



**STATE OF TENNESSEE  
CENTRAL PROCUREMENT OFFICE**

**REQUEST FOR QUALIFICATIONS  
FOR  
CUSTODIAL SERVICES**

**RFQ # 35910-02029 **RELEASE 2****

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## 1. INTRODUCTION

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The State of Tennessee, Department of Children's Services (DCS), hereinafter referred to as "the State," has issued this Request for Qualifications ("RFQ") to define mandatory goods or services requirements; solicit responses; detail response requirements; and, outline the State's process for evaluating responses and selecting a Respondent for contract award to provide the needed goods or services.

Through this RFQ or any subsequent solicitation, the State seeks to buy the requested 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, the opportunity to do business with the state as contractors or subcontractors.

### 1.1. Statement of Procurement Purpose

DCS is mandated by statute to provide residential care and treatment to children/youth placed in its custody. To that end, the Department must maintain a network of statewide providers, referred to as "DCS Provider Network". This network must have the capability to adequately and appropriately deliver a broad array of services that meet the clinical and behavioral needs of children/youth in state custody. The Department has determined that the current network lacks some critical service components necessary to ensure the treatment and care of custodial children.

For the purposes of this RFQ, those services (located at <http://www.tn.gov/dcs/topic/DCS-Contract-Provider-Manual>) determined to be required to adequately address the need for residential care and treatment includes:

1. [Section 2 -Foster Care Services](#)
2. [Section 3-Group Care Facilities](#)
3. [Section 4 -Residential Treatment](#)
4. [Section 5 -Sub-Acute Psychiatric Residential Care](#)
5. [Section 6 -Continuums](#)
6. [Section 7 -Unique Care Agreements](#)
7. [Section 8 -Primary Assessment Centers](#)

In order to see a more detailed listing of the contracts available for service under this RFQ, along with the associated per diem (current for FY17) and a brief synopsis of required programming and licensure for each contract type, please refer to Attachment 1 "Service Types" included as a part of this RFQ packet.

The service requirements and expectations associated with those specific levels of care are more fully defined in the Contract Provider Manual ("CPM"). The CPM may be accessed at the following hyper link:

<http://www.tn.gov/dcs/topic/DCS-Contract-Provider-Manual>

In order to qualify as a network provider, Respondents to this RFQ must be able to demonstrate that they have the facilities, service types, and training described in Attachments 1-4.

The purpose for this RFQ is to establish the process of reviewing, evaluating and pre-qualifying Respondents that will become a member of the DCS network of providers delivering direct care and treatment to children/youth in State custody.

All services for residential care and treatment are procured utilizing Performance-Based Contracts (“PBC”). The Department of Children’s Services utilizes a system focused on outcomes for children and families within the context of their communities. The PBC methodology helps DCS achieve its goal of improving the permanency of outcomes for children in its care in compliance with the terms and conditions of the Brian A. Settlement Agreement.

The PBC concept also employs a payment structure that reinforces efforts on the part of provider agencies to implement those services that specifically improve pre-determined outcomes. Outcomes to be analyzed and used in fiscal calculations toward performance measurement include: improved timeliness and likelihood of permanency (reunification, adoption, or guardianship), reduced paid care days, and reduced re-entries into care.

Outcomes are measured relative to appropriate standards as well as pre-established, network-wide baseline performance. More detail on these PBC outcome measurements is located at: <http://www.tn.gov/dcs/topic/performance-based-contracting>.

## 1.2. **Notice of Intent to Respond**

Before the Notice of Intent to Respond Deadline detailed in the RFQ 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 RFQ amendments or other notices and communications relating to this RFQ.**

## 2. RFQ SCHEDULE OF EVENTS

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The following schedule represents the State's best estimates for this RFQ; however, the State reserves the right, at its sole discretion, to adjust the schedule at any time, or cancel and reissue a similar solicitation. Nothing in this RFQ is intended by the State to create any property rights or expectations of a property right in any Respondent.

