Group 2 and Group 3 Consumer-Directing services; and
 - 2. The number of Critical Incidents, overall and by type of incident.
 - b. For ECF CHOICES Members:
 - 1. The number of Members in Group 4, 5, and 6 Consumer-Directing services; and
 - 2. The number of Reportable Events, overall and by Tier and type of event.

- c. For Persons Supported:
 - 1. The number of Persons Supported Self-Directing services; and
 - 2. The number of Reportable Incidents, overall and by type of incident.
- 9. An Accounts Receivable Report by month and cumulative for the quarter, that provides the following information, at a minimum:
 - a. The total number and amount of denied claims by MCO, both those that the Contractor determined were appropriately and inappropriately denied (these shall be identified separately);
 - b. Inappropriately denied claims and amounts, date of submission, reason(s) for denial with corresponding code; and the status and/or date of resolution;
 - c. Reason(s) for denial of appropriately denied claims with corresponding code, including the number of claims appropriately denied for each reason; and
 - d. Actions taken toward addressing appropriately denied claims (i.e., to minimize denied claims going forward).
 - e. Additional ad hoc reports shall be prepared and submitted as directed by TennCare within ten (10) business days from the date of the request unless otherwise specified by TennCare.

Withdrawal from Consumer Direction or Self-Direction

- A.72. In the event that the Contractor determines that a Worker is unable to deliver appropriate services and supports as prescribed in the Service Agreement and the PCSP for Members, or the Service Agreement and ISP for Persons Supported, or that a Participant is not an appropriate candidate for Consumer Direction or Self-Direction, the Contractor shall notify the Care Coordinator, Support Coordinator, or DIDD Case Manager, as applicable, regarding those concerns within one (1) business day of identifying the issue(s) as well as inform the Participant/Representative of any potential risks associated with continuing to use the Worker, and in conjunction with the MCO or DIDD, as applicable, shall:
 - a. Collaborate to develop strategies to address identified issues and concerns. Such strategies shall include, but not be limited to: Participant/Representative retraining, Worker retraining, and focused training and oversight specific to individual Participant issues identified.
 - b. If no strategies can be successfully developed and implemented to maintain a Participant's enrollment in Consumer Direction or Self-Direction, initiate involuntary disenrollment proceedings
 - c. Abide by TennCare's decision, as applicable, regarding disenrollment of a Participant from Consumer Direction or Self-Direction, as applicable. TennCare shall conduct the disenrollment process in accordance with TennCare Rules, including providing the Participant with advance notice of involuntary disenrollment or withdrawal. The notice shall include a statement of the Participant's right to request a fair hearing within thirty (30) days from receipt of the written notice regarding valid factual disputes pertaining to the decision. In the case of involuntary withdrawal from participation in Consumer Direction, if the request for a fair hearing is received prior to the date of action,

continuation of participation in Consumer Direction or Self Direction, as applicable, shall be provided, unless such continuation would pose a serious risk to the Participant's health, safety and welfare, in which case, services specified in the PCSP or ISP, as applicable shall be made available through Contract Providers pending resolution of the hearing;

- d. Facilitate a seamless transition from Workers to Contract Providers and ensure there are no interruptions or gaps in services; and
- e. For Participants who have been involuntarily withdrawn and choose to be reinstated in Consumer Direction or Self-Direction, as applicable, ensure that the issues previously identified as reasons for withdrawal have been adequately addressed prior to reinstatement. All Participants shall be required to participate in Consumer Direction or Self-Direction training programs, as applicable, prior to re-instatement.

A.73. When TennCare disenrolls a Participant from Consumer Direction or Self Direction, either voluntarily or involuntarily, the Contractor shall retire the Participant's IRS Form 2678 FEIN, and adhere to State processes including final filings of state income and unemployment taxes and retirement of Participant's state income and unemployment registration numbers.

Data Exchange and Sharing of Information

A.74. The Contractor shall have the capability to accept all relevant MCO and DIDD data files in accordance with agreed upon standards, have a comprehensive information system in place to receive and disburse funds and track funds authorized and disbursed for each Participant, by Worker, individually, and in the aggregate. Such comprehensive system shall include backup provisions for providing these services should the primary system become unavailable.

A.75. The Contractor shall have a system in place for collecting and processing all required forms and information contained in Participant enrollment packets and Worker employment packets for each Participant and Worker and for maintaining copies in each Participant's file, and shall adhere to all applicable HIPAA and HITECH requirements for transmission, protection and identification of health information.

A.76. The Contractor shall establish with the MCOs and DIDD a process that allows for the efficient exchange of all relevant Participant information between entities (e.g. information is submitted timely and using appropriate format).

Customer Service

A.77. The Contractor shall operate a toll free telephone line for Participants/Representatives and Workers to use to contact the Contractor for questions on administrative and Support Brokerage functions. The toll free telephone line shall handle calls from callers with Limited English Proficiency as well as calls from callers who have speech and hearing impairments. The Contractor shall:

- a. Ensure that the toll free telephone line is staffed adequately to respond to Participant/Representative questions during normal business hours, defined as 8 a.m. to 5 p.m. in the time zone applicable to the Grand Region being served by the MCO or DIDD, as applicable, Monday through Friday, except State of Tennessee holidays. The Contractor shall ensure that during such time, automated answering is not used and all calls answered are answered by a live representative who is familiar with the Contractor's services and program materials, and with each program for which Consumer-Directed or Self-Directed services, as applicable, are provided, including the requirements and processes thereto. Outside such times, the Contractor shall have an answering service available, which shall obtain and record the best time and number to contact the caller.

Calls received by the answering service shall be returned within one (1) business day from the time the message is recorded;

- b. Provide a toll free facsimile number for Participants/Representatives to use as needed for communication and sharing relevant information and documentation, and that the receipt and storing of any such communications is HIPAA compliant;
- c. Have a secured HIPAA and HITECH compliant e-mail address to use as needed for communication and sharing of relevant information and documentation with Participants/Representatives. The parties acknowledge that Contractor cannot be responsible for the HIPAA compliance of messages prior to their receipt at the HIPAA-compliant e-mail address;
- d. Establish and maintain a system for receiving, returning, and tracking calls from individuals during and after regular business hours. This system should capture, at a minimum:
 - 1. The number of the caller;
 - 2. The name of the caller;
 - 3. The date and time the call was received;
 - 4. The purpose of the call;
 - 5. The name of the person who received the call;
 - 6. If after business hours, when the call was returned (date and time) and by whom; and
 - 7. If the call required additional time to resolve, when the caller was contacted with the additional information (date and time) and by whom.

A call shall be considered resolved for the purpose of this section if the representative either speaks directly with the caller and no further contact is needed, or the representative makes and documents three (3) separate attempts to reach the caller during a twenty-four (24) hour period, at the number and during the time period specified during the initial contact, with such calls not being less than two (2) hours apart;

- e. Provide assistance to Participants/Representatives over the phone, via e-mail, facsimile, or in-person, as necessary to complete required forms;
 - f. Communicate effectively with all Participants/Representatives including those who are culturally diverse and have a variety of disabilities. The Contractor shall use telecommunication devices for Participants/Representatives who are hearing and speech impaired and shall have Spanish speaking bilingual customer service representatives available during normal business hours. Participants/Representatives and customer service representatives shall have the ability to access interpreter services when needed. The Contractor shall have the capacity to access translation services when needed; and
 - g. Respond to telephone inquiries and requests for general program information regarding Consumer Direction and Self-Direction that is outside of the Contractor's scope of service and transfer calls as appropriate, using a Warm Transfer whenever possible, to the Member's MCO or DIDD, as applicable.
- A.78. Information regarding the Contractor's customer service system (as noted above in Section A.77 of this Contract), including the hours of operation, the response time for returning messages and responding to mail inquiries shall be provided to Participants/Representatives as part of the enrollment packet and Workers as part of the employment packet.
- A.79. The Contractor shall work with the MCOs and DIDD to develop a protocol for interfaces and transfers of customer service inquiries that ensures that all calls are transferred and referred appropriately and in a timely manner.

Staffing Requirements

- A.80. The Contractor shall have sufficient staff with relevant experience and qualifications to fulfill all specified requirements per the terms of this Contract, and shall implement a policy to ensure service coverage for all Participants during the absence of staff and vacated positions. The Contractor shall be responsible for ensuring applicants meet the required qualifications in Contract Sections A.81 and A.82 prior to hire.
- A.81. All Supports Brokers and other staff, including subcontractors, whose job functions include direct contact with or responsibility for Participants shall complete a background check, which includes criminal background check (including fingerprinting), or, as an alternative, a background check from a licensed private investigation company. Additionally, the Contractor shall verify that the person's name does not appear on the State abuse registry, State and national sexual offender registries, the federal government's LEIE and SAM exclusion databases, and verify licensure, as applicable.
- A.82. The Contractor shall possess and maintain applicable State of Tennessee business license(s), be approved by the IRS to be an FEA and carry out Financial Administration activities under the supervision of a certified public accountant licensed by the State of Tennessee. Additionally, the Contractor shall ensure that staff providing Support Brokerage functions meet the following minimum qualifications:
- a. A four (4) year degree in Human Services (psychology, sociology, social work, recreational therapy, education, nursing, physical therapy, occupational therapy, speech, etc.) and at least one (1) year professional experience working with one (1) of the following populations: elderly, adults with physical disabilities, individuals with intellectual disabilities, and persons with developmental disabilities; or
 - b. A four (4) year degree in any other subject and two (2) years' experience working with one (1) of the following populations: elderly, adults with physical disabilities, individuals with intellectual disabilities, and persons with developmental disabilities; or
 - c. A two (2) year degree in Human Services (psychology, sociology, social work, recreational therapy, education, nursing, physical therapy, occupational therapy, speech, etc.) and at least five (5) years professional experience working with one (1) of the following populations: elderly, adults with physical disabilities, individuals with intellectual disabilities, and persons with developmental disabilities. For Support Brokers working with Persons Supported, five (5) years professional experience working with persons who have an intellectual disability, without the preceding education requirements meets the minimum qualification. Supports Brokers with this experience only, and not the above educational experience, shall only be allowed to perform Support Brokerage functions for Persons Supported and not for Members; and
 - d. satisfactorily complete a TennCare (and DIDD, as applicable)-approved orientation and training program, as applicable, on Participant-managed services and the role of the Supports Broker. The program shall be prior approved by TennCare (and DIDD, as applicable) before staff can participate.

Contractor Training Requirements

Requirements for Training Contractor Staff

- A.83. The Contractor shall provide staff training including;

- a. Customer service training for Contractor staff, including Person-Centered Practices;
- b. As appropriate, train staff on how to use the Timekeeping System;
- c. Requirements for Critical Incident, Reportable Event, and Reportable Incident identification and reporting;
- d. Identification and reporting of potential or suspected fraud and abuse, initially upon hire and annually thereafter;
- e. The False Claims Act, including whistleblower protections, administrative remedies for false claims, any state laws pertaining to civil or criminal penalties for false claims or statements, and whistleblower protections under such laws with respect to such laws in preventing and detecting fraud, waste, and abuse in federal health care programs, initially upon hire and annually thereafter.
- f. The Contractor's complaint system; and
- g. All Supports Brokers shall be trained in a manner prior approved by TennCare on Consumer Direction in CHOICES and ECF CHOICES and Self-Direction in SDWP and supporting older adults, adults with physical disabilities, and individuals with intellectual or other developmental disabilities.

Requirements for Training MCO and DIDD Staff

- A.84. Prior to the implementation of this Contract, and at least annually or upon request by the MCO or DIDD, the Contractor shall provide standardized training to Care Coordinators, Support Coordinators and Case Managers, as applicable, employed by each MCO or DIDD regarding Consumer Direction or Self-Direction, as applicable, for Participants and the role and responsibilities of the Contractor, including Financial Administration and Supports Brokerage functions as required for each program.

Record Management and Retention

- A.85. The Contractor shall have in place the following record management and retention processes:
- a. Establish and maintain a recordkeeping system for managing Participant/Representative and Worker files in a secure and confidential manner as required by federal and State statutes and regulations, including meeting all HIPAA requirements;
 - b. Maintain current and archived Participant/Representative, Worker, and Contractor files, including the maintenance of original and file copies of all forms and documents needed to comply with federal, State, and local (if applicable) payments of income, FICA and unemployment tax, and workers' compensation insurance payments, if applicable, and all other reporting requirements of employers and for the required period of time;
 - c. Maintain current and archived Participant/Representative, Worker, and Contractor files in a secure and confidential manner and for the prescribed period of time as required by federal and State statutes and regulations, including federal and State record retention rules and applicable HIPAA requirements; and
 - d. Establish and maintain a documented disaster recovery plan for electronic and hard copy files including a disaster recovery plan for restoring software and master files and hardware back-up if management information systems are disabled and for continuation of payment of Worker, independent contractors, and other entities as applicable.

Payroll Processing

- A.86. The Contractor shall have in place the following procedures and policies for payroll processing:
- a. Develop, implement, and maintain a system for managing Worker time and generating and submitting claims to MCOs and DIDD based on Worker time;
 - b. Establish the accounting and information systems necessary for processing and paying Workers as specified in the authorization of Consumer-Directed or Self-Directed services, as applicable, and establish the reporting functions and the internal controls necessary to track and manage these functions in an effective and timely manner. This includes ensuring that payment to Workers is only made for Eligible CHOICES HCBS, Eligible ECF CHOICES HCBS, or Eligible SDWP HCBS, as applicable, and for ensuring compliance with the Fair Labor Standards Act and all other applicable federal and State law and regulation, as well as TennCare and DIDD policies and/or protocols regarding Worker compensation, overtime and overtime pay, including services delivered in a back-up capacity. The Contractor shall further be responsible for ensuring that its payroll processing systems are capable of tracking Worker time across all programs (CHOICES, ECF CHOICES, and SDWP) in the event a single Employer of Record serves as a Representative for Participants in all three programs and Worker(s) provide services to Participants in more than one program;
 - c. Develop and implement a payment schedule for Workers, that shall be prior approved by TennCare;
 - d. Develop and implement a process for payment of Workers outside of the standard payment schedule, as requested by TennCare, including the capability to process payment daily if requested, including a manual process for issuing payroll checks for authorized and approved time;
 - e. Review timesheets submitted in the Timekeeping System to verify amounts that should be paid to the Worker(s);
 - f. Develop a process for identifying and resolving, with a frequency specified by TennCare to ensure accurate payment to the Worker in the scheduled time period, errors or omissions in timesheets, including instances when a Worker fails to submit a timesheet;
 - g. Timely resolve discrepancies in time submissions for purposes of paying Workers and generating claims for submission (for purposes of this section, "timely" means that the Contractor shall initiate action and shall make all reasonable efforts to resolve such discrepancies within the current payroll processing period during which payment to the Worker should be processed, and prior to submission of claims to the MCO or DIDD, as applicable, and payment of Workers by the Contractor);
 - h. Reconcile and document, pursuant to business rules developed in collaboration with the MCOs and DIDD, any discrepancies between the Timekeeping System, payments made to a Worker, and claims submitted for reimbursement to the MCO or DIDD, as applicable. Such reconciliation shall be conducted on at least a bi-weekly basis and completed within any applicable MCO TennCare, or DIDD reporting timelines, as applicable, in order to ensure the accuracy of MCO and DIDD reports;
 - i. Develop and implement a process for immediately notifying the Participant/Representative and Worker when a discrepancy in time reporting cannot be resolved and the Worker shall not be reimbursed for services delivered and submitted in the Timekeeping System;