EVENT		TIME (Central Time Zone)	DATE (all dates are State business days)
1.	RFQ Issued		3/24/2017
2.	Disability Accommodation Request Deadline	2:00 p.m.	3/29/2017
3.	Notice of Intent to Respond Deadline	2:00 p.m.	3/30/2017
4.	Written "Questions & Comments" Deadline	2:00 p.m.	4/3/2017
5.	State response to written "Questions & Comments"		4/17/2017
6.	RFQ Technical Response Deadline	2:00 p.m.	5/2/2017
7.	State Notice of Qualified Respondents Released & Solicitation Files Opened for Inspection		5/18/2017
8.	End of Open File Period		5/25/2017
9.	Respondent Contract Signature Deadline	2:00 p.m.	5/31/2017
10.	Anticipated Start Date		7/1/17

### 3. RESPONSE REQUIREMENTS

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#### 3.1. **Response Contents:** A response to this RFQ should address the following:

- 3.1.1. **Mandatory Requirements:** This section details the mandatory technical, functional, and experience requirements that must be demonstrated in the response to this RFQ in order to be passed on to Phase II of the Technical Response evaluation. A Respondent must duplicate and use RFQ Attachment A as a guide to organize responses for the Mandatory Requirements of the RFQ response. The Respondent should reference the page location of the information within the response in the indicated column of the table. This section is included in the State's evaluation as to whether or not a Respondent meets mandatory qualifications (Phase I).
- 3.1.2. **General Qualifications & Experience:** This section is included in the State's evaluation of Phase II of the Technical Response Evaluation and details general information and qualifications that must be demonstrated in the response to this RFQ. A Respondent must duplicate and use RFQ Attachment B as a guide to organize responses for this portion of the RFQ response. The Respondent should reference the page location in the information within the response in the indicated column of the table.
- 3.1.3. **Technical Qualifications, Experience & Approach:** This section is also included in the State's evaluation of Phase II of the Technical Response Evaluation and details technical qualifications, experience, and approach items that must be demonstrated in the response to this RFQ. A Respondent must duplicate and use RFQ Attachment C as a guide to organize responses for this portion of the RFQ response. The Respondent should reference the page location in the information within the response in the indicated column of the table.
- 3.1.4. **Cost Proposal:** A Cost Proposal is **NOT** an RFQ requirement as the rate for each level of care is pre-established by the State (see the Pro Forma contract).

#### 3.2. **Response Delivery Location**

A Respondent must ensure that the State receives a Response to this RFQ no later than the Response Deadline time and dates detailed in the RFQ § 2, Schedule of Events. All responses must be delivered to:

Joyanna Brassfield  
 Department of General Services  
 3rd Floor, WRS Tennessee Tower  
 312 Rosa L. Parks Avenue  
 Nashville, TN 37243

#### 3.3. **Response Format**

- 3.3.1. A Respondent must ensure that the original response meets all form and content requirements detailed within this RFQ.
- 3.3.2. A Respondent must submit original response documents and copies as specified below.
  - 3.3.2.1. **Technical Response**  
 One (1) original Technical Response paper document clearly labeled:

**“RFQ #35910-02029 TECHNICAL RESPONSE ORIGINAL”**

and five (5) 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:

**"RFQ #35910-02029 TECHNICAL RESPONSE COPY"**

The digital copies should not include copies of sealed customer references or cost information in the general and technical evaluation phase. However, any other discrepancy between the paper response document and digital copies may result in the State rejecting the response as nonresponsive.

**3.4. Response Prohibitions:** A response to this RFQ shall not:

- 3.4.1. Restrict the rights of the State or otherwise qualify the response to this RFQ;
- 3.4.2. Include, for consideration in this procurement process or subsequent contract negotiations, incorrect information that the Respondent knew or should have known was materially incorrect;
- 3.4.3. Include more than one response, per Respondent, to this RFQ;
- 3.4.4. Include any information concerning costs (in specific dollars or numbers) associated with the Technical Response;
- 3.4.5. Include the respondent's own contract terms and conditions (unless specifically requested by the RFQ); or
- 3.4.6. Include the respondent as a prime contractor while also permitting one or more other respondents to offer the respondent as a subcontractor in their own responses.