- j. Obtain necessary documentation from the Participant/Representative to ensure that services were provided prior to paying Workers, which may be obtained via the Timekeeping System;
- k. Review, as necessary, detailed documentation of service delivery including, but not limited to, the specific tasks and functions performed for the Person Supported to help ensure that services are being provided and that the Person Supported's needs are being met;
- l. Facilitate resolution of any disputes regarding payment to Workers for services rendered;
- m. Compute, withhold, and file federal and state income tax withholding, FICA, FUTA and Tennessee unemployment insurance taxes per State and federal periodicity requirements;
- n. Have a system in place for determining if the Participant's Workers are family members who might be exempt from FICA, FUTA, and SUTA and for processing payments to them accordingly;
- o. Deposit FICA and federal income tax withholding in the aggregate for all Participants it represents using the Contractor's separate FEIN, in accordance with IRS depositing rules and maintain relevant documentation in the Contractor's files;
- p. Deposit FUTA in the aggregate using its separate FEIN quarterly for all Participants it represents and maintain the relevant documentation in the Contractor's files;
- q. Pay unemployment taxes individually for each Participant it represents per the State's payment schedule and maintain the relevant documentation in the Contractor's files;
- r. Obtain each Participant's employer number for State unemployment tax filing and payment purposes for each Participant it represents and maintain the relevant documentation in the Contractor's files;
- s. Retire a Participant's State unemployment tax registration number when the Participant is no longer the employer of Workers (permanently);
- t. Ensure that Workers are paid in compliance with federal and State Department of Labor wage and hour rules for regular and overtime pay (if program permits a Worker working more than forty (40) hours in a work week) for all time submitted in accordance with specified requirements as well as any adjustments thereto (i.e., resolution of exceptions) which are determined appropriate based on program business rules. The Contractor is not responsible for paying the Worker prior to completion of all required paperwork or for wages that exceed the authorized number of hours or funding amount approved for the Participant. The Contractor has the right to charge an administrative fee to Workers for issuing stop payments or reissuing checks. The Contractor shall provide Workers with the option to receive payment via either mailed check or Electronic Funds Transfer
- u. Manage the application of all garnishments, levies, and liens on Workers' payroll checks in an accurate and timely manner and maintain the relevant documentation in the Contractor's files. The Contractor has the right to charge an administrative fee to Workers for these services;
- v. Report new hires per State requirements;
- w. Submit to TennCare and DIDD a list of checks reportable under the State's Unclaimed Property Act each year. TennCare and DIDD will designate a staff person who is authorized to receive and approve the list of abandoned checks from the

Contractor. TennCare or DIDD, as applicable, will receive a remittance check from the Contractor that is equal to the face value of checks reported on the abandoned property report. The Contractor shall void all items on the abandoned property report, providing an internal control to prevent re-issuance. TennCare or DIDD, as applicable, shall assume responsibility for managing the abandoned property filing and for performing any reconciliation related to Medicaid escheatment or CMS-64 reporting. When a check that was previously reported as abandoned by the Contractor is presented for payment, TennCare or DIDD, as applicable, shall remit the funds to the holder in due course;

- x. Refund over-collected FICA to applicable individual-employers (or State or county government) and Workers in accordance with the December 18, 2000 IRS letter and maintain the relevant documentation in the Contractor's files within one (1) standard pay period as defined in Contract Section A.86.d;
- y. Prepare, file, and distribute IRS Forms W-2 for Participant's Workers per IRS instructions for agents, for electronic filing when processing two hundred fifty (250) or more IRS Forms W-2 and maintain the relevant documentation in the Contractor's files by January 31st of every year. The Contractor has the right to charge an administrative fee to Workers for the replacement of lost W-2s;
- z. Prepare, file, and distribute IRS Forms W-3 in the aggregate for all Participants the Contractor represents per IRS instructions and maintain the relevant documentation in the Contractor's files by January 31st of every year; and
- aa. Pay Workers for authorized services rendered within authorized timeframes and have a system in place for processing Workers' direct deposit and for maintaining the relevant documentation in the Contractor's files.

Claims Submission

- A.87. For Members, the Contractor shall submit an electronic claims submission file in the 837i format to the MCO at the appropriate frequency.
- A.88. For Members, the Contractor shall electronically submit claims to the MCO in the 837i format and shall reconcile and document, pursuant to business rules developed in collaboration with the MCO, any discrepancies between the Timekeeping System, payments made to a Worker, and claims submitted for reimbursement to the MCO. Such reconciliation shall be conducted on at least a weekly basis and completed within any applicable MCO reporting timelines to TennCare in order to ensure the accuracy of MCO reports.
- A.89. For Persons Supported, the Contractor shall submit claims in a format and frequency identified by DIDD. Adjustment and corrections of claims shall occur in a timely manner, within one hundred and twenty (120) calendar days of date of service. Any extension of this time frame shall be approved by DIDD.

Claiming and Payment for Consumer-Directed and Self-Directed Services

- A.90. For reimbursement for authorized services, the Contractor shall:
 - a. Only bill for services that have been authorized by the MCO or DIDD, as applicable, for a Participant enrolled in Consumer Direction or Self-Direction, as applicable, at the time of service delivery. The Contractor shall provide a web-based interface for the MCO, DIDD, and Participants to review information on the units of service authorized, utilized, and remaining balances, and information for Persons Supported on funds authorized, disbursed, and remaining balances;

- b. Submit all claims for services rendered timely in accordance with requirements agreed to with the MCOs or DIDD, as applicable;
- c. Track receipt of service funds in its financial information system;
- d. Maintain a dedicated bank account for the deposit of service funds;
- e. Be reimbursed via Automated Clearing House deposit and shall be provided a detailed electronic remittance advice; and
- f. Timely reconcile all accounts receivable.

A.91. For reimbursement for administrative services, the Contractor shall:

- a. Submit an administrative invoice monthly per TennCare prescribed requirements, which includes at a minimum: number of current Participants and new Participants; number of current Workers and new Workers; names, Participant ID, and Worker Provider Number for each Participant and Worker;
- b. Have a comprehensive information system in place for submitting the administrative invoice billing to TennCare electronically; and
- c. Provide an accurate report of current enrollment/Participant activity.

Ownership and Financial Disclosure

A.92. The Contractor shall:

- a. Disclose to TennCare in a form and manner specified by TennCare, and the Comptroller General of the United States or Centers for Medicare and Medicaid full and complete information regarding ownership, financial transactions and persons convicted of criminal activity related to Medicare, Medicaid, or the federal Title XX programs in accordance with federal and state requirements, including Public Chapter 379 of the Acts of 1999. The Contractor shall screen its employees and any subcontractors initially and on an ongoing monthly basis to determine whether any of them has been excluded from participation in Medicare, Medicaid, SCHIP, or any Federal health care programs (as defined in Section 1128B (f) of the Social Security Act) and not employ or contract with an individual or entity that has been excluded, as listed in the LEIE database. The Contractor shall disclose the following information on the form located at https://www.tn.gov/assets/entities/didd/attachments/New_Provider-Disclosure_of_ownership-Entities.pdf:
 1. The name and address of each person with an ownership or control interest in the disclosing entity or in any provider or subcontractor in which the disclosing entity has direct or indirect ownership of five percent (5%) or more and whether any of the persons named pursuant to this requirement is related to another as spouse, parent, child, or sibling. This disclosure shall include the name of any other disclosing entity in which a person with an ownership or control interest in the disclosing entity also has an ownership or control interest;
 2. The identity of any provider or subcontractor with whom the Contractor has had significant business transactions, defined as those totaling more than twenty-five thousand dollars (\$25,000) during the twelve (12) month period ending on the date of the disclosure, and any significant business transactions between the Contractor, any wholly owned supplier, or between the Contractor and any provider or subcontractor, during the five (5) year period ending on the date of the disclosure;

3. The identity of any person who has an ownership or control interest in the Contractor, or is an agent or managing employee of the Contractor and who has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, or the federal Title XX services program since the inception of those programs; and
4. Disclosure from officials in legislative and executive branches of government as to possible conflicts of interest.

Administrative Requirements

A.93. The Contractor shall be responsible for the following:

a. Accounting System

The Contractor shall establish and maintain an accounting system in accordance with generally accepted accounting principles. The accounting system shall maintain records pertaining to the tasks defined in the Contract and any other costs and expenditures made under the Contract. Accounting records and procedures are subject to State and federal approval. Accounting procedures, policies, and records shall be completely open to State and federal personnel at any time during the Contract period and for five (5) years thereafter.

b. Availability of Records

1. Ensure within its own organization and pursuant to any agreement the Contractor may have with any other providers of service, including, but not limited to providers, subcontractors or any person or entity receiving monies directly or indirectly by or through TennCare or DIDD, that TennCare or DIDD representatives and authorized federal, State and Office of the Comptroller of the Treasury personnel, including, but not limited to TennCare, DIDD, the Office of the Inspector General (OIG), the Tennessee Bureau of Investigations, Medicaid Fraud Control Unit (TBI MFCU), the Department of Health and Human Services, Office of Inspector General (DHHS OIG) and the Department of Justice (DOJ), and any other duly authorized state or federal agency shall have immediate and complete access to all records pertaining to services provided to TennCare and DIDD enrollees.
2. Ensure that it and any of its subcontractors and any providers of service, including, but not limited to providers or any person or entity receiving monies directly or indirectly by or through TennCare or DIDD shall make all records (including but not limited to, financial and medical records) available at the Contractor's, provider's, and/or the subcontractor's expense for administrative, civil and/or criminal review, audit, or evaluation, inspection, investigation and/or prosecution by authorized federal, State, and Office of the Comptroller of the Treasury personnel, including Representatives from the OIG, the TBI MFCU, DOJ and the DHHS OIG, TennCare, DIDD, or any duly authorized state or federal agency. Access will be either through on-site review of records or through the mail at the government agency's discretion and during normal business hours, unless there are exigent circumstances, in which case access will be at any time. The Contractor shall send all records to be sent by mail to TennCare or DIDD, as applicable, within twenty (20) business days of request, unless otherwise specified by TennCare or TennCare rules and regulations or DIDD or DIDD rules and regulations. Requested records shall be provided at no expense to TennCare or DIDD, authorized federal, state, and Office of the Comptroller of the Treasury personnel, including Representatives from the OIG, the TBI MFCU, DOJ and the DHHS OIG, or any duly authorized state or federal agency. Records

related to appeals shall be forwarded within the timeframes specified in the appeal process portion of this contract. Such requests made by TennCare or DIDD shall not be unreasonable.

3. Ensure that it as well as any of its management company and any subcontractor shall cooperate with the State, or any of the State's contractors and agents, including, but not limited to TennCare or DIDD, OIG, TBI MFCU, DOJ and the DHHS OIG, and the Office of the Comptroller of the Treasury, and any duly authorized governmental agency, during the course of any financial or operational examinations or during any administrative, civil or criminal investigation, hearing or prosecution. This cooperation shall include, but shall not be limited to the following:
 - a. Provide full cooperation and direct and unrestricted access to facilities, information, and staff, including facilities, information and staff of any management company or subcontractor, to the State or any of the State's contractors and agents, which includes, but is not limited to TennCare or DIDD, OIG, TBI MFCU, DOJ and the DHHS OIG, and the Office of the Comptroller of the Treasury and any duly authorized governmental agency, including federal agencies; and
 - b. Maintain full cooperation and open authority for claims processing systems access and mailroom visits by the Tennessee Department of Commerce and Insurance or designated representatives or any authorized entity of the state or federal government, and to cooperate fully with detail claims testing for claims processing system compliance.
4. Cooperate fully with audits the State may conduct of medical management to include clinical processes and outcomes, internal audits, provider networks, and any other aspect of the program the State deems appropriate. The State may select any qualified person or organization to conduct the audits.
5. In the event of termination of the contract between TennCare and the Contractor for any reason, the Contractor shall immediately make available, to TennCare, or its designated representative, in a usable form, any or all records related to the Contractor's activities undertaken pursuant to the contract. The provision of such records shall be at no expense to TennCare.

c. Auditing Requirements/Records Maintained for Five (5) Years

The Contractor and its providers, subcontractors and other entities receiving monies originating by or through TennCare or DIDD shall maintain books, records, documents, and other evidence pertaining to services rendered, equipment, staff, financial records, medical records, and the administrative costs and expenses incurred pursuant to this contract as well as medical information relating to the individual enrollees as required for the purposes of audit, or administrative, civil and/or criminal investigations and/or prosecution or for the purposes of complying with the requirements set forth in Section 2.20 of the Contractor Risk Agreement. Records other than medical records may be kept in an original paper state or preserved on micromedia or electronic format. Medical records shall be maintained in their original form or may be converted to electronic format as long as the records are readable and/or legible. These records, books, documents, etc., shall be available for any authorized federal, state, including, but not limited to TENNCARE, OIG, TBI MFCU, DOJ and the DHHS OIG, and Office of the Comptroller of the Treasury personnel during the contract period and five (5) years thereafter, unless an audit, administrative, civil or criminal investigation or prosecution is in progress or audit

findings or administrative, civil or criminal investigations or prosecutions are yet unresolved in which case records shall be kept until all tasks or proceedings are completed. During the contract period, these records shall be available at the Contractor's chosen location in Tennessee subject to the written approval of TennCare or DIDD. If the records need to be sent to TennCare or DIDD, the Contractor shall bear the expense of delivery. Prior approval of the disposition of Contractor, subcontractor or provider records shall be requested and approved by TennCare or DIDD, as applicable, in writing.

d. Safeguarding Member Information

The Contractor shall ensure that all material and information, in particular Information relating to Members or potential Members, which is provided to or obtained by or through the Contractor's performance under this contract, whether verbal, written, tape, or otherwise, shall be treated as Confidential Information to the extent confidential treatment is provided under state and federal laws. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the MCO or State or acquired by the Contractor pursuant to this contract shall be regarded as Confidential Information in accordance with the provisions of state and federal law and ethical standards and 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 state and federal law and ethical standards. The Contractor shall comply with all state and federal law regarding information security and confidentiality of information. In the event of a conflict among these requirements, the Contractor shall comply with the most restrictive requirement. The use or disclosure of information concerning Members/potential Members shall be limited to purposes directly connected with the administration of this contract and shall be in compliance with federal and State law.

Readiness Review

- A.94. Prior to the implementation of this Contract, TennCare and DIDD shall verify that the Contractor is ready to begin operations. TennCare and DIDD shall conduct a readiness review that consists of a desk audit of requested deliverables, one or more on-site reviews, and any necessary follow-up regarding issues stemming from an onsite review or that are not adequately addressed during an on-site review.

The requested deliverables may include, but shall not be limited to: policies and procedures regarding Supports Broker roles and responsibilities, qualifications, staffing ratios, and management of staffing ratios and turnover; communication with MCOs, Care Coordinators, Support Coordinators, and DIDD Case Managers as applicable; payroll and claims processing, data and information exchange, customer service, records management, incident management and reporting, fraud and abuse plan, program materials such as copies of Worker employment and Member enrollment packets and program manuals, and training materials for Workers, Participants/Representatives, and Contractor staff.

On-site reviews will consist of, at a minimum: follow-up on items identified in desk audit, participation in training activities, end-to-end system testing and a walk-through of the Contractor's operations, system demonstrations (including systems connectivity testing), and interviews with Contractor's staff. The scope of the review may include any and all requirements of the Contract related to CHOICES, ECF CHOICES, and SDWP, as determined by TennCare and DIDD. Based on the results of the review activities, TennCare will issue a letter of findings and, if needed, will request a corrective action plan from the Contractor. TennCare and DIDD shall not allow Participants to participate in the Contractor's Consumer Direction or Self-Direction delivery model until TennCare and DIDD have determined that the Contractor is able to meet all requirements related to this Contract.

- a. TennCare shall notify the Contractor in advance of the specific deliverables to be submitted for the desk audit, timeframes for submission, and general requirements for submitting materials.
- b. TennCare shall work with the Contractor to determine appropriate dates for on-site reviews and shall notify the Contractor in advance regarding dates for scheduled on-site reviews and expectations.

Participant Advocacy Group

- A.95. The Contractor shall be required to develop and maintain a Participant advocacy group. Such group shall include, at minimum:
- a. Six (6) Participants currently receiving Consumer-Directed or Self-Directed services, with at least one (1) Participant from each program included (CHOICES, ECF CHOICES, and the SDWP);
 - b. Three (3) family members of Participants currently receiving Consumer-Directed or Self-Directed services;
 - c. One (1) Worker currently providing Consumer-Directed services and one (1) Worker currently providing Self-Directed Services; and
 - d. Two (2) Participant advocates not belonging to any preceding group and in no way affiliated with the Contractor.

The group shall meet quarterly with the purpose of providing the Contractor with feedback on Consumer Direction and Self-Direction and the Contractor's operations.

- A.96. Control Memorandum Process. The Control Memorandum ("CM") process shall be utilized by the State to clarify Contract requirements, issue instruction to the Contractor, document action required of the Contractor, or request information from the Contractor. In addition, the CM process shall be used by the State to impose assessments of damages, either actual or liquidated. This process will be used to address issues or matters that do not require a contract amendment. Each CM must be in writing and indicate the date on which it was issued. CMs may provide relevant history, background, and other pertinent information regarding the issue(s) being addressed in the CM. Each CM will establish a deadline or timeframe for the Contractor's reply or other action. All CMs submitted to the Contractor must be signed and approved by the State's Project Director (or his/her designee). When the CM pertains to damages, either actual or liquidated, the State may issue consecutive CMs, as may be necessary or appropriate.