**3.5. Response Errors & Revisions**

A Respondent is responsible for any and all errors or omissions in its response to this RFQ. A Respondent will not be allowed to alter or revise its response after the Response Deadline time and dates as detailed in RFQ § 2, Schedule of Events, unless such is formally requested in writing by the State (e.g., through a request for clarification, etc.).

**3.6. Response Withdrawal**

A Respondent may withdraw a response at any time before the Response Deadline time and date as detailed in RFQ § 2, Schedule of Events, by submitting a written signed request by an authorized representative of the Respondent. After withdrawing a response, a Respondent may submit another Response at any time before the Response Deadline time and date as detailed in RFQ § 2, Schedule of Events.

**3.7. Response Preparation Costs**

The State will not pay any costs associated with the preparation, submittal, or presentation of any response. Each Respondent is solely responsible for the costs it incurs in responding to this RFQ.

## 4. GENERAL INFORMATION & REQUIREMENTS

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### 4.1. Communications

- 4.1.1. Respondents shall reference RFQ #35910-02029 in all communications relating to this solicitation, and direct any such communications to the following person designated as the Solicitation Coordinator:

Joyanna Brassfield  
 3<sup>rd</sup> Floor, WRS Tennessee Tower  
 312 Rosa L. Parks Avenue  
 Nashville, TN 37243  
 (615) 741-1251  
[Joyanna.West@tn.gov](mailto:Joyanna.West@tn.gov)

The State will convey all official responses and communications related to this RFQ to the potential respondents from whom the State has received a Notice of Intent to Respond (refer to RFQ Section 1.3.).

- 4.1.2. Potential respondents with a handicap or disability may receive accommodation relating to the communication of this RFQ and participating in the RFQ process. Potential respondents may contact the RFQ Coordinator to request such reasonable accommodation no later than the Disability Accommodation Request Deadline detailed in RFQ § 2, Schedule of Events.
- 4.1.3. **Unauthorized contact about this RFQ with other employees or officials of the State of Tennessee may result in disqualification from contract award consideration.**
- 4.1.4. Notwithstanding the foregoing, potential Respondents may also contact the following as appropriate:
- 4.1.4.1. Staff of the Governor's Office of Diversity Business Enterprise may be contacted for assistance with respect to available minority-owned, woman-owned, Tennessee service-disabled veteran-owned, and small business enterprises as well as general public information relating to this request; or
- 4.1.4.2. 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:

Donovan Haynes, Affirmative Action Director  
 Division for Diversity Initiatives  
 Tennessee Department of Children's Services  
 12<sup>th</sup> Floor, UBS Bldg.  
 315 Deaderick St.  
 Nashville, TN 37243  
 Phone: 615-741-8422  
[Donovan.Haynes@tn.gov](mailto:Donovan.Haynes@tn.gov)

### 4.2. Nondiscrimination

No person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of a contract pursuant to this solicitation or in the employment practices of the Vendor on the grounds of handicap or disability, age, race, color, religion (subject to *Tennessee Code Annotated*, Sections 4-21-401 and 405), sex, national origin, or any other classification protected by federal, Tennessee state constitutional, or statutory law.

The Vendor pursuant to this solicitation shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

#### 4.3. **Conflict of Interest**

4.3.1. The State may not consider a proposal from an individual who is, or within the past six (6) months has been, a State employee. For these purposes,

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

4.3.1.2. A contract with or a proposal 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

4.3.1.3. A contract with or a proposal from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six 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.