- a. A CM may include one (1) or more of the following five (5) components of the CM process described below:
 - 1. On Request Report – a request directing the Contractor to provide information by the time and date set out in the CM.
 - 2. Control Directive (CD) – instructions that require the Contractor to complete, within a designated timeframe, one (1) or more deliverables or to perform any other request from the State that is within the scope of the Contract. A CD may also provide clarification of certain Contract terms. Once a CM/CD has been issued, it shall be considered to be incorporated into this Contract.
 - 3. Notice of Potential Damages (Actual or Liquidated) (NPD) – notification to the Contractor that the State has determined that a potential Contract performance or compliance failure exists and that the State is contemplating assessing damages, actual and/or liquidated. The NPD shall identify the Contract

provision(s) on which the State determination rests.

4. Notice of Calculation of Potential Damages (Actual or Liquidated) (NCPD) – notification to the Contractor that provides a calculation of the amount of potential damages, actual and/or liquidated, that the State is contemplating assessing against the Contractor. NPDs and NPCDs may be issued consecutively or simultaneously.
 5. Notice of Intent to Assess Damages (Actual or Liquidated) (NIAD) – notification to the Contractor that the State is assessing damages and specifying whether the damages are actual damages, Liquidated Damages, or both, and setting out the performance or compliance failure underlying each intended damage assessment. The NIAD shall identify the NPD and NCPD upon which it is based. The NIAD shall specify the total amount and type of damages, whether actual or liquidated, the State intends to assess. Following the issuance of an NIAD, the State may elect to withhold damages from payments due to Contractor. The State may not issue a NIAD without first issuing a NPD and a NPCD. The State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.
- b. Damages for failure to comply with CM. The Contractor shall fully comply with all CMs. Failure to do so may result in the State pursuing recovery of damages, as defined in Section E.10, including Liquidated Damages as listed in Contract Attachment C, a corrective action plan, and/or termination of the Contract.
 - c. Appeal of Damages by Contractor. Contractor may appeal either the basis for NPD or calculation of NCPD potential damages, either actual or liquidated. To do so, the Contractor shall submit to the State's Project Director (or his/her designee) a written response to the NPD and/or NCPD within ten (10) business days of receipt of a CM which includes a NPD or a NCPD. The State's Project Director (or his/her designee) shall review the appeal and provide notice of his/her determination to the Contractor through a CM. If the Contractor disagrees with the State's Project Director's (or his/her designee) initial appeal determination or the State's Project Director (or his/her designee) is unable to resolve the appeal, the Contractor may submit a written request to the State's Project Director (or his/her designee) that the matter be escalated to senior management of the Agency. Contractor shall submit such a request for escalation within ten (10) business days of its receipt of the initial appeal determination from the State's Project Director (or his/her designee) or of notification by the State's Project Director that he/she is unable to resolve the appeal. The State's senior management shall provide written notice of its final determination to the Contractor within (10) days of the receipt of the appeal from the Contractor. Upon appeal or escalation, the State shall not increase the amount of the potential damages.
- A.97. Nondiscrimination Compliance Requirements. The Contractor shall comply with all applicable federal and state civil rights laws, regulations, rules, and policies and Contract Section D.9 of this Contract.
- a) In order to demonstrate compliance with the applicable federal and State civil rights laws and regulations, which may include, but are not limited to, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and 42 U.S.C. § 18116 (codified at 45 C.F.R. pt. 92) the Contractor shall designate a staff person to be responsible for nondiscrimination compliance.

The Contractor's Nondiscrimination Compliance Coordinator ("NCC") shall be responsible for compliance with the nondiscrimination requirements set forth in this Contract. Contractor agrees that its civil rights compliance staff member will work directly with TennCare's Civil Rights Compliance Director in order to implement and coordinate nondiscrimination compliance

activities. The Contractor does not have to require that civil rights compliance be the sole function of the designated NCC staff member. However, the Contractor shall identify the designated NCC staff member to HCFA by name.

The Contractor shall report to HCFA, in writing, to the attention of the HCFA Director of Civil Rights Compliance, within ten (10) calendar days of the commencement of any period of time that the Contractor does not have a designated staff person for nondiscrimination compliance. At such time that this function is redirected, the name of the staff member who assumed the duties shall be reported in writing to HCFA within ten (10) calendar days of assuming the duties of the NCC.

- (1) The Contractor's NCC shall develop a nondiscrimination training plan within thirty (30) days of the implementation of this Contract and shall provide a copy of such training plan to HCFA on an annual basis and upon request. If needed, the NCC may request an extension of time for this due date. Thereafter, this training plan shall be updated as needed to conform to changes in Federal and State law and provided to HCFA as set forth above.

On an annual basis, The Contractor's staff and subcontractors assigned to perform duties under the terms of this Contract shall receive nondiscrimination training. The Contractor shall be able to show documented proof that the training was made available to the Contractor's staff and to its subcontractors that are considered to be performing duties under this Contract.

- (2) The Contractor shall, at a minimum, emphasize nondiscrimination in its personnel policies and procedures as it relates to hiring, promoting, operational policies, contracting processes and participation on advisory/planning boards or committees.
- (3) Prior to implementation of this Contract, Contractor shall provide its written policies and procedures that demonstrate nondiscrimination in the provision of services provided under this Contract to HCFA. These policies shall include topics, such as, the provision of language services to individuals with Limited English Proficiency and individuals requiring communication assistance in alternative formats and providing other forms of assistance to individuals with disabilities. Effective Communication may be achieved by providing interpretation and translation services and other forms of auxiliary aids or services, including, Braille and large print and shall be based on the needs of the individual and/or the individual's representative. These nondiscrimination policies and procedures shall be approved in writing by HCFA.
- (4) The Contractor shall keep such records as may be necessary in order to submit timely, complete and accurate compliance reports that may be requested by the U.S. Department of Health and Human Services ("HHS"), the U.S. Department of Justice ("DOJ"), HCFA, and the Tennessee Human Rights Commission ("THRC") or their designees. If requested, the information shall be provided in a format and timeframe specified by HHS, DOJ, HCFA, or THRC. The requested information may be necessary to enable HHS, DOJ, HCFA, or THRC to ascertain whether the Contractor is complying with the applicable civil rights laws.
- (5) The Contractor shall permit access as set forth in the applicable civil rights laws, such as, 45 C.F.R. § 92.302 or 45 C.F.R. § 80.6 to HHS, DOJ, HCFA, and THRC or their designees during Normal Business Hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain whether the Contractor is complying with the applicable civil rights laws.
- (6) The Contractor shall use and have available to individuals HCFA's discrimination complaint forms for the HCFA program or programs covered under this Contract. These discrimination complaint forms shall be provided to individuals upon request and be available on the Contractor's website. HCFA's discrimination complaint forms are vital documents and must be available at a minimum in the English and Spanish languages. HCFA's Director of Civil Rights Compliance shall work with the Contractor's NCC on providing the Contractor with the HCFA program's or programs' discrimination complaint forms that are required under this Contract.

The Contractor shall provide assistance to individuals that request that the Contractor assist them with filing discrimination complaints with the HCFA program or programs covered under this Contract. The Contractor shall inform its employees and its providers and subcontractors that are considered to be recipients of federal financial assistance under this Contract about how to assist individuals with obtaining discrimination complaint forms and assistance with submitting the forms to the HCFA program or programs covered under this Contract.

- (7) Significant publications and significant communications, including small sized publications and communications that are targeted to beneficiaries, participants, enrollees, applicants, and members of the public shall be printed with the notice of nondiscrimination and LEP taglines as required by HCFA and set forth in HCFA's tagline templates. Written materials specific to HCFA's programs' members shall be prior approved in writing by HCFA prior to the materials being sent to these individuals.
- (8) Within ninety (90) calendar days of notification from HCFA, all vital Contractor documents related to this Contract shall be translated and available to each Limited English Proficiency ("LEP") group identified by HCFA in accordance with the applicable standards set forth below:
 - (i) If a LEP group constitutes five percent (5%) or 1,000, whichever is less, of the population targeted under this Contract, vital documents shall be translated into that LEP language. Translation of other documents, if needed, can be provided orally; or
 - (ii) If there are fewer than fifty (50) individuals in a language group that is part the population targeted under this Contract that reaches the five percent (5%) trigger in (a), the Contractor shall inform those individuals that it does not provide written translation of vital documents but provides written notice in that group's primary language of the right to receive competent oral interpretation of those written materials, free of cost.
 - (iii) At a minimum, all vital Contractor documents shall be translated and available in Spanish.
- b) The Contractor shall submit the following nondiscrimination compliance deliverables to HCFA as follows:
 - (1) Annually, HCFA shall provide the Contractor with a Nondiscrimination Compliance Questionnaire. The Contractor shall answer the questions contained in the Compliance Questionnaire and submit the completed Questionnaire to HCFA within sixty (60) days of receipt of the Questionnaire with any requested documentation, which shall include, the Contractor's Assurance of Nondiscrimination. The signature date of the Contractor's Nondiscrimination Compliance Questionnaire shall be the same as the signature date of the Contractor's Assurance of Nondiscrimination. The Nondiscrimination Compliance Questionnaire deliverables shall be in a format specified by HCFA.
 - (i) As part of the requested documentation for the Nondiscrimination Compliance Questionnaire, the Contractor shall submit copies of its nondiscrimination policies and procedures that demonstrate nondiscrimination in the provision of its services, programs, or activities provided under this Contract. These policies shall include topics, such as, the provision of language assistance services for LEP individuals and those requiring effective communication assistance in alternative formats, and providing assistance to individuals with disabilities. Any nondiscrimination policies and procedures that are specific to HCFA program members shall be prior approved in writing by HCFA.
 - (ii) Also as part of the requested documentation for the Nondiscrimination Compliance Questionnaire the Contractor shall include reports that capture data for all language and communication assistance services used and provided by the Contractor under this Contract. One report shall contain the names of the Contractor's language and communication assistance service providers,

the languages that interpretation and translation services are available in, the auxiliary aids or services that were provided and that are available, the hours the language assistance services are available, and the numbers individuals call to access language and communication assistance services. A separate report that captures a listing of language and communication assistance services that were requested by members (i.e. Arabic; Braille) and the methods used to provide the language and alternative communication service to the members (i.e. interpretation; translation). Upon request the Contractor shall provide a more detailed report that contains the requestor's name and identification number, the requested service, the date of the request, the date the service was provided, and the name of the service provider.

- (2) The Contractor shall submit a quarterly Non-discrimination Compliance Report which shall include the following:
 - (i) A summary listing that captures the total number of the Contractor's new hires that have completed civil rights/nondiscrimination training and cultural competency training and the dates the trainings were completed for that quarter;
 - (ii) A listing of the total number of the Contractor's employees that have completed annual civil rights training and cultural competency training and the dates completed for that quarter, if annual training was provided during that quarter.
 - (iii) An update of all written discrimination complaints filed by individuals, such as, employees, members, and subcontractors in which the discrimination allegation is related the provision of and/or access to HCFA covered services provided by the Contractor, which the Contractor is assisting HCFA with resolving. This update shall include, at a minimum: identity of the complainant, complainant's relationship to the Contractor, circumstances of the complaint; type of covered service related to the complaint, date complaint filed, the Contractor's resolution, date of resolution, and the name of the Contractor staff person responsible for adjudication of the complaint. For each complaint reported as resolved the Contractor shall submit a copy of the complainant's letter of resolution.
 - (iv) The Contractor shall provide a listing of all discrimination claims that are reported to the Contractor that are claimed to be related to the provision of and/or access to HCFA covered services provided by the Contractor. The listing shall include, at a minimum: identity of the complainant, complainant's relationship to the Contractor, circumstances of the complaint; type of covered service related to the complaint, date complaint filed, the Contractor's resolution, date of resolution. When such reports are made, the Contractor shall offer to provide the discrimination complaint forms to the individual making the report.
 - (v) The language and communication assistance report shall capture a summary listing of language and communication assistance services that were requested by members (i.e. Arabic; Braille) and the methods used to provide the language and alternative communication service to the members (i.e. interpretation; translation). Upon request the Contractor shall provide a more detailed report that contains the requestor's name and identification number, the requested service, the date of the request, the date the service was provided, and the name of the service provider.
- c) Discrimination Complaint Investigations. All discrimination complaints against the Contractor and its employees and its subcontractors that are considered to be recipients of federal financial assistance under this Contract shall be resolved according to the provisions of this Section and the below subsections:
 - (1) Discrimination Complaints against the Contractor and/or Contractor's Employees. When complaints concerning alleged acts of discrimination committed by the Contractor and/or its employees related to the provision of and/or access to one of HCFA's programs are reported to the Contractor, the Contractor's NCC shall send such complaints within two (2) business days of receipt to HCFA. HCFA shall investigate and resolve all alleged acts of discrimination committed by the Contractor and/or its employees. The Contractor shall cooperate with HCFA during the

investigation and resolution of such complaints. HCFA reserves the right to request that the Contractor's NCC assist with conducting the initial investigations and to suggest resolutions of alleged discrimination complaints. If HCFA requests that the Contractor's NCC assist HCFA with conducting the initial investigation, the Contractor's NCC within five (5) business days from the date of the request shall start the initial investigation. The Contractor's NCC shall provide HCFA with all requested information, including but not limited to, the identity of the party filing the complaint; the complainant's relationship to the Contractor; the circumstances of the complaint; date complaint filed; and the Contractor's suggested resolution. HCFA shall review the Contractor's initial investigations and determine the appropriate resolutions for the complaints as set forth in subsection c below. During the complaint investigation, the Contractor shall have the opportunity to provide HCFA with any information that is relevant to the complaint investigation. Any documentation or materials related to such investigation shall be considered confidential and not subject to disclosure to any third party, unless disclosure is otherwise required by law.

- (2) Discrimination Complaints against the Contractor's Subcontractors that are recipients of federal financial assistance under this Contract. Should complaints concerning alleged acts of discrimination committed by the Contractor's subcontractors related to the provision of and/or access to one of HCFA's programs be reported to the Contractor, the Contractor's nondiscrimination compliance officer shall inform HCFA of such complaints within two (2) business days from the date Contractor learns of such complaints. If HCFA requests that the Contractor's nondiscrimination compliance officer assist HCFA with conducting the initial investigation, the Contractor's nondiscrimination compliance officer within five (5) business days from the date of the request shall start the initial investigation. Once an initial investigation has been completed, the Contractor's nondiscrimination compliance officer shall report his/her determinations to HCFA. At a minimum, the Contractor's nondiscrimination compliance officer's report shall include the identity of the party filing the complaint; the complainant's relationship to the Contractor; the circumstances of the complaint; date complaint filed; and the Contractor's suggested resolution. HCFA shall review the Contractor's initial investigations and determine the appropriate resolutions for the complaints as set forth in subsection (3) below. HCFA reserves the right to investigate and resolve all complaints concerning alleged acts of discrimination committed by the Contractor's subcontractors that are recipients of federal financial assistance under this Contract. The Contractor's Providers and Subcontractors that are recipients of federal financial assistance under this Contract shall cooperate with HCFA and the Contractor during discrimination investigations and resolutions.
- (3) Corrective Action Plans to Resolve Discrimination Complaints. If a discrimination complaint against the Contractor or its employees or one of its subcontractors who are recipients of federal financial assistance under this Contract, is determined by HCFA to be valid, HCFA shall, at its option, either (i) provide the Contractor with a corrective action plan to resolve the complaint, or (ii) request that the Contractor submit a proposed corrective action plan to HCFA for review and approval that specifies what actions the Contractor proposes to take to resolve the discrimination complaint. Upon provision of the corrective action plan to Contractor by HCFA, or approval of the Contractor's proposed corrective action plan by HCFA, the Contractor shall implement the approved corrective action plan to resolve the discrimination complaint. HCFA, in its sole discretion, shall determine when a satisfactory discrimination complaint resolution has been reached and shall notify Contractor of the approved resolution. A discrimination complaint resolution corrective action plan may consist of approved nondiscrimination training on relevant discrimination topics. Prior to use, the nondiscrimination training material shall be reviewed and approved by HCFA. Time periods for the implementation of the corrective action plan nondiscrimination training shall be designated by HCFA.
- d) Electronic and Information Technology Accessibility Requirements. To the extent that the Contractor is using electronic and information technology to fulfill its obligations under this Contract, the Contractor agrees to comply with the electronic and information technology accessibility requirements under the federal civil rights laws including Section 504 and Section 508 of the Rehabilitation Act of 1973 ("Section 508"); 45 C.F.R. § 92.204; and the Americans with Disabilities Act. To comply with the accessibility requirements for Web content and non-Web

electronic documents and software, the Contractor shall use W3C's Web Content Accessibility Guidelines ("WCAG") 2.0 AA (For the W3C's guidelines see: <http://www.w3.org/TR/WCAG20/>) (Two core linked resources are Understanding WCAG 2.0 <http://www.w3.org/TR/UNDERSTANDING-WCAG20/> and Techniques for WCAG 2.0 <http://www.w3.org/TR/WCAG20-TECHS/>).