4.3.2. This RFQ is also subject to *Tennessee Code Annotated*, Section 12-4-101.

#### 4.4. **Respondent Required Review & Waiver of Objections**

4.4.1. Each potential respondent must carefully review this RFQ, including but not limited to, attachments, the RFQ Attachment G, *pro forma* Contract, and any amendments for questions, comments, defects, objections, or any other matter requiring clarification or correction (collectively called "questions and comments").

4.4.2. Any potential respondent having questions and comments concerning this RFQ must provide such in writing to the State no later than the written "Questions & Comments Deadline" detailed in RFQ § 2, Schedule of Events.

4.4.3. Protests based on any objection 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."

#### 4.5. **Disclosure of Response Contents**

4.5.1. All materials submitted to the State in response to this solicitation become property of the State of Tennessee. Selection for award does not affect this right. By submitting a response, a Respondent acknowledges and accepts that the full contents and associated documents submitted in response to this request will become open to public inspection. Refer to RFQ § 2, Schedule of Events.

4.5.2. The RFQ responses will be available for public inspection only after the completion of evaluation of the RFQ or any resulting solicitation which this RFQ becomes a part of, whichever is later.

#### 4.6. **Notice of Professional Licensure, Insurance, and Department of Revenue Registration Requirements**

4.6.1. 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 part of a response to this RFQ, shall be properly licensed to render such opinions.

4.6.2. Before the Contract resulting from this RFQ is signed, the apparent successful Respondent (and Respondent employees and subcontractors, as applicable) must hold all necessary, appropriate business and professional licenses to provide service as required. The State may require any Respondent to submit evidence of proper licensure.

- 4.6.3. Before the Contract resulting from this RFQ is signed, the apparent successful Respondent must provide a valid, Certificate of Insurance indicating current insurance coverage meeting minimum requirements as may be specified by the RFQ.
- 4.6.4. Before the Contract resulting from this RFQ is signed, the apparent successful Respondent must be registered with the Department of Revenue for the collection of Tennessee sales and use tax. The State shall not approve a contract unless the Respondent provides proof of such registration. The foregoing is a mandatory requirement of an award of a contract pursuant to this solicitation.

#### 4.7. **RFQ Amendments & Cancellation**

- 4.7.1. The State reserves the right to amend this RFQ at any time, provided that it is amended in writing. However, prior to any such amendment, the State will consider whether it would negatively impact the ability of potential respondents to meet the deadlines and revise the RFQ Schedule of Events if deemed appropriate. If a RFQ amendment is issued, the State will convey it to potential respondents who submitted a Notice of Intent to Respond (refer to RFQ § 1.3). A response must respond, as required, to the final RFQ (including its attachments) as may be amended.
- 4.7.2. The State reserves the right, at its sole discretion, to cancel or to cancel and reissue this RFQ in accordance with applicable laws and regulations.

#### 4.8. **State Right of Rejection**

- 4.8.1. Subject to applicable laws and regulations, the State reserves the right to reject, at its sole discretion, any and all proposals.
- 4.8.2. The State may deem as nonresponsive and reject any proposal that does not comply with all terms, conditions, and performance requirements of this RFQ. Notwithstanding the foregoing, the State reserves the right to seek clarifications or to waive, at its sole discretion, a response's minor variances from full compliance with this RFQ. If the State waives variances in a response, such waiver shall not modify the RFQ requirements or excuse the Respondent from full compliance with such, and the State may hold any resulting vendor to strict compliance with this RFQ.
- 4.8.3. The State will review the response evaluation record and any other available information pertinent to whether or not each respondent is responsive and responsible. If the evaluation team identifies any respondent that appears not to meet the responsive and responsible thresholds such that the team would not recommend the respondent for potential contract award, this determination will be fully documented for the record. ("Responsive" is defined as submitting a response that conforms in all material respects to the RFQ. "Responsible" is defined as having the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.)