Additionally, the Contractor agrees to comply with Title VI of the Civil Rights Act of 1964. In order to achieve Title VI compliance the Contractor should add a system function that allows users to translate the content into a language other than English. This requirement may be satisfied by the provision of a link to Google translate or other machine translate tool.

Should the system or a component of the system fail to comply with the accessibility standards, the Contractor shall develop and submit to HCFA for approval a noncompliance report that identifies the areas of noncompliance, a plan to bring the system or component into compliance, an alternative/work around that provides users with the equivalent access to the content, and a timeframe for achieving that compliance. HCFA shall review the noncompliance report to determine whether or not it is acceptable and should be implemented. Once the noncompliance report is approved by HCFA the Contractor may implement the compliance plan. HCFA, in its sole discretion, shall determine when a satisfactory compliance plan resolution has been reached and shall notify the Contractor of the approved resolution. If Contractor is unable to obtain content that conforms to WCAG 2.0 AA, it shall demonstrate through its reporting to HCFA that obtaining or providing accessible content would fundamentally alter the nature of its goods and services or would result in an undue burden.

(e) Moral/Ethical or/and Religious Directives.

(i). Should the Contractor not cover or provide a service pursuant to the Contractor's obligation under the terms of this Contract because of moral/ethical or religious reasons, the Contractor shall provide a list of these services to TennCare. This list shall be used by TennCare to provide information to Participants and potential Participants about where and how the individuals can obtain the services that are not being delivered due to Ethical and Religious Directives.

(ii). Should the Contractor contract with providers and/or subcontractors to deliver services to Participants or potential Participants pursuant to the Contractor's obligations under this Contract and the providers or subcontractors cannot provide certain services because of moral/ethical or religious reasons, the Contractor shall provide a list of these services to TennCare. This list shall be used by the Contractor and TennCare to provide information to Participants and potential Participants about where and how the individuals can obtain the services that are not being delivered due to Ethical and Religious Directives.

A.98. Non-Disclosure and Contractors

The Contractor shall, as directed by the State and at no additional cost to the State, coordinate with, facilitate the prompt exchange of information between, and work collaboratively with any and all other State contractors and State agencies. If required in order for the Contractor to proceed with any part of the Scope of Services which involves sharing or obtaining information of a confidential, proprietary, or otherwise valuable nature with or from another State contractor or State agency, the Contractor may be requested to sign mutually agreeable documents, including but not limited to Non-Disclosure Agreements (Non-Disclosure Documents), which are reasonably necessary to maintain cooperation and collaboration among and with any and all other State contractors and State agencies in the performance of the Contract.

All information the Contractor may receive, have disclosed to it, or otherwise becomes known to Contractor during the performance of this Contract from any other State contractor or State agency, that the State contractor or State agency considers to be propriety or confidential in

nature pursuant to a Non-Disclosure Document entered into between the Contractor and another State contractor or State agency, shall be governed by such Non-Disclosure Document.

Nothing in this Section, including failure to negotiate and enter into a Non-Disclosure Document acceptable to Contractor with another State contractor or State agency, shall be construed to relieve the Contractor of its duty to perform any requirements or deliverables under this Contract. Other than as permitted in Section C of this Contract, Payment Terms and Conditions, the Contractor shall not invoice the State for any such coordination services, and the State shall not be liable to the Contractor for payment of any such coordination services.

B. TERM OF CONTRACT:

- B.1. This Contract shall be effective for the period beginning October 1, 2017 (“Effective Date”) and ending on December 31, 2020 (“Term”). The State shall have no obligation for goods delivered or services provided by the Contractor prior to the Effective Date.
- B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months by the State, at the State’s sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty-three (63) months.

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)** (“Maximum Liability”). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
 - a. The Contractor’s compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
 - b. The Contractor shall be compensated based upon the following payment methodology:
 - (1) For the three (3) month transition period of October 1, 2017 – December 31, 2017, there shall be no cost to the State.
 - (2) For services performed from January 1, 2018 – December 31, 2020, the following rates shall apply:

Cost Item Description	Amount (per compensable increment)
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Financial Administration	\$ _____ Per Participant Per Month*
Supports Brokerage	\$ _____ Per Participant Per Month*
Set-Up for New Consumer Direction or Self-Direction Referral	\$ _____ Per Participant
Set-Up for New Worker	\$ _____ Per Worker

*The Per Member per Month (PMPM) payment shall be based only on Participants enrolled in Consumer Direction of HCBS, defined as the number of CHOICES or ECF CHOICES Members with an active authorization for Consumer Direction services who are receiving Consumer-Directed services, or the number of SDWP Persons Supported with an active authorization for Self-Direction services who are receiving Self-Directed services.

The set-up fee covers all applicable costs for processing paperwork, completing training, etc., for new CHOICES Members (including persons specified by TennCare who are not enrolled in CHOICES, but who may qualify for CHOICES only through receipt of Consumer-Directed services), ECF CHOICES Members, Persons Supported, Representatives and their identified Workers, including background checks. These fees may be billed only upon completion of all tasks associated with Participant or Worker enrollment, and shall not be billed when a Participant withdraws from Consumer Direction or Self Direction prior to completion of these tasks, and/or when a Worker decides not to proceed with employment prior to completion of these tasks, or is determined to not qualify for employment. Except for lapses in employment of a Worker, which warrant a new background check as specified in Section A. 28 above, the fee shall be applicable only once per lifetime for each Participant/Representative, and/or Worker, even if the Worker is employed by multiple Participants/Representatives and regardless of any lapses in the Participant's participation in Consumer Direction or Self Direction. Set-up fees for New Consumer Direction or Self-Direction Referral and for New Workers shall not be paid to the Contractor for Participants already enrolled in Consumer Direction or Self-Direction and transitioned to the Contractor at implementation of this Contract, or for the Workers already employed to provide services.

- (3) For services performed from January 1, 2021 – December 31, 2022, the following rates shall apply:

Cost Item Description	Amount (per compensable increment)
Financial Administration	\$ _____ Per Participant Per Month*
Supports Brokerage	\$ _____ Per Participant Per Month*
Set-Up for New Consumer Direction or Self-Direction Referral	\$ _____ Per Participant
Set-Up for New Worker	\$ _____ Per Worker

*The Per Member per Month (PMPM) payment shall be based only on Participants enrolled in Consumer Direction of HCBS, defined as the number of CHOICES or ECF CHOICES Members

with an active authorization for Consumer Direction services who are receiving Consumer-Directed services, or the number of SDWP Persons Supported with an active authorization for Self-Direction services who are receiving Self-Directed services.

The set-up fee covers all applicable costs for processing paperwork, completing training, etc., for new CHOICES Members (including persons specified by TennCare who are not enrolled in CHOICES, but who may qualify for CHOICES only through receipt of Consumer-Directed services), ECF CHOICES Members, Persons Supported, Representatives and their identified Workers, including background checks. These fees may be billed only upon completion of all tasks associated with Participant or Worker enrollment, and shall not be billed when a Participant withdraws from Consumer Direction or Self Direction prior to completion of these tasks, and/or when a Worker decides not to proceed with employment prior to completion of these tasks, or is determined to not qualify for employment. Except for lapses in employment of a Worker, which warrant a new background check as specified in Section A. 28 above, the fee shall be applicable only once per lifetime for each Participant/Representative, and/or Worker, even if the Worker is employed by multiple Participants/Representatives and regardless of any lapses in the Participant's participation in Consumer Direction or Self Direction. Set-up fees for New Consumer Direction or Self-Direction Referral and for New Workers shall not be paid to the Contractor for Participants already enrolled in Consumer Direction or Self-Direction and transitioned to the Contractor at implementation of this Contract, or for the Workers already employed to provide services.

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

C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Division of Health Care Finance and Administration
310 Great Circle Road
Nashville, TN 37243

a. Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):

- (1) Invoice number (assigned by the Contractor);
- (2) Invoice date;
- (3) Contract number (assigned by the State);
- (4) Customer account name: Department of Finance and Administration, Division of Health Care Finance and Administration
- (5) Customer account number (assigned by the Contractor to the above-referenced Customer);
- (6) Contractor name;
- (7) Contractor Tennessee Edison registration ID number;
- (8) Contractor contact for invoice questions (name, phone, or email);
- (9) Contractor remittance address;
- (10) Description of delivered goods or services provided and invoiced, including identifying information as applicable;
- (11) Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
- (12) Applicable payment methodology (as stipulated in Section C.3.) of each good or service invoiced;
- (13) Amount due for each compensable unit of good or service; and
- (14) Total amount due for the invoice period.

b. Contractor's invoices shall:

- (1) Only include charges for goods delivered or services provided as described in Section A and in accordance with payment terms and conditions set forth in Section C;
- (2) Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
- (3) Not include Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal property taxes, or income taxes; and
- (4) Include shipping or delivery charges only as authorized in this Contract.

c. The timeframe for payment (or any discounts) begins only when the State is in receipt of an invoice that meets the minimum requirements of this Section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, to not constitute proper compensation for goods delivered or services provided.

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 that are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.

D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract, other than information or data that is necessary for one or more Contract deliverables, 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. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

Deputy Commissioner
Department of Finance and Administration
Division of Health Care Finance and Administration
Bureau of TennCare
310 Great Circle Road
Nashville TN 37243
Telephone # (615) 507-6444
FAX # (615) 253-5607

The Contractor:

Contractor Contact Name & Title
Contractor Name
Address
Email Address
Telephone # Number
FAX # Number

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. 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 materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract

and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.

D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation 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 under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

D.9. 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 handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination. In addition, the Contractor shall comply with the provisions of Contract Section A.97 (Nondiscrimination Compliance Requirements) and this Section D.9 shall not be deemed to limit or abridge any requirement set forth in Section A.97.

D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 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 agrees 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, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor 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 Term, 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 under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from 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. Contractor's 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 Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) 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.12. 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.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, 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 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.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party 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 are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules,

amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.

D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising 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: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

D.19. 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 to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.

- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable 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 the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
- d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 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 under Tenn. Code Ann. §§ 8-35-101, *et seq.*, 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, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

- D.22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- D.23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
 - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
 - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

- D.24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the

nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract. In addition, the Contractor shall comply with the provisions of Contract Section E.16, (Applicable Laws, Rules, Policies and Court Orders), and this Section D.25 shall not be deemed to limit or abridge any requirement set forth in Section E.16, Applicable Laws, Rules, Policies and Court Orders.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, 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, whether written or oral.
- D.28. 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 of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes Attachment A, Definitions, Attachment B, Attestation RE: Personnel Used in Contract Performance and Attachment C, Liquidated Damages;
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons as defined at T.C.A. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce and Insurance ("TDCI"); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. The deductible and any premiums are the Contractor's sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers' Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area.

Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified in this Section. The COI must be on a form approved by the TDCI (standard ACORD form preferred). The COI must list each insurer's National Association of Insurance Commissioners (NAIC) number and be signed by an authorized representative of the insurer. The COI must list the State of Tennessee – CPO Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 as the certificate holder. Contractor shall provide the COI ten (10) business days prior to the Effective Date and again thirty (30) calendar days before renewal or replacement of coverage. Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that subcontractors are included under the Contractor's policy. At any time, the State may require Contractor to provide a valid COI. The parties agree that failure to provide evidence of insurance coverage as required is a material breach of this Contract. If Contractor self-insures, then a COI will not be required to prove coverage. Instead Contractor shall provide a certificate of self-insurance or a letter, on Contractor's letterhead, detailing its coverage, policy amounts, and proof of funds to reasonably cover such expenses.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability Insurance

- 1) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).
The Contractor shall maintain bodily injury/property damage with a combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).

b. Workers' Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
 - i. Workers' compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 - i. The Contractor employs fewer than five (5) employees;
 - ii. The Contractor is a sole proprietor;
 - iii. The Contractor is in the construction business or trades with no employees;
 - iv. The Contractor is in the coal mining industry with no employees;
 - v. The Contractor is a state or local government; or
 - vi. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

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, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.
- E.2. 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 that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, 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. Confidential Information shall not be disclosed except as required or permitted under state or federal law. The Contractor shall only use Confidential information for activities pursuant to and related to the performance of the Contract. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

E.3 State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.

E.4. Transfer of Ownership of Custom Software Developed for the State.

a. Definitions.

- (1) "Contractor-Owned Software," shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
- (2) "Custom-Developed Application Software," shall mean customized application software developed by Contractor for the State under this Contract intended to function with the Contractor-Owned Software or any Work Product provided under this Contract.
- (3) "Rights Transfer Application Software," shall mean any pre-existing application software and documentation owned or supplied by Contractor or a third party necessary for the use, functioning, support, or maintenance of the Contractor-Owned Software, the Custom-Developed Application Software, Third Party Software, and any Work Product provided to State.
- (4) "Third-Party Software," shall mean software supplied by Contractor under this Contract or necessary for the functioning of any Work Product not owned by the State or the Contractor.
- (5) "Work Product," shall mean all deliverables such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State under this Contract. Work Product shall include Rights Transfer Application Software.

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license or transfer of rights or ownership granted under this Contract. Contractor grants the State a perpetual non-exclusive license to the Contractor-Owned Software to be used solely with the Custom-Developed Application Software and the Work Product.
- (2) Contractor shall provide the source code in the Custom-Developed Application Software, Work Product and the Contractor-Owned Software, with all subsequent modifications, enhancements, bug-fixes or any other changes in the source code of the Work Product and the Contractor-Owned Software and all other code and documentation necessary for the Custom-Developed Application Software to be installed and function as intended and as set forth in this Contract, to the State.

- (3) Contractor may lease or sell the Custom-Developed Application Software to third parties with the written permission of the State, which permission may be conditioned on the State receiving royalties from such sales or licenses.
 - (4) All right, title and interest in and to the Custom-Developed Application Software, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Custom-Developed Application Software, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Custom-Developed Application Software, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Custom-Developed Application Software. Contractor and its employees, agents, contractors or representatives shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties.
 - (5) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license or other rights granted to the State under this Contract or otherwise.
- c. The Contractor may use for its own purposes the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of performing under this Contract. The Contractor may develop for itself, or for others, materials which are similar to or competitive with those that are produced under this Contract.
- E.5 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 use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less reasonable wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.
- E.6 Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.7 Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- E.8. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

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

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

- E.9. Intellectual Property Indemnity. 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 or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- E.10. Liquidated Damages In the event of a Contract performance or compliance failure by the Contractor, the State may, but is not obligated to address such Contract performance or compliance failure and/or assess damages ("Liquidated Damages") in accordance with Attachment C of the Contract. The State shall notify the Contractor of any amounts to be assessed as Liquidated Damages via the Control Memorandum process specified in Contract Section A.96. 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 Contractor performance or compliance failure, as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Contract Attachment C and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Contract performance or compliance failure, are a reasonable estimate of the damages that would occur from a Contract performance or compliance failure, and are not punitive. The Parties agree that although the Liquidated Damages represent the reasonable estimate of the damages and injuries sustained by the State due to the Contract performance or compliance failure, they do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

The State is not obligated to assess Liquidated Damages as a result of a Contract performance or compliance failure before availing itself of any other remedy. In the event of multiple Contract performance or compliance failures, the Parties recognize that the cumulative effect of these Contract performance failures may exceed the compensation provided by Liquidated Damages. In that event, the State may choose to avail itself of any other remedy available under this Contract or at law or equity. The Parties further recognize that the State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.

Without regard to whether the State has imposed Liquidated Damages or pursued any other remedy due to any action or inaction by the Contractor, the State may impose a corrective action plan or similar measure through a Control Memorandum. Such measure is neither punitive nor related to any damages the State might suffer.

- E.11 Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.
- E.12 Unencumbered Personnel. The Contractor shall not restrict its employees, agents, subcontractors or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.
- E.13. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify and/or procure that Contractor is in full compliance with its obligations under this Contract in relation to PII. Upon termination or expiration of the Contract or at the State's direction at any time in its sole discretion, whichever is earlier, Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor ("Unauthorized Disclosure") that come to the Contractor's attention. Any such report shall be made by the Contractor within forty-eight (48)

hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law.

- E.14. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

a. Reporting of Total Compensation of the Contractor's Executives.

- (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
 - i. 80 percent or more of the Contractor's annual gross revenues from federal procurement contracts and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - ii. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).

As defined in 2 C.F.R. § 170.315, "Executive" means officers, managing partners, or any other employees in management positions.