#### 4.9. **Assignment & Subcontracting**

- 4.9.1. The vendor may not subcontract, transfer, or assign any portion of the Contract awarded as a result of this RFQ without prior approval of the State. The State reserves the right to refuse approval, at its sole discretion, of any subcontract, transfer, or assignment.
- 4.9.2. If a Respondent intends to use subcontractors, the response to this RFQ must specifically identify the scope and portions of the work each subcontractor will perform (refer to RFQ Attachment B, Item B.14.).
- 4.9.3. Subcontractors identified within a response to this RFQ 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.

4.9.4. The Contractor resulting from this RFQ may only substitute another subcontractor for a proposed subcontractor at the discretion of the State and with the State's prior, written approval.

4.9.5. Notwithstanding any State approval relating to subcontracts, the Contractor resulting from this RFQ will be the prime contractor and will be responsible for all work under the Contract.

4.10. **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 RFQ process.

## 5. PROCUREMENT PROCESS & CONTRACT AWARD

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- 5.1. Qualification of Technical Responses: Technical Responses will be short-listed for further evaluation, analysis or negotiation if they are apparently responsive, responsible, and within the competitive range. A Technical Response will be deemed within the competitive range based on the following criterion:

The State will consider qualifications, experience and technical approach in the evaluation of each proposal. Points will then be awarded (up to the maximum evaluation points indicated) in each of the categories detailed below. DCS may award a number of contracts under this RFQ for all levels of service listed, or any partial number of those services, depending on the Respondent's qualifications to deliver that specific level of service.

In order to be awarded a contract for residential services, all Respondents must meet both the Mandatory Requirements in Attachment A and achieve a combined score no lower than 75 in the evaluation of Attachments B and C.

Phase I: The State will evaluate the Mandatory Requirements set forth in RFQ Attachment A on a pass/fail basis.

Phase II: Following the Phase I evaluation, the State will apply a standard equitable evaluation model, which will represent a qualitative assessment of each response. Each response will be scored by Evaluation Team members according to the Technical Response & Evaluation Guides (See RFQ Attachments B & C).

The Solicitation Coordinator will total the average score from the evaluation team for each responsive and responsible Respondent's Technical Response Points for RFQ Attachments B & C to determine which of the Respondents are considered Qualified and within the competitive range.

- 5.2. Clarifications: The State reserves the right to award a contract on the basis of initial responses received; therefore, each response should contain the respondent's best terms from a technical and cost standpoint. However, the State reserves the right to conduct clarifications or negotiations with respondents. All communications, clarifications, and negotiations shall be conducted in a manner that supports fairness in response improvement.

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 round(s). Each clarification sought by the State may be unique to an individual respondent.

- 5.3. Evaluation Guide

The State will consider qualifications, experience, technical approach, and cost (if applicable) in the evaluation of responses and award points in each of the categories detailed below. The maximum evaluation points possible for each category are detailed below.

Evaluation Category	Maximum Points Possible
Mandatory Requirements (refer to RFQ Attachment A)	Pass/Fail
General Qualifications, Experience, Technical Qualifications, Experience & Approach (refer to RFQ Attachment B)	60
Technical Qualifications, Experience & Approach (refer to RFQ Attachment C)	40

**ATTACHMENT A****TECHNICAL RESPONSE & EVALUATION GUIDE**

All Respondents must address all items detailed below and provide, in sequence, the information and documentation as required (referenced with the associated item references). All Respondents must also detail the response page number for each item in the appropriate space below.

The Solicitation Coordinator will review all responses 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 Evaluation Team must review the responses and attach a written determination. In addition to the Mandatory Requirement Items, the Solicitation Coordinator will review each response for compliance with all RFQ requirements.

<b>RESPONDENT LEGAL ENTITY NAME:</b>			
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section A— Mandatory Requirement Items</b>	<b>Pass/Fail</b>
		The Technical Response must be delivered to the State no later than the Technical Response Deadline specified in the RFQ § 2, Schedule of Events.	
		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.	
		A Respondent must not submit multiple responses in different forms (as a prime and a subcontractor).	
	<b>A.1.</b>	Provide the Statement of Certifications and Assurances (RFQ Attachment D) completed and signed by an individual empowered to bind the Respondent to the provisions of this RFQ and any resulting contract. The document must be signed without exception or qualification.	
	<b>A.2.</b>	Provide a statement, based upon reasonable inquiry, of whether the Respondent or any individual who shall perform work under the contract has a possible conflict of interest ( <i>e.g.</i> , 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.	
	<b>A.3.</b>	Respondent must provide documentation of its most recent <u>audited</u> financial statement. For the purposes of this RFQ, “most recent” shall be defined as the Respondent’s audited financial statement for the close of its most recent established fiscal year.  Note: The State will recognize these financial statements as recent and valid if the documentation is dated up to nine (9) months following the close of the Respondent’s most recent established fiscal year.	

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		<p>This documentation must show certified evidence of the Respondent's access to at least 60 days' worth of operating capital.</p> <p>For the purposes of this RFQ, operating capital shall be defined as the net amount after current liabilities are subtracted from current assets. This net amount must exceed, or be equal to, 60 days of the Responder's operating expenses.</p>	
	A.4.	<p>Provide an official, current copy of Respondent's accreditation from at least one of the following accreditation bodies:</p> <ul style="list-style-type: none"> <li>• Council On Accreditation (COA); and/or,</li> <li>• Commission on Accreditation of Rehabilitation Facilities (CARF); and/or,</li> <li>• Joint Commission on Accreditation of Healthcare Organizations (JCAHCO).</li> </ul>	
	A.5.	<p>Respondent must provide official documentation of re-validation of their TennCare membership. This documentation should be in the form of the "Welcome Letter" received from TennCare verifying current membership.</p>	
	A.6.	<p>Respondent must provide documented evidence of five (5) years or more of experience delivering direct care services and/or treatment to children and youth.</p> <p>The Respondent shall verify that these services and/or treatment have been delivered in the following setting(s), according to the contract applied for:</p> <ul style="list-style-type: none"> <li>• Foster Care Services</li> <li>• Juvenile Justice Services</li> <li>• Primary Assessment Center Services</li> <li>• Autism Spectrum/Neurological Services</li> <li>• Services for the Severely Emotionally Disturbed (SED)</li> </ul> <p>In submitting this evidentiary information, the responder must provide the following:</p> <ol style="list-style-type: none"> <li>a. the name, title, telephone number and e-mail address of the contact responsible for the referenced contract(s);</li> <li>b. the name of the procuring entity;</li> <li>c. a brief description of the type(s) of services provided; and the period of service delivery.</li> </ol>	
	A.7.	<p>Provide a listing of each Service Type the respondent will provide and attach copies of current licensure from the appropriate licensing entity (DCS, DMHSAS, etc.) for said Service Type. Please refer to <b>Attachment 1</b> for a comprehensive list of Licensure requirements.</p>	