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax

- vi. qualified.
Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
- c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
- d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

- E.15 Survival. The terms, provisions, representations, and warranties contained in Sections D.11 (Records), D.19 (Hold Harmless), D.20 (HIPAA Compliance), E.2 (Confidentiality of Records), E.7 (Prohibited Advertising), E.9 (Intellectual Property) E.13 (Personally Identifiable Information), E.18 (Notification of Breach), E.20 (SSA Data), and E.24 (IRS Data) of this Contract shall survive the completion of performance, termination or expiration of this Contract.
- E.16. Applicable Laws, Rules, Policies and Court Orders. The Contractor agrees to comply with all applicable federal and State laws, rules, regulations, sub-regulatory guidance, executive orders, HCFA waivers, and all current, modified or future Court decrees, orders or judgments applicable to the State's TennCare program. Such compliance shall be performed at no additional cost to the State.
- E.17. Business Associate. As the Contractor will provide services to HCFA pursuant to which the Contractor will have access to, receive from, create, or receive on behalf of HCFA Protected Health Information, or Contractor will have access to, create, receive, maintain or transmit on behalf of HCFA Electronic Protected Health Information (as those terms are defined under HIPAA and HITECH), Contractor hereby acknowledges its designation as a business associate under HIPAA and agrees to comply with all applicable HIPAA regulations and the terms in the associated Business Associate Agreement.
- E.18. Notification of Breach and Notification of Suspected Breach. The Contractor shall notify HCFA's Privacy Office immediately upon becoming aware of and in no case later than forty-eight (48) hours after discovery of any incident, either confirmed or suspected, that represents or may represent unauthorized access, use or disclosure of encrypted or unencrypted computerized data that materially compromises the security, confidentiality, or integrity of enrollee PHI maintained or held by the Contractor, including any unauthorized acquisition of enrollee PHI by an employee or otherwise authorized user of the Contractor's system. This includes, but is not limited to, loss or suspected loss of remote computing or telework devices such as laptops, PDAs, Blackberrys or other Smartphones, USB drives, thumb drives, flash drives, CDs, and/or disks.
- E.19. Transmission of Contract Deliverables. All information or data that is necessary for one or more deliverable set forth in this Contract shall be transmitted between HCFA and Contractor via the data transfer method specified in advance by HCFA. This may include, but shall not be limited to, transfer through HCFA's SFTP system. Failure by the Contractor to transmit information or data

that is necessary for a deliverable in the manner specified by HCFA, may, at the option of HCFA, result in liquidated damages as set forth on Contract Attachment C, hereto.

- E.20. Social Security Administration (SSA) Required Provisions for Data Security. The Contractor shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. §3541, *et seq.*), and related National Institute of Standards and Technology guidelines. In addition, the Contractor shall have in place administrative, physical, and technical safeguards for data.
- a. The Contractor shall specify in its agreements with any agent or subcontractor that will have access to data that such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Contractor pursuant to this Section;
 - b. The Contractor shall not duplicate in a separate file or disseminate, without prior written permission from HCFA, the data governed by the Contract for any purpose other than that set forth in this Contract for the administration of the HCFA program. Should the Contractor propose a redisclosure of said data, the Contractor must specify in writing to HCFA the data the Contractor proposes to redisclose, to whom, and the reasons that justify the redisclosure. HCFA will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the HCFA program.
 - c. The Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Contract.
 - d. The Contractor shall maintain a current list of the employees of such contractor with access to SSA data and provide such lists to HCFA at the start of the contract, subsequently at any time there are changes or upon request.
 - e. The Contractor shall restrict access to the data obtained from HCFA to only those authorized employees who need such data to perform their official duties in connection with purposes identified in this Contract. The Contractor shall not further duplicate, disseminate, or disclose such data without obtaining HCFA's prior written approval.
 - f. The Contractor shall provide appropriate training and ensure that its employees:
 - (1) properly safeguard PHI/PII furnished by HCFA under this Contract from loss, theft or inadvertent disclosure;
 - (2) understand and acknowledge that they are responsible for safeguarding this information at all times, regardless of whether or not the Contractor employee is at his or her regular duty station;
 - (3) ensure that laptops and other electronic devices/ media containing PHI/PII are encrypted and/or password protected;
 - (4) send emails containing PHI/PII only if the information is encrypted or if the transmittal is secure; and,
 - (5) limit disclosure of the information and details relating to a PHI/PII loss only to those with a need to know.

Contractor employees who access, use, or disclose HCFA or HCFA SSA-supplied data in a manner or purpose not authorized by this Contract may be subject to civil and criminal sanctions pursuant to applicable federal statutes.

- g. Loss or Suspected Loss of Data—If an employee of the Contractor becomes aware of suspected or actual loss of PHI/PII, the Contractor must contact HCFA immediately upon becoming aware to report the actual or suspected loss. The Contractor must provide HCFA with timely updates as any additional information about the loss of PHI/PII becomes available.

If the Contractor experiences a loss or breach of said data, HCFA will determine whether or not notice to individuals whose data has been lost or breached shall be provided and the Contractor shall bear any costs associated with the notice or any mitigation.

- h. HCFA may immediately and unilaterally suspend the data flow under this Contract, or terminate this Contract, if HCFA, in its sole discretion, determines that the Contractor has: (1) made an unauthorized use or disclosure of HCFA SSA-supplied data; or (2) violated or failed to follow the terms and conditions of this Contract Section E.20.

- i. This Section further carries out Section 1106(a) of the Act (42 U.S.C. 1306), the regulations promulgated pursuant to that section (20 C.F.R. Part 401), the Privacy of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget ("OMB") guidelines, the Federal Information Security Management Act of 2002 ("FISMA") (44 U.S.C. 3541 et seq.), and related National Institute of Standards and Technology ("NIST") guidelines, which provide the requirements that the SSA stipulates that the Contractor must follow with regard to use, treatment, and safeguarding data in the event data is exchanged with a federal information system.

j. Definitions

- (1) "SSA-supplied data" or "data" as used in this section – information, such as an individual's social security number or income, supplied by the Social Security Administration to HCFA to determine entitlement or eligibility for federally-funded programs (covered by a CMPPA between SSA and F&A; and IEA between SSA and HCFA).
- (2) "Protected Health Information/Personally Identifiable Information" (PHI/PII)(45 C.F.R. 160.103; OMB Circular M-06-19) – Protected health information means individually identifiable health information that is: (i) Transmitted by electronic media; (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.
- (3) "Individually Identifiable Health Information"— information that is a subset of health information, including demographic information collected from an individual, and: (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- (4) "Personally Identifiable Information" – any information about an individual maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as their name, Social Security Number, date and place of birth, mother's maiden name, biometric records, including any other personal information which can be linked to an individual.

- E.21. Medicaid and CHIP - The Contractor must provide safeguards that restrict the use or disclosure of information concerning applicants and beneficiaries to purposes directly connected with the administration of the plan:
- a) Purposes directly related to the administration of Medicaid and CHIP include:
 - 1) establishing eligibility;
 - 2) determining the amount of medical assistance;
 - 3) providing services for beneficiaries; and,
 - 4) conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to Medicaid or CHIP administration.
 - b) The Contractor must have adequate safeguards to assure that:
 - 1) Information is made available only to the extent necessary to assist in the valid administrative purposes of those receiving the information, and information
 - 2) received under 26 USC is exchanged only with parties authorized to receive that information under that section of the Code; and, the information is adequately stored and processed so that it is protected against unauthorized disclosure for other purposes.
 - c) The Contractor must have criteria that govern the types of information about applicants and beneficiaries that are safeguarded. This information must include at least--
 - 1) Names and addresses;
 - 2) Medical services provided;
 - 3) Social and economic conditions or circumstances;
 - 4) Contractor evaluation of personal information;
 - 5) Medical data, including diagnosis and past history of disease or disability
 - 6) Any information received for verifying income eligibility and amount of medical assistance payments, including income information received from SSA or the Internal Revenue Service;
 - 7) Income information received from SSA or the Internal Revenue Service must be safeguarded according to Medicaid and CHIP requirements;
 - 8) Any information received in connection with the identification of legally liable third party resources; and.
 - 9) Social Security Numbers.
 - d) The Contractor must have criteria approved by HCFA specifying:
 - 1) the conditions for release and use of information about applicants and beneficiaries:

- 2) Access to information concerning applicants or beneficiaries must be restricted to persons or Contractor representatives who are subject to standards of confidentiality that are comparable to those of HCFA;
- 3) The Contractor shall not publish names of applicants or beneficiaries;
- 4) The Contractor shall obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility and the amount of medical assistance payment to an authorized individual or entity;
- 5) If, because of an emergency situation, time does not permit obtaining consent before release, the Contractor shall notify HCFA, the family or individual immediately after supplying the information.
- 6) The Contractor's policies must apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials.
 - i) The Contractor shall notify HCFA of any requests for information on applicants or beneficiaries by other governmental bodies, the courts or law enforcement officials ten (10) days prior to releasing the requested information.
- 7) If a court issues a subpoena for a case record or for any Contractor representative to testify concerning an applicant or beneficiary, the Contractor must notify HCFA at least ten (10) days prior to the required production date so HCFA may inform the court of the applicable statutory provisions, policies, and regulations restricting disclosure of information.
- 8) The Contractor shall not request or release information to other parties to verify income, eligibility and the amount of assistance under Medicaid or CHIP, prior to express approval from HCFA.

E.22. Employees Excluded from Medicare, Medicaid or CHIP. The Contractor does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly employ, in the performance of this Contract, employees who have been excluded from participation in the Medicare, Medicaid, and/or CHIP programs pursuant to Sections 1128 of the Social Security Act.

E.23. Offer of Gratuities. By signing this contract, the Contractor signifies that no member of or a delegate of Congress, nor any elected or appointed official or employee of the State of Tennessee, the federal General Accounting Office, federal Department of Health and Human Services, the Center for Medicare and Medicaid Services, or any other state or federal agency has or will benefit financially or materially from this Contract. This Contract may be terminated by HCFA as provided in Section D.6, if it is determined that gratuities of any kind were offered to or received by any of the aforementioned officials or employees from the Contractor, its agent, or employees.

E.24. Internal Revenue Service (IRS) Safeguarding Of Return Information:

- a) Performance - In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:
 - (1) This provision shall not apply if information received or delivered by the Parties under this Contract is NOT "federal tax returns or return information" as defined by IRS Publication 1075 and IRC 6103.

- (2) All work will be done under the supervision of the contractor or the contractor's employees. The contractor and the contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (3) Any Federal tax returns or return information (hereafter referred to as returns or return information) made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (5) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (7) All computer systems receiving, processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
- (8) No work involving Federal tax information furnished under this contract will be subcontracted without prior written approval of the IRS.
- (9) The contractor will maintain a list of employees authorized access. Such list will be provided to the agency and, upon request, to the IRS reviewing office.
- (10) The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

b) Criminal/Civil Sanctions

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further

disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.
- (3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A. The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

Inspection - The IRS and the Agency with 24 hour notice, shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work with FTI under this contract. The IRS and Agency's right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with contract safeguards.

E.25. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's Response to RFP 31865-00477 (Attachment 6.2, Section B.15) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and Tennessee service-disabled veterans. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at: <https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

IN WITNESS WHEREOF,

CONTRACTOR LEGAL ENTITY NAME:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

**DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION:**

LARRY B. MARTIN, COMMISSIONER

DATE

DEFINITIONS

Adult Protective Services (APS) – An office within the Tennessee Department of Human Services that investigates reports of abuse, neglect (including self-neglect) or financial exploitation of vulnerable adults. APS staff members assess the need for protective services and provide services to reduce the identified risk to the adult.

Back-up Plan - A written plan that is a required component of a Participant's PCSP or ISP, as applicable which specifies unpaid persons as well as Workers who are available, have agreed to serve as back-up, and who will be contacted to deliver needed care or support in situations when regularly scheduled Workers are unavailable or do not arrive as scheduled. A Participant shall not elect, as part of the Back-up Plan, to go without services. The Back-up Plan shall include the names and telephone numbers of persons to contact and the services to be provided by each of the listed contacts. The Participant/Representative shall have primary responsibility for the development and implementation of the Back-up Plan for Consumer-Directed or Self-Directed services, as applicable. The Contractor will assist as needed with the development and verification of the initial Back-up Plan. The Care Coordinator, Support Coordinator, or DIDD Case Manager, as applicable, shall be responsible for assistance as needed with implementing the Back-up Plan and for updating and verifying the Back-up Plan on an ongoing basis.

Care Coordinator - For purposes of CHOICES, a person who is employed or contracted by an MCO to perform the continuous process of care coordination:

- (a) Assessing a Member's physical, behavioral, functional, and psychosocial needs;
- (b) Identifying the physical health, behavioral health, and long-term services and supports (LTSS) and other social support services and assistance (e.g., housing or income assistance) necessary to meet identified needs;
- (c) Ensuring timely access to and provision, coordination and monitoring of physical health, behavioral health, and LTSS services needed to help the Member maintain or improve his physical or behavioral health status or functional abilities and maximize independence; and
- (d) Facilitating access to other social support services and assistance needed in order to ensure the Member's health, safety and welfare, and as applicable, to delay or prevent the need for more expensive institutional placement.

Child Protective Services (CPS) – A program division of the Tennessee Department of Children's Services whose purpose is to investigate allegations of child abuse and neglect and provide and arrange preventive, supportive, and supplementary services.

Complaint System – A system established and maintained by the Contractor for responding to and tracking verbal and written complaints from Participants/Representatives and Workers regarding dissatisfaction with any action or omission of the Contractor or the Contractor's staff.

Confidential Information – Any non-public, confidential or proprietary information, whether written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, which is created under this Contract. Any such information relating to Participants or relating to individuals who may be potentially enrolled in the TennCare program, which is provided to or obtained under this Contract, shall also be treated as "Confidential Information" to the extent that confidential status is afforded such information under State and federal laws or regulations. All Confidential Information shall not be subject to disclosure under the Tennessee Public Records Act.

Consumer-Directed or Self-Directed Worker (Worker) – An individual who has been hired by a Participant/Representative to provide one or more Eligible CHOICES HCBS, Eligible ECF CHOICES HCBS, or Eligible SDWP HCBS to the Participant. Worker does not include an employee of an agency that is being paid by an MCO or DIDD to provide HCBS to the Participant.

Consumer Direction of Eligible CHOICES or ECF CHOICES HCBS (Consumer Direction) - The opportunity for a CHOICES or ECF CHOICES Member assessed to need specified types of CHOICES or ECF CHOICES HCBS including for purposes of CHOICES, attendant care, personal care, in-home respite, companion care; and for purposes of ECF CHOICES, personal assistance, supportive home care, hourly respite, and community transportation; and/or any other service specified in TennCare Rules as available for Consumer Direction to elect to direct and manage (or to have a Representative direct and manage) certain aspects of the provision of such services—primarily, the hiring, firing, and day-to-day supervision of Consumer-Directed workers delivering the needed service(s) and for ECF CHOICES, the delivery of each eligible ECF CHOICES HCBS within the authorized budget for that service.

Contract Provider - A provider who is under contract with the Contractor. Also called “Network Provider” or “In-Network provider.”

Contractor Risk Agreement – The agreement between MCOs and TennCare regarding requirements for operation and administration of the TennCare managed care program, including CHOICES and ECF CHOICES.

Critical Incident - For purposes of CHOICES, an incident of a type specified by the Contractor Risk Agreement occurring to a Member in the CHOICES program in an HCBS setting, which requires notification to the Member's MCO and law enforcement and/or APS, as appropriate within the timeframes and in a manner specified by the Contractor Risk Agreement.

Department of Intellectual and Developmental Disabilities Case Manager (Case Manager) - Shall mean a person who provides support coordination services to a Person Supported, who is responsible for developing, monitoring, and assuring the implementation of the ISP; who assists the Person Supported in identifying, selecting, obtaining, coordinating, and using both paid services and natural supports to enhance the person's independence, integration in the community, and productivity as specified in the ISP.

Eligible CHOICES HCBS - For purposes of Consumer Direction, CHOICES HCBS that may be Consumer-Directed are limited to attendant care, personal care, in-home respite, or companion care services and/or any other CHOICES HCBS specified in TennCare Rules and regulations as eligible for Consumer Direction for which a CHOICES Member is determined to need and elects to direct and manage (or have a Representative direct and manage). Eligible CHOICES HCBS do not include home health or private duty nursing services.

Eligible ECF CHOICES HCBS - For purposes of Consumer Direction, ECF CHOICES HCBS that may be Consumer-Directed are limited to personal assistance, supportive home care, hourly respite, community transportation, and/or any other ECF CHOICES HCBS specified in TennCare Rules as eligible for Consumer Direction which an ECF CHOICES Member is determined to need and elects to direct and manage (or have a Representative direct and manage) certain aspects of the provision of such services – primarily the hiring, firing and day-to-day supervision of Consumer-Directed workers delivering the needed service(s) and the delivery of each eligible ECF CHOICES HCBS within the authorized budget for that service. Eligible ECF CHOICES HCBS do not include home health or private duty nursing services.

Eligible SDWP HCBS - For purposes of Self-Direction, Eligible SDWP HCBS that may be Self-Directed are limited to respite services (when provided by an approved respite provider who serves only one (1) Person Supported), personal assistance; day services (except those selected by and provided in a facility-based setting); and individual transportation services.

Employer of Record – The Participant or a Representative designated by the Participant to assume the Consumer Direction or Self-Direction functions on the Participant's behalf.

Fiscal Employer Agent (Contractor) – An entity contracting with the State, MCOs, and/or DIDD that helps Participants in Consumer Direction and Self-Direction. The Contractor provides both Financial Administration and Supports Brokerage functions for Participants. This term is used by the IRS to designate an entity operating under Section 3504 of the IRS code, Revenue Procedure 70-6 and Notice 2003-70 as the agent to Members for the purpose of filing certain federal tax forms and paying federal income tax withholding, FICA and FUTA taxes. The Contractor also files state income tax withholding and unemployment insurance tax forms and pays the associated taxes and processes payroll based on the Eligible CHOICES HCBS, Eligible ECF CHOICES HCBS, or Eligible SDWP HCBS, as applicable, authorized and provided.

Financial Administration - Financial Administration refers to the Contractor's functions related to the performance of payroll, employer taxes, and related tasks as defined in this Contract.

HIPAA – Health Insurance Portability and Accountability Act of 1996, 45 CFR Parts 160 and 164.

HITECH -- Health Information Technology for Economic and Clinical Health Act of 2009. 42 U.S.C. § 300jj et seq. and 42 U.S.C. § 17921 et seq.

Home and Community-Based Services (HCBS) – Services that are provided pursuant to a Section 1915(c) waiver or the CHOICES or ECF CHOICES program as an alternative to long-term care institutional services in a nursing facility or an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) or to delay or prevent placement in a nursing facility.

Individual Support Plan (ISP) – An individualized written plan that identifies a Person Supported's preferences, capacities, needs and resources and that identifies supports and services to meet such needs; and by which a Persons Supported and their family are assisted to access SDWP and other necessary services.

List of Excluded Individuals/Entities (LEIE) – List of Excluded Individuals/Entities is the database maintained by the Office of the Inspector General in the Department of Human Services containing the names of providers excluded from participation in federally financed healthcare programs by the authority granted in 42 U.S.C. § 1320a-7.

Managed Care Organization (MCO) – An appropriately licensed Health Maintenance Organization (HMO) approved by the Bureau of TennCare as capable of providing medical, behavioral, and long-term services and supports in the TennCare Program.

Member – Member shall mean an individual who is enrolled in CHOICES or ECF CHOICES and is Consumer-Directing services under this Contract. The term collectively refers to both CHOICES and ECF CHOICES Members when used in this Contract, unless a specific program is referenced (i.e., CHOICES Member or ECF CHOICES Member).

Participant - Participant collectively refers to any individual who is either Consumer-Directing services in CHOICES or ECF CHOICES or is Self-Directing services in the SDWP.

Person-Centered Practices - An approach to the performance of functions required under this Contract by the Contractor and its staff that focuses on the goals, preferences and needs of the Participant seeking assistance, and which supports the Participant's choice and self-determination, which includes:

- (a) Ensuring that the Contractor allows people chosen by the Participant/Representative to be present for discussion about Consumer Direction or Self-Direction, as applicable;
- (b) Provides the Participant/Representative with necessary information and support to ensure the Participant/Representative directs the process to the maximum extent possible, and is enabled to make informed choices and decisions;
- (c) Required meetings with Participants/Representatives are timely and occur at times and locations of convenience for the Participant/Representative;

- (d) Reflects cultural considerations of the Participant/Representative and is conducted by providing information in plain language and in a manner accessible for individuals with disabilities and individuals who are limited English proficient; and
- (e) The Contractor and its staff have strategies for solving conflict or disagreement.

Person-Centered Support Plan (PCSP) - As it pertains to CHOICES and ECF CHOICES, the PCSP is a written plan developed by the Support Coordinator or Care Coordinator in accordance with person-centered planning requirements set forth in federal regulation, and in TennCare policies and protocols, using a person-centered planning process that accurately documents the member's strengths, needs, goals, lifestyle preferences and other preferences and outlines the services and supports that will be provided to the member to help them achieve their preferred lifestyle and goals, and to meet their identified unmet needs (after considering the availability and role of unpaid supports provided by family members and other natural supports) through paid services provided by the member's MCO and other payor sources. The person-centered planning process is directed by the member with long-term support needs and may include a representative whom the member has freely chosen to assist the member with decision-making, and others chosen by the member to contribute to the process. If the member has a guardian or conservator, the member shall lead the planning process to the maximum extent possible, and the guardian or conservator shall have a participatory role as needed and defined by the individual, except as explicitly defined under State law and the order of guardianship or conservatorship. Any decisions made on the member's behalf should be made using principles of substituted judgment and supported decision-making. This planning process, and the resulting PCSP, will assist the member in achieving a personally defined lifestyle and outcomes in the most integrated community setting appropriate, ensure delivery of services in a manner that reflects personal preferences and choices, and contribute to the assurance of health, welfare, and personal growth. Services in CHOICES and ECF CHOICES shall be authorized, provided, and reimbursed only as specified in the PCSP.

Person Supported - An individual enrolled in the 1915(c) HCBS SDWP who is Self-Directing their HCBS services under this Contract.

Provider - Provider shall mean an appropriately licensed institution, facility, agency, person, corporation, partnership, or association that delivers health care services. Providers are categorized as either TennCare Providers or Non-TennCare Providers. TennCare Providers may be further categorized as being one of the following:

- (a) Participating Providers or In-Network Providers
- (b) Non-Participating Providers or Out-of-Network Providers
- (c) Out-of-State Emergency Providers

Definitions of each of these terms are contained in TennCare Rule 1200-13-13-.01.

Provider does not include Consumer-Directed Workers (See Consumer-Directed Worker); nor does provider include the Contractor (Fiscal Employer Agent).

Reportable Event -- For purposes of ECF CHOICES, an event experienced by a Member in the ECF CHOICES program in an HCBS Settings that is classified as either Tier 1, Tier 2, or Tier 3 as specified in the Contractor Risk Agreement, which requires notification to the Member's MCO, DIDD, law enforcement, and/or APS or CPS, as appropriate, within the timeframes and in the manner specified in the Contractor Risk Agreement.

Representative – As it relates to Consumer Direction and Self-Direction, a person who is authorized by the Participant to serve as the Employer of Record, and to direct and manage the Participant's Worker(s), and signs a Representative agreement. The Representative for Consumer Direction or Self-Direction must also: be at least eighteen (18) years of age; have a personal relationship with the Participant and understand his/her support needs; know the Participant's daily schedule and routine, medical and functional status, medication regimen, likes and dislikes, and strengths and weaknesses; and be

physically present in the Participant's residence on a regular basis or at least at a frequency necessary to supervise and evaluate Workers.

Representative Agreement – The agreement between a Participant electing Consumer Direction or Self-Direction, as applicable, who has a Representative direct and manage the Members' Worker(s) and that specifies the roles and responsibilities of the Participant and the Participant's Representative.

Self-Direction of Eligible SDWP HCBS (Self-Direction) - The opportunity for a Person Supported in the 1915(c) Self-Determination Waiver assessed to need specified types of Self-Directed services, including personal assistance, community-based day services, respite, transportation, and/or any other service specified in TennCare Rules as available for Self-Directed service option to elect to direct and manage (or to have a Representative direct and manage) certain aspects of the provision of such services— primarily, the hiring, firing, and day-to-day supervision of Self-Directed Workers delivering the needed service(s) and the delivery of eligible HCBS within the authorized budget for such services.

Self-Direction of Health Care Tasks – A decision by a Participant in Consumer Direction or Self-Direction to direct and supervise a paid Worker delivering Eligible CHOICES HCBS, Eligible ECF CHOICES, or SDWP HCBS in the performance of health care tasks that would otherwise be performed by a licensed nurse. Self-Direction of health care tasks is not a service, but rather, health care-related duties and functions (such as administration of medications) that a Participant in Consumer Direction or Self-Direction may elect to have performed by a Consumer-Directed or Self-Directed Worker as part of the delivery of Eligible CHOICES HCBS, Eligible ECF CHOICES HCBS, or SDWP HCBS he or she is authorized to receive.

Service Agreement – The agreement between a Participant/Representative electing Consumer Direction or Self-Direction and the Worker that specifies the roles and responsibilities of the Participant/Representative and the Worker and the Worker's rate of pay.

Support Coordinator – For purposes of ECF CHOICES, a person who is employed or contracted by an MCO to perform responsibilities related to the continuous process of:

- (a) identifying, developing, and supporting opportunities for a Member's community involvement, including achieving and maintaining competitive, integrated employment consistent with the Member's individual strengths, preferences and conditions for success;
- (b) leveraging Member strengths, resource and opportunities available in the Member's community, and natural supports available to the Member in coordination with ECF CHOICES services and supports to enable the Member to achieve his/her desired lifestyle and goals for community involvement, employment and independent living and wellness;
- (c) assessing a Member's physical, behavioral, functional, and psychosocial needs;
- (d) identifying the physical health, behavioral health and long-term services and other support services and assistance (e.g., vocational rehabilitation, housing or income assistance) that are necessary to enable the Member to achieve his/her desired lifestyle, goals for community involvement, employment and independent living, and wellness, and to address identified needs;
- (e) ensuring timely access to and provision, coordination and monitoring of physical health, behavioral health, and long-term services and supports necessary to facilitate the Member's community involvement, including achieving and maintaining competitive, integrated employment, consistent with the Member's individual strengths, preferences and conditions for success and necessary to maintain or improve his or her physical or behavioral health status and functional abilities, to maximize independence, to ensure the Member's rights and choices, health, safety and welfare, and as applicable, to delay or prevent the need for more restrictive and more expensive institutional placement; and
- (f) facilitating access to other support services and assistance the Member needs to achieve his/her desired lifestyle, goals for community involvement, employment and independent living and wellness, and to address identified needs.

Supports Broker - An individual assigned by the Contractor to each Participant who assists the Participant/Representative as requested by the Participant/Representative in performing certain Employer of Record functions as follows: developing job descriptions; recruiting, interviewing, and hiring Workers;

Participant and Worker enrollment in Consumer Direction and Consumer Direction training or Self-Direction and Self-Direction training, as applicable; and developing (as part of the onboarding process for new Workers) a schedule for the Participant's Workers that comports with the schedule at which services are needed by the Participant as reflected in the Member's PCSP or Person's Supported ISP, as applicable. The Supports Broker shall also assist the Participant as needed with developing and verifying the initial Back-up Plan. The Supports Broker collaborates with the Participant's Care Coordinator, Support Coordinator, or DIDD Case Manager, as applicable and appropriate. The Supports Broker does not have authority or responsibility for Consumer Direction or Self-Direction. The Participant/Representative must retain authority and responsibility for Consumer Direction or Self-Direction, as applicable.

TennCare or TennCare Program – The program administered by the single state agency, as designated by the state and CMS, pursuant to Title XIX of the Social Security Act and the Section 1115 research and demonstration waiver granted to the State of Tennessee and any successor programs.

TennCare CHOICES in Long-Term Services and Supports (CHOICES) – A program in which all nursing facility services and home and community based long-term services and supports for the elderly and/or adults with physical disabilities are integrated into TennCare's managed care delivery system.

TennCare Employment and Community First CHOICES (ECF CHOICES) - A managed long-term services and supports program that offers home and community-based services to eligible individuals with intellectual and developmental disabilities enrolled in the program in order to promote competitive employment and integrated community living as the first and preferred option.

Timekeeping System - A system developed, implemented, and maintained by the Contractor to capture time submitted for the delivery of Consumer-Directed and Self-Directed services. The system is used to monitor Participant receipt of Eligible CHOICES HCBS, Eligible ECF CHOICES HCBS, and Eligible SDWP HCBS to ensure provided HCBS is authorized by the MCO or DIDD, as applicable, generate payment to Workers for hours worked, as appropriate, and also generate claims for submission by the provider. The system will not allow payment to Workers for services not authorized by the MCO or DIDD, as applicable.

Vital Documents – Vital Documents may include, but are not limited to, consent and complaint forms, intake and application forms with the potential for important consequences, notices pertaining to the reduction, denial, delay, suspension, or termination of services, certain critical outreach documents (i.e., case management and Population Health documents) and any other documents designated by the State. At a minimum, all vital documents shall be available in the Spanish language.

Warm Transfer – A telecommunications mechanism in which the person answering the call facilitates transfer to a third party, announces the caller and issue, and remains engaged as necessary to provide assistance.

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
EDISON VENDOR IDENTIFICATION 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. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

LIQUIDATED DAMAGES

In the event of a Contract performance or compliance failure by Contractor and such Contract performance or compliance failure is not included in the following table with an associated Liquidated Damage amount, the parties hereby agree that the State may choose one of the following courses of action in order to obtain redressability for such Contract performance or compliance failure: (1) the State may assess actual damages resulting from the Contract performance or compliance failure against the Contractor in the event that such actual damages are known or are reasonably ascertainable at the time of discovery of such Contract performance or compliance failure or (2) if such actual damages are unknown or are not reasonably ascertainable at the time of discovery of the Contract performance or compliance failure, the State may (a) require the Contractor to submit a corrective action plan to address any such Contract performance or compliance failure and (b) assess a liquidated damage against Contractor for an amount that is reasonable in relation to the Contract performance failure as measured at the time of discovery of the Contract performance or compliance failure. In the event that the State chooses to assess a Liquidated Damage for a Contract performance or compliance failure according to the immediately preceding sentence, in no event shall such Liquidated Damage be in excess of \$1,000 for any single Contract performance or compliance failure.

HCFA may elect to apply the following liquidated damages remedies in the event the Contractor fails to perform its obligations under this Contract in a proper and/or timely manner. Upon determination by HCFA that the Contractor has failed to meet any of the requirements of this Contract in a proper and/or timely manner, HCFA will notify the Contractor in writing of the performance or compliance failure and of the potential liquidated damages to be assessed. Should the performance or compliance failure remain uncorrected for more than thirty (30) calendar days from the date of the original notification of the performance or compliance failure by HCFA, HCFA may impose an additional liquidated damage of Five Hundred Dollars (\$500) per day from the date of the original notification to Contractor until said performance or compliance failure is resolved.

All liquidated damages remedies set forth in the following table may, at HCFA's election, be retroactive to the date of the initial occurrence of the failure to comply with the terms of the Contract as set forth in the notice of deficiency from HCFA and may continue until such time as the HCFA Deputy Commissioner, or the Deputy Commissioner's representative, determines the performance or compliance failure has been cured.

If liquidated damages are assessed, HCFA shall reduce the amount of any payment due to the Contractor in the next invoice by the amount of damages. In the event that damages due exceed the amount HCFA is to pay to Contractor in a given payment, HCFA shall invoice Contractor for the amount exceeding the amount payable to Contractor, and such excess amount shall be paid by Contractor within thirty (30) calendar days of the invoice date. In situations where the Contractor wishes to dispute any liquidated damages assessed by HCFA, the Contractor must submit a written notice of dispute, including the reasons for disputing the liquidated damages, to the HCFA Deputy Commissioner or the Deputy Commissioner's representative within thirty (30) calendar days of receipt of the notice from HCFA containing the total amount of damages assessed against the Contractor. If the Contractor fails to timely dispute a liquidated damages assessment as set forth herein, such failure shall constitute a bar to the Contractor seeking to have the assessment amount overturned in a forum or court of competent jurisdiction.

Liquidated damages will apply in the below Contract performance or compliance failures. Contractor acknowledges that the actual damages likely to result from breach of the below contract performance or compliance failures are difficult to estimate and may be difficult for the State to prove. The parties intend that the Contractor's payment of assessed liquidated damages will compensate the State for breach by the Contractor obligations under this Contract. Liquidated damages do not serve as punishment for any breach by the Contractor.

	PROGRAM ISSUES	DAMAGE
1.	Failure by the Contractor to meet the standards for privacy, security, and confidentiality of individual data as evidenced by a breach of the security per Section E. 2. and E.18	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.
2.	Failure by the Contractor to execute the appropriate agreements to effectuate transfer and exchange of enrollee PHI or HCFA confidential information including, but not limited to, a data use agreement, trading partner agreement, business associate agreement or qualified protective order prior to the use or disclosure of PHI to a third party. (See E.17. and Business Associate Agreement between the parties)	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.
3.	Failure by the Contractor to seek express written approval from HCFA prior to the use or disclosure of enrollee data or HCFA confidential information in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States. (See E.13 and Business Associate Agreement between the parties)	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.
4.	Failure by the Contractor to timely report violations in the access, use and disclosure of PHI or timely report a security incident or timely make a notification of breach or notification of suspected breach per Sections (See E.18 and Business Associate Agreement between the parties)	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.
5.	Failure to obtain written approval of any written Participant materials including educational materials prior to using such materials.	\$250 per Participant or educational material (i.e., per document, regardless of the number of persons to whom such document may have been disseminated) for which prior approval was not obtained.
6.	Failure to complete and process all required employer paperwork, including but not limited to IRS Forms SS-4 LB-0927, LB-00441, and 2678 for the Participant/Representative, as applicable, prior to initiating Consumer Direction or Self-Direction, as applicable, for the Participant.	\$500 per Participant for which all required employer paperwork is not completed and processed prior to initiating Consumer Direction or Self-Direction.

	PROGRAM ISSUE	DAMAGE
7.	Failure to ensure that each Worker completes all required employee paperwork, including an abbreviated Medicaid agreement, and obtains a Medicaid provider ID number prior to authorizing the Worker to deliver Consumer-Directed or Self-Direct services, as applicable, for a Participant.	\$500 per Worker for which all required employee paperwork was not completed prior to authorizing the Worker to deliver Consumer-Directed or Self-Directed services, as applicable, for a Participant.
8.	Failure to ensure that each Worker completes all training requirements prior to authorizing the Worker to deliver Consumer- Directed or Self-Directed services, as applicable.	\$500 per Worker for which all training requirements were not completed prior to authorizing the Worker to deliver Consumer-Directed or Self-Directed services, as applicable, for a Participant.
9.	Failure to ensure that each Worker meets all qualifications specified in this Contract and in TennCare or DIDD Rules, as applicable, and completes a background check (including all applicable registry and database checks); failure to maintain documentation of such qualifications and background (including registry and database) checks; or failure to allow a Worker who has failed his/her background check to provide Consumer-Directed or Self-Directed services, as applicable, only as permitted pursuant to this Contract.	\$1,000 per Worker for which qualifications were not verified, or a background check was not completed prior to authorizing the Worker to deliver Consumer-Directed or Self-Directed services, as applicable; for which documentation of such qualifications and background check was not maintained; or for each Worker whose background check returned results that prohibited the Worker from providing Consumer-Directed or Self-Directed services, but this Worker that was permitted to provide Consumer-Directed or Self-Directed services.
10.	Failure to obtain a signed Service Agreement for each Worker prior to such Worker being authorized to deliver Consumer-Directed or Self-Directed services, as applicable, and any time there is a change in the terms or conditions of a Worker's employment or a change in the Participant's Representative, as applicable.	\$1,000 per Worker for which a Service Agreement was not signed prior to authorizing the Worker to deliver Consumer-Directed or Self-Directed services, as applicable, for a Participant, or for which a new Service Agreement is not signed when there is a change in the terms or conditions of a Worker's employment or a change in the Participant's Representative, if applicable.
11.	Failure to confirm each back-up person and organization's willingness and availability to provide back-up care when needed prior to initiation of Consumer Direction or Self-Direction, as applicable.	\$500 per Participant for whom the Contractor failed to confirm each back-up person and organization's willingness and availability to provide back-up care when needed prior to initiation of Consumer Direction or Self-Direction, as applicable.
12.	Failure to report a Critical Incident, Reportable Event, or Reportable Incident, as applicable within the timeframes specified in this Contract.	\$250 per incident or event not reported.

	PROGRAM ISSUE	DAMAGE
13.	Failure to submit complete and accurate data or to comply with all data collection processes and timelines established by TennCare or DIDD in policy or protocol in order to gather data required to comply with tracking and reporting requirements.	\$500 per occurrence in which reported data was incomplete or inaccurate.
14.	Failure to pay a Worker pursuant to the terms of this Contract, including but not limited to the timeliness of payment as defined in this Contract.	\$200 per instance in which a Worker is not paid pursuant to the terms of this Contract.
15.	Failure to timely submit and pay a Participant/Representative's Employer Payroll Taxes as defined in this Contract.	\$200 per Participant per day for which Employer Payroll Taxes were not timely submitted and paid in addition to all applicable IRS penalties and interest which may be assessed.
16.	Failure by the Contractor to ensure that all TennCare and DIDD data containing Protected Health Information (PHI), as defined by HIPAA, is secured through commercially reasonable methodology in compliance with HITECH, such that it is rendered unusable, unreadable and indecipherable to unauthorized individuals through encryption or destruction, that compromises the security or privacy of TennCare or DIDD enrollee PHI.	\$500 per Participant per occurrence, AND If the State deems credit monitoring and/or identity theft safeguards are needed to protect those TennCare or DIDD enrollees whose PHI was placed at risk by Contractor's failure to comply with the terms of this Contract, the Contractor shall be liable for all costs associated with the provision of such monitoring and/or safeguard services.
17.	Failure to comply with program integrity requirements, including but not limited to fraud and abuse reporting, education, and exclusion screening.	\$1000 for each business day per occurrence that Contractor fails to comply with program integrity requirements.

HIPAA Business Associate Agreement

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT ("Agreement") is between **The State of Tennessee, Department of Finance and Administration, Health Care Finance and Administration** ("HCFA" or "Covered Entity"), 310 Great Circle Road, Nashville, TN 37243 and _____ ("Business Associate"), located at _____, including all office locations and other business locations at which Business Associate data may be used or maintained. Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

BACKGROUND

The Parties acknowledge that they are subject to the Privacy and Security Rules (45 C.F.R. Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, and as amended by the final rule modifying the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act (HITECH). If Business Associate provides services to Covered Entity pursuant to one or more contractual relationships, said Agreements are detailed below and hereinafter referred to as "Service Agreements."

LIST OF AGREEMENTS AFFECTED BY THIS HIPAA BUSINESS ASSOCIATE AGREEMENT:

In the course of performing services under a Service Agreement, Business Associate may come into contact with, use, or disclose Protected Health Information ("PHI"). Said Service Agreements are hereby incorporated by reference and shall be taken and considered as a part of this document the same as if fully set out herein.

In accordance with the federal privacy and security rules and regulations set forth at 45 C.F.R. Part 160 and Part 164, Subparts A, C, D and E, which require Covered Entity to have a written memorandum with each of its Business Associates, the Parties wish to establish satisfactory assurances that Business Associate will appropriately safeguard PHI that Business Associate may receive (if any) from or on behalf of Covered Entity, and, therefore, execute this Agreement.

1. DEFINITIONS

All capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms defined in 45 C.F.R. Parts 160 through 164 or other applicable law or regulation. A reference in this Agreement to a section in the Privacy or Security Rule means the section as in effect or as amended.

1.1 "Breach of the Security of the [Business Associate's Information] System" shall mean the unauthorized acquisition, including, but not limited to, access to, use, disclosure, modification or destruction, of unencrypted computerized data that materially compromises the security, confidentiality, or integrity of personal information maintained by or on behalf of the Covered Entity under the terms of Tenn. Code Ann. § 47-18-2107 and this Agreement. Good faith acquisition of personal information by an employee or agent of the Information Holder for the purposes of the Information Holder is not a Breach of the Security of the System; provided, that the personal information is not used or subject to further unauthorized disclosure.

1.2 "Commercial Use" means obtaining PHI with the intent to sell, transfer or use it for commercial, or personal gain, or malicious harm; sale to third party for consumption, resale, or processing for resale; application or conversion of data to make a profit or obtain a benefit contrary to the spirit of this Agreement, including but not

limited to presentation of data or examples of data in a conference or meeting setting where the ultimate goal is to obtain or gain new business.

1.3 "Confidential Information" shall mean any non-public, confidential or proprietary information, whether written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, which is supplied by HCFA to the Business Associate under this Agreement. Any information, whether written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, relating to individuals enrolled in the HCFA program ("HCFA enrollees"), or relating to individuals who may be potentially enrolled in the HCFA program, which is provided to or obtained through the Business Associate's performance under this Agreement, shall also be treated as "Confidential Information" to the extent that confidential status is afforded such information under state and federal laws or regulations. All confidential information shall not be subject to disclosure under the Tennessee Public Records Act.

1.4 "Electronic Signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

1.5 "Information Holder" means any person or business that conducts business in this state, or any agency of the state of Tennessee or any of its political subdivisions, that owns or licenses computerized data that includes personal information

1.6 "Marketing" shall have the meaning under 45 C.F.R. § 164.501 and the act or process of promoting, selling, leasing or licensing any HCFA information or data for profit without the express written permission of HCFA.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Privacy Rule)

2.1 Compliance with the Privacy Rule. Business Associate shall fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule and not use or further disclose PHI other than as permitted or required by this Agreement, the Service Agreements, or as required by law. In case of any conflict between this Agreement and the Service Agreements, this Agreement shall govern.

2.2 HITECH Act Compliance. The Health Information Technology for Economic and Clinical Health Act (HITECH) was adopted as part of the American Recovery and Reinvestment Act of 2009. HITECH and its implementing regulations impose new requirements on Business Associates with respect to privacy, security, and Breach notification. Business Associate hereby acknowledges and agrees that to the extent it is functioning as a Business Associate of Covered Entity, Business Associate shall comply with any applicable provisions of HITECH. Business Associate and the Covered Entity further agree that the provisions of HIPAA and HITECH that apply to business associates and that are required to be incorporated by reference in a business associate agreement have been incorporated into this Agreement between Business Associate and Covered Entity. Should any provision not be set forth specifically, it is as if set forth in this Agreement in its entirety and is effective as of the Applicable Effective Date, and as amended.

2.3 Business Management. Business Associate may use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate. Business Associate may provide data aggregation services relating to the Health Care Operations of HCFA, or as required by law. Business Associate is expressly prohibited from using or disclosing PHI other than as permitted by this Agreement, any associated Service Agreements, or as otherwise permitted or required by law, and is prohibited from uses or disclosures of PHI that would not be permitted if done by the Covered Entity.

2.4 Privacy Safeguards and Policies. Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the Service Agreement(s), this Agreement or as required by law. This includes the implementation of Administrative, Physical, and Technical Safeguards to reasonably and appropriately protect the Covered Entity's PHI against any reasonably anticipated threats or hazards, utilizing the technology commercially available to the Business Associate (See also Section 3.2). The Business Associate shall maintain appropriate documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, procedures, records of training and sanctions of members of its Workforce.

2.5 Business Associate Contracts. Business Associate shall require any agent, including a Subcontractor, to whom it provides PHI received from, maintained, created or received by Business Associate on behalf of Covered Entity, or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of,

or access to PHI or other confidential HCFA information, to agree, by written agreement with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information except for the provision at section 4.6, which shall only apply to the Business Associate notwithstanding the requirements in this section 2.5.

2.6 Mitigation of Harmful Effect of Violations. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

2.7 Reporting of Violations in Use and Disclosure of PHI. Business Associate shall require its employees, agents, and Subcontractors to promptly report to Business Associate immediately upon becoming aware of any use or disclosure of PHI in violation of this Agreement and to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement. The Business Associate shall report such violation to Covered Entity immediately upon becoming aware of, and in no case later than 48 hours after discovery.

2.8 Breach of Unsecured Protected Health Information. As required by the Breach Notification Rule, Business Associate shall, and shall require its Subcontractor(s) to, maintain systems to monitor and detect a Breach of Unsecured PHI, whether in paper or electronic form.

2.8.1 Business Associate shall provide to Covered Entity notice of a Breach of Unsecured PHI immediately upon becoming aware of the Breach, and in no case later than 48 hours after discovery.

2.8.2 Business Associate shall cooperate with Covered Entity in timely providing the appropriate and necessary information to Covered Entity.

2.8.3 Covered Entity shall make the final determination whether the Breach requires notification to affected individuals and whether the notification shall be made by Covered Entity or Business Associate.

2.9 Access of Individual to PHI and other Requests to Business Associate. If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate agrees to provide access to PHI in a Designated Record Set to Covered Entity in order to meet its requirements under 45 C.F.R. § 164.524. If Business Associate receives a request from an Individual for a copy of the Individual's PHI, and the PHI is in the sole possession of the Business Associate, Business Associate will provide the requested copies to the Individual in a timely manner. If Business Associate receives a request for PHI not in its possession and in the possession of the Covered Entity, or receives a request to exercise other Individual rights as set forth in the Privacy Rule, Business Associate shall promptly forward the request to Covered Entity. Business Associate shall then assist Covered Entity as necessary in responding to the request in a timely manner. If a Business Associate provides copies of PHI to the Individual, it may charge a reasonable fee for the copies as the regulations shall permit.

2.10 Requests to Covered Entity for Access to PHI. The Covered Entity shall forward to the Business Associate in a timely manner any Individual's request for access to or a copy (in any form they choose, provided the PHI is readily producible in that format) of their PHI that shall require Business Associate's participation, after which the Business Associate shall provide access to or deliver such information as follows:

- (a) The Parties understand that if either Party receives a request for access to or copies of PHI from an Individual which the Party may complete with only its own onsite information, the time for such response shall be thirty (30) days, with notification to the Covered Entity upon completion.
- (b) If Covered Entity does not have the requested PHI onsite and directs Business Associate to provide access to or a copy of his/her PHI directly to the Individual, or Individual's designee, the Business Associate shall have sixty (60) days from the date of the Individual's request to provide access to PHI or deliver a copy of such information to the Individual. The Business Associate shall notify the Covered Entity when it completes the response.
- (c) If the Covered Entity receives a request and requires information from the Business Associate in addition to the Covered Entity's onsite information to fulfill the request, the Business Associate shall have thirty (30) days from date of Covered Entity's notice to provide access or deliver such information to the Covered Entity so that the Covered Entity may timely respond to the Individual within the sixty (60) day requirement of 45 C.F.R. § 164.524.

- (d) If the Party designated above as responding to the Individual's request is unable to complete the response to the request in the time provided, that Party shall provide the Individual, or Individual's designee, with a written statement of the reasons for the delay and the date by which the Party will complete its action on the request. The Party may extend the response time once for no more than thirty (30) additional days.
- (e) Business Associate is permitted to send an Individual or Individual's designee unencrypted emails including Electronic PHI if the Individual requests it, provided the Business Associate has advised the Individual of the risk and the Individual still prefers to receive the message by unencrypted email.
- (f) Business Associate shall develop forms that are designed to collect the necessary written, signed designation that is required in order to permit Individuals to designate recipients of PHI.

2.11 Individuals' Request to Amend PHI. If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate agrees to make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526, regarding an Individual's request to amend PHI. The Business Associate shall make the amendment promptly in the time and manner designated by Covered Entity, but shall have thirty (30) days' notice from Covered Entity to complete the amendment to the Individual's PHI and to notify the Covered Entity upon completion.

2.12 Recording of Designated Disclosures of PHI. Business Associate shall document any and all disclosures of PHI by Business Associate or its agents, including information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

2.13 Accounting for Disclosures of PHI. The Business Associate agrees to provide to Covered Entity or to an Individual, or Individual's designee, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. The Covered Entity shall forward the Individual's request requiring the participation of the Business Associate to the Business Associate in a timely manner, after which the Business Associate shall provide such information as follows:

- (a) If Covered Entity directs Business Associate to provide an accounting of disclosures of the Individual's PHI directly to the Individual, the Business Associate shall have sixty (60) days from the date of the Individual's request to provide access to or deliver such information to the Individual or Individual's designee. The Covered Entity shall provide notice to the Business Associate in time to allow the Business Associate a minimum of thirty (30) days to timely complete the Individual's request.
- (b) If the Covered Entity elects to provide the accounting to the Individual, the Business Associate shall have thirty (30) days from date of Covered Entity's notice of request to provide information for the Accounting to the Covered Entity so that the Covered Entity may timely respond to the Individual within the sixty (60) day period.
- (c) If either of the Parties is unable to complete the response to the request in the times provided above, that Party shall notify the Individual with a written statement of the reasons for the delay and the date by which the Party will complete its action on the request. The Parties may extend the response time once for no more than thirty (30) additional days.
- (d) The accounting of disclosures shall include at least the following information:
 - (1) date of the disclosure;
 - (2) name of the third party to whom the PHI was disclosed,
 - (3) if known, the address of the third party;
 - (4) brief description of the disclosed information; and
 - (5) brief explanation of the purpose and basis for such disclosure.
- (e) The Parties shall provide one (1) accounting in any twelve (12) months to the Individual without charge. The Parties may charge a reasonable, cost-based fee, for each subsequent request for an accounting by the same Individual if he/she is provided notice and the opportunity to modify his/her request. Such charges shall not exceed any applicable State statutes or rules.

2.14 Minimum Necessary. Business Associate shall use reasonable efforts to limit any use, disclosure, or request for use or disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule.

2.14.1 Business Associate represents to Covered Entity that all its uses and disclosures of, or requests for, PHI shall be the minimum necessary in accordance with the Privacy Rule requirements.

2.14.2 Covered Entity may, pursuant to the Privacy Rule, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.

2.14.3 Business Associate shall adequately and properly maintain all PHI received from, or created or received on behalf of, Covered Entity.

2.15 Privacy Compliance Review upon Request. Business Associate agrees to make its internal practices, books and records, including policies, procedures, and PHI, relating to the use and disclosure of PHI received from, created by or received by Business Associate on behalf of Covered Entity available to the Covered Entity or to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the requester, for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.

2.16 Cooperation in Privacy Compliance. Business Associate agrees to fully cooperate in good faith and to assist Covered Entity in complying with the requirements of the Privacy Rule.

3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Security Rule)

3.1 Compliance with Security Rule. Business Associate shall fully comply with the requirements under the Security Rule applicable to "Business Associates," as that term is defined in the Security Rule. In case of any conflict between this Agreement and Service Agreements, this Agreement shall govern.

3.2 Security Safeguards and Policies. Business Associate shall implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity as required by the Security Rule. This includes specifically, but is not limited to, the utilization of technology commercially available at the time to the Business Associate to protect the Covered Entity's PHI against any reasonably anticipated threats or hazards. The Business Associate understands that it has an affirmative duty to perform a regular review or assessment of security risks, conduct active risk management and supply best efforts to assure that only authorized persons and devices access its computing systems and information storage, and that only authorized transactions are allowed. The Business Associate will maintain appropriate documentation of its compliance with the Security Rule.

3.3 Security Provisions in Business Associate Contracts. Business Associate shall ensure that any agent to whom it provides Electronic PHI received from, maintained, or created for Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, shall execute a bilateral contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, incorporating the same restrictions and conditions in this Agreement with Business Associate regarding PHI except for the provision in Section 4.6.

3.4 Tennessee Consumer Notice of System Breach. Business Associate understands that the Covered Entity is an "Information Holder" (as may be Business Associate) under the terms of Tenn. Code Ann. § 47-18-2107, and that in the event of a breach of the Business Associate's security system as defined by that statute and Definition 1.1 of this agreement, the Business Associate shall indemnify and hold the Covered Entity harmless for expenses and/or damages related to the breach. Such obligation shall include, but is not limited to, the mailed notification to any Tennessee resident whose personal information is reasonably believed to have been acquired by an unauthorized individual. In the event that the Business Associate discovers circumstances requiring notification of more than one thousand (1,000) persons at one time, the person shall also notify, without unreasonable delay, all consumer reporting agencies and credit bureaus that compile and maintain files on consumers on a nationwide basis, as defined by 15 U.S.C. § 1681a, of the timing, distribution and content of the notices. Substitute notice, as defined by Tenn. Code Ann. § 47-18-2107(e)(2) and (3), shall not be permitted except as approved in writing in advance by the Covered Entity. The parties agree that PHI includes data elements in addition to those included by "personal information" under Tenn. Code Ann. § 47-18-2107, and agree that Business Associate's responsibilities under this paragraph shall include all PHI.

3.5 Reporting of Security Incidents. The Business Associate shall track all Security Incidents as defined by HIPAA and shall periodically report such Security Incidents in summary fashion as may be requested by the Covered Entity, but not less than annually within sixty (60) days of the anniversary of this Agreement. The Covered Entity shall not consider as Security Incidents, for the purpose of reporting, external activities (port enumeration, etc.) typically associated with the "footprinting" of a computing environment as long as such activities have only identified but not compromised the logical network perimeter, including but not limited to externally facing firewalls and web servers. The Business Associate shall reasonably use its own vulnerability assessment of damage potential and monitoring to define levels of Security Incidents and responses for Business Associate's operations. However, the Business Associate shall expediently notify the Covered Entity's Privacy Officer of any Security Incident, including any "breach of the security of the system" under Tenn Code Ann. § 47-18-2107, immediately upon becoming aware of any unauthorized acquisition including but not limited to use, disclosure, modification, or destruction of PHI by an employee or otherwise authorized user of its system of which it becomes aware.

3.5.1 Business Associate identifies the following key contact persons for all matters relating to this Agreement:

Business Associate shall notify Covered Entity of any change in these key contacts during the term of this Agreement in writing within ten (10) business days.

3.6 Contact for Security Incident Notice. Notification for the purposes of Sections 2.9, 3.4 and 3.5 shall be in writing made by email/fax, certified mail or overnight parcel immediately upon becoming aware of the event, with supplemental notification by facsimile and/or telephone as soon as practicable, to:

HCFA Privacy Officer
310 Great Circle Rd.
Nashville Tennessee 37243
Phone: (615) 507-6855
Facsimile: (615) 734-5289
Email: Privacy.TennCare@tn.gov

3.7 Security Compliance Review upon Request. Business Associate shall make its internal practices, books, and records, including policies and procedures relating to the security of Electronic PHI received from, created by or received by Business Associate on behalf of Covered Entity, available to the Covered Entity or to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the requester, for purposes of determining Covered Entity's, Business Associate's compliance with the Security Rule.

3.8 Cooperation in Security Compliance. Business Associate shall fully cooperate in good faith to assist Covered Entity in complying with the requirements of the Security Rule.

3.9 Refraining from intimidation or retaliation. A Covered Entity or Business Associate may not threaten, intimidate, coerce, harass, discriminate against, or take any other retaliatory action against any Individual or other person for-- (a) Filing of a complaint under 45 C.F.R. § 160.306; (b) testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing; or (c) opposing any act or practice made unlawful, provided the Individual or person has a good faith belief that the practice opposed is unlawful, and the manner of opposition is reasonable and does not involve a disclosure of PHI in violation of HIPAA.

4. USES AND DISCLOSURES BY BUSINESS ASSOCIATE

4.1 Use and Disclosure of PHI for Operations on Behalf of Covered Entity. Except as otherwise limited in this

Agreement, Business Associate may use or disclose PHI to perform Treatment, Payment or Health Care Operations for, or on behalf of, Covered Entity as specified in Service Agreements, provided that such use or disclosure would not violate the Privacy and Security Rule, if done by Covered Entity.

4.2 Other Uses of PHI. Except as otherwise limited in this Agreement, Business Associate may use PHI within its Workforce as required for Business Associate's proper management and administration, not to include Marketing or Commercial Use, or to carry out the legal responsibilities of the Business Associate.

4.3 Third Party Disclosure Confidentiality. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or, if permitted by law, this Agreement, and the Service Agreement, provided that, if Business Associate discloses any PHI to a third party for such a purpose, Business Associate shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality, integrity, and availability of PHI and not to use or further disclose such information except as required by law or for the purpose for which it was disclosed, and (b) notify Business Associate of any instances in which it becomes aware in which the confidentiality, integrity, and/or availability of the PHI is Breached immediately upon becoming aware.

4.4 Other Uses Strictly Limited. Nothing in this Agreement shall permit the Business Associate to share PHI with Business Associate's affiliates or contractors except for the purposes of the Service Agreement(s) between the Covered Entity and Business Associate(s) identified in the "LIST OF AGREEMENTS AFFECTED BY THIS HIPAA BUSINESS ASSOCIATE AGREEMENT" on page one (1) of this Agreement.

4.5 Covered Entity Authorization for Additional Uses. Any use of PHI or other confidential HCFA information by Business Associate, its Subcontractors, its affiliate or Contractor, other than those purposes of this Agreement, shall require express written authorization by the Covered Entity, and a Business Associate agreement or amendment as necessary.

Activities which are prohibited include, but not are not limited to, Marketing or the sharing for Commercial Use or any purpose construed by Covered Entity as Marketing or Commercial use of HCFA enrollee personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws.

4.6 Prohibition of Offshore Disclosure. Nothing in this Agreement shall permit the Business Associate to share, use or disclose PHI in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States without express written authorization from the Covered Entity.

4.7 Prohibition of Other Uses and Disclosures. Business Associate shall not use or disclose PHI that is Genetic Information for underwriting purposes. Moreover, the sale, marketing or the sharing for commercial use or any purpose construed by Covered Entity as the sale, marketing or commercial use of HCFA enrollee personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws, is prohibited.

4.8 Data Use Agreement - Use and Disclosure of Limited Data Set. Business Associate may use and disclose a Limited Data Set that Business Associate creates for Research, public health activity, or Health Care Operations, provided that Business Associate complies with the obligations below. Business Associate may not make such use and disclosure of the Limited Data Set after any cancellation, termination, expiration, or other conclusion of this Agreement.

4.9 Limitation on Permitted Uses and Disclosures. Business Associate will limit the uses and disclosures it makes of the Limited Data Set to the following: Research, public health activity, or Health Care Operations, to the extent such activities are related to covered functions, including business planning and development such as conducting cost-management and planning-related analysis related to managing and operating Business Associates functions, formulary development and administration, development and improvement of methods of payment or coverage policies, customer service, including the provision of data analysis for policy holders, plan sponsors, or other customers, to the extent such activities are related to covered functions, provided that PHI is not disclosed and disclosure is not prohibited pursuant to any other provisions in this Agreement related to Marketing or Commercial use.

4.10 Business Associate shall enter into written agreements that are substantially similar to this Business Associate Agreements with any Subcontractor or agent which Business Associate provides access to Protected

Health Information.

4.11 Business Associates shall implement and maintain information security policies that comply with the HIPAA Security Rule.

5. OBLIGATIONS OF COVERED ENTITY

5.1 Notice of Privacy Practices. Covered Entity shall provide Business Associate with the notice of Privacy Practices produced by Covered Entity in accordance with 45 C.F.R. § 164.520, as well as any changes to such notice.

5.2 Notice of Changes in Individual's Access or PHI. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses.

5.3 Notice of Restriction in Individual's Access or PHI. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use of PHI.

5.4 Reciprocity for Requests Received by Business Associate. The Parties agree that this Section (Section 5) is reciprocal to the extent Business Associate is notified or receives an inquiry from any Individual within Covered Entity's covered population.

6. TERM AND TERMINATION

6.1 Term. This Agreement shall be effective as of the date on which it has been signed by both parties and shall terminate when all PHI which has been provided, regardless of form, by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if the Parties agree that it is unfeasible to return or destroy PHI, subsection 6.3.5 below shall apply.

6.2 Termination for Cause. This Agreement authorizes and Business Associate acknowledges and agrees Covered Entity shall have the right to terminate this Agreement and Service Agreement in the event Business Associate fails to comply with, or violates a material provision of this Agreement and any provision of the Privacy and Security Rules.

6.2.1 Upon Covered Entity's knowledge of a Breach by Business Associate, Covered Entity shall either:

- (a) Provide notice of breach and an opportunity for Business Associate to reasonably and promptly cure the breach or end the violation, and terminate this BAA if Business Associate does not cure the breach or end the violation within the reasonable time specified by Covered Entity; or
- (b) Immediately terminate this BAA if Business Associate has breached a material term of this BAA and cure is not possible.

6.3 Effect of Termination. Upon termination of this Agreement for any reason, except as provided in subsections 6.3.2 and 6.3.5 below, Business Associate shall at its own expense either return and/or destroy all PHI and other confidential information received from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision applies to all confidential information regardless of form, including but not limited to electronic or paper format. This provision shall also apply to PHI and other confidential information in the possession of sub-contractors or agents of Business Associate.

6.3.1 The Business Associate shall consult with the Covered Entity as necessary to assure an appropriate means of return and/or destruction and shall notify the Covered Entity in writing when such destruction is complete. If information is to be returned, the Parties shall document when all information has been received by the Covered Entity.

6.3.2 This provision (Section 6.3 and its subsections) shall not prohibit the retention of a single separate, archived file of the PHI and other confidential HCFA information by the Business Associate if the method

of such archiving reasonably protects the continued privacy and security of such information and the Business Associate obtains written approval at such time from the Covered Entity. Otherwise, neither the Business Associate nor its Subcontractors and agents shall retain copies of HCFA confidential information, including enrollee PHI, except as provided herein in subsection 6.3.5.

- 6.3.3 The Parties agree to anticipate the return and/or the destruction of PHI and other HCFA confidential information, and understand that removal of the confidential information from Business Associate's information system(s) and premises will be expected in almost all circumstances. The Business Associate shall notify the Covered Entity whether it intends to return and/or destroy the confidential with such additional detail as requested. In the event Business Associate determines that returning or destroying the PHI and other confidential information received by or created for the Covered Entity at the end or other termination of the Service Agreement is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible.
- 6.3.4 Except for Business Associate Agreements in effect prior to April 21, 2005 when the Security Rule became effective, for the renewal or amendment of those same Agreements, or for other unavoidable circumstances, the Parties contemplate that PHI and other confidential information of the Covered Entity shall not be merged or aggregated with data from sources unrelated to that Agreement, or Business Associate's other business data, including for purposes of data backup and disaster recovery, until the parties identify the means of return or destruction of the HCFA data or other confidential information of the Covered Entity at the conclusion of the Service Agreement, or otherwise make an express alternate agreement consistent with the provisions of Section 6.3 and its subsections.
- 6.3.5 Upon written mutual agreement of the Parties that return or destruction of PHI is unfeasible and upon express agreement as to the means of continued protection of the data, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

7. MISCELLANEOUS

7.1 Regulatory Reference. A reference in this Agreement to a section in the Privacy and/or Security Rule means the section as in effect or as amended.

7.2 Amendment. The Parties agree to take such action to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191. Business Associate and Covered Entity shall comply with any amendment to the Privacy and Security Rules, the Health Insurance Portability and Accountability Act, Public Law 104-191, and related regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended, including, but not limited to, changes required by the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

7.3 Survival. The respective rights and obligations of Business Associate under Confidentiality and Section 6.3 of this Agreement shall survive the termination or expiration of this Agreement.

7.4 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and the Business Associate to comply with the Privacy and Security Rules.

7.5 Headings. Paragraph Headings used in this Agreement are for the convenience of the Parties and shall have no legal meaning in the interpretation of the Agreement.

7.6 Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by electronic mail, hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice. (For purposes of this section, effective notice to "Respective Party" is not dependent on whether the person named below remains employed by such Party.) The Parties agree to use their best efforts to immediately notify the other Party of changes in

address, telephone number, and fax numbers and to promptly supplement this Agreement as necessary with corrected information.

Notifications relative to Sections 2.7, 3.4 and 3.5 of this Agreement must be reported to the Privacy Officer pursuant to Section 3.6.

COVERED ENTITY:

Wendy Long, MD, Director
Department of Finance and Adm.
Health Care Finance & Admin.
310 Great Circle Rd.
Nashville, TN 37243
Fax: (615) 253-5607

BUSINESS ASSOCIATE:

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the date of hand delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the facsimile machine at the receiving location and receipt is verbally confirmed by the sender.

7.7 Transmission of PHI or Other Confidential Information. Regardless of the transmittal methods permitted above, Covered Entity and Business Associate agree that all deliverables set forth in this Agreement that are required to be in the form of data transfers shall be transmitted between Covered Entity and Business Associate via the data transfer method specified in advance by Covered Entity. This may include, but shall not be limited to, transfer through Covered Entity's SFTP system. Failure by the Business Associate to transmit such deliverables in the manner specified by Covered Entity, may, at the option of the Covered Entity, result in liquidated damages as set forth in one (1) or more of the Service Agreements between Covered Entity and Business Associate listed above. All such deliverables shall be considered effectively submitted upon receipt or recipient confirmation as may be required.

7.8 Strict Compliance. No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.

7.9 Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

7.10 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee except to the extent that Tennessee law has been pre-empted by HIPAA and HITECH and without giving effect to principles of conflicts of law. Jurisdiction shall be Davidson County, Nashville, Tennessee, for purposes of any litigation resulting from disagreements of the parties for purpose of this Agreement and the Service Agreement (s).

7.11 Compensation. There shall be no remuneration for performance under this Agreement except as specifically provided by, in, and through, existing administrative requirements of Tennessee State government and Services Agreement(s) referenced herein.

7.12 Validity of Execution. Unless otherwise agreed, the parties may conduct the execution of this Business Associate Agreement transaction by electronic means. The parties may agree that an electronic record of the Agreement containing an Electronic Signature is valid as an executed Agreement.

IN WITNESS WHEREOF, the Parties execute this Agreement to be valid and enforceable from the last date set out below:

HEALTH CARE FINANCE & ADMINISTRATION

BUSINESS ASSOCIATE

By: _____

Wendy Long, MD, Director

Date: _____

By: _____

Date: _____

State of Tennessee, Dept. of Finance & Adm.
Health Care Finance and Administration
310 Great Circle Road Nashville, TN 37243
Fax: (615) 253-5607