RESPONDENT LEGAL ENTITY NAME:			
Response Page # (Respondent completes)	Item Ref.	Section A— Mandatory Requirement Items	Pass/Fail
		<p>Note: In the event that the Respondent does not hold current licensure for the intended service at the time of RFQ submission, the Respondent may submit an affidavit detailing the intent to acquire current licensure for each applied for Service Type. No child or youth may be placed with a prospective respondent until such time as appropriate and current licensure has been acquired and submitted to the State.</p> <p>For the purposes of this RFQ, the *Service Type(s) for which the Respondents are permitted to submit a response are as follows:</p> <ul style="list-style-type: none"> <li>• Foster Care Services</li> <li>• Juvenile Justice Services</li> <li>• Autism Spectrum/Neurological Services</li> <li>• Severely Emotionally Disturbed (SED)</li> </ul> <p>*Please refer to <b>Attachment 1</b> for a more detailed description of each Service Type along with the per diem associated with that Service Type.</p>	
	<b>A.8.</b>	<p>Provide a brief overview that describes the Responder's training structure.</p> <p>Respondents must utilize <b>Attachment 2</b> in order to identify the components of their Pre-Service <u>and</u> In-Service training curricula and verify that the components of both mirror DCS training.</p>	
	<b>A.9.</b>	<p>Provide documentation verifying the Responder's utilization of *Evidence-Based Programming (EBP) throughout its entire service array. Please reference <b>Attachment 3</b> of the RFQ document for guidance in documentation of EBP programming.</p> <p>* The Tennessee General Assembly has established TCA – 37.5.121 in order to ensure that all programs for the treatment, training and rehabilitation of juveniles employ proven evidence-based approaches in the delivery of services. Additional information related to this law can be located at:</p> <p style="text-align: center;"><a href="http://www.lexisnexis.com/hottopics/tncode/">http://www.lexisnexis.com/hottopics/tncode/</a></p>	
	<b>A.10.</b>	<p>Provide a guideline which describes your agency's process for performance evaluation of employees with case management responsibilities. Please include a copy of your review tool.</p>	
	<b>A.11.</b>	<p>Respondent's Technical Response must not exceed 150 pages in length and all text must be at least a 12 point font (maps, graphs, and charts included as an appendix will not count against this page limit).</p>	
<p><i>State Use – RFQ Coordinator Signature, Printed Name &amp; Date:</i></p>			

**ATTACHMENT B****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. Evaluation Team members will independently evaluate and assign one score for all responses to Section B—General Qualifications & Experience Items.

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section B— General Qualifications &amp; Experience Items</b>
	<b>B.1.</b>	Detail the name, e-mail address, mailing address, telephone number, and facsimile number of the person the State should contact regarding the response.
	<b>B.2.</b>	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>B.3.</b>	Detail the number of years the Respondent has been in business.
	<b>B.4.</b>	Briefly describe how long the Respondent has been performing the goods or services required by this RFQ.
	<b>B.5.</b>	Describe the Respondent's number of employees, client base, and location of offices.
	<b>B.6.</b>	Provide a statement of whether there have been any mergers, acquisitions, or sales of the Respondent within the last ten (10) years. If so, include an explanation providing relevant details.
	<b>B.7.</b>	Provide a statement of whether the Respondent or, to the Respondent's knowledge, any of the Respondent's employees, agents, independent contractors, or subcontractors, proposed to provide work on a contract pursuant to this RFQ, 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>B.8.</b>	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>B.9.</b>	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 RFQ 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 RFQ.  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 such licensure detailing the state of licensure and licensure number for each person or entity that renders such opinions.

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section B— General Qualifications &amp; Experience Items</b>
	<b>B.10.</b>	<p>Provide a statement of whether there is 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 impair the Respondent's performance in a contract pursuant to this RFQ.</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 such licensure detailing the state of licensure and licensure number for each person or entity that renders such opinions.</p>
	<b>B.11.</b>	Provide a brief, descriptive statement detailing evidence of the Respondent's ability to deliver the goods or services sought under this RFQ (e.g., prior experience, training, certifications, resources, program and quality management systems, etc.).
	<b>B.12.</b>	Provide a narrative description of the proposed contract team, its members, and organizational structure along with an organizational chart identifying the key people who will be assigned to provide the goods or services required by this RFQ, illustrating the lines of authority, and designating the individual responsible for the completion of each task and deliverable of the RFQ.
	<b>B.13.</b>	Provide a personnel roster listing the names of key people who the Respondent will assign to perform tasks required by this RFQ along with the estimated number of hours that each individual will devote to the required tasks. 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>B.14.</b>	<p>Provide a statement of whether the Respondent intends to use subcontractors to accomplish the work required by this RFQ, 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 work 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 RFQ.</p>
	<b>B.15.</b>	<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); and</p> <p>(iii) contractor contact name and telephone number.</p>

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section B— General Qualifications &amp; Experience Items</b>
		<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> <ul style="list-style-type: none"> <li>(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 <b>DO NOT INCLUDE DOLLAR AMOUNTS</b>);</li> <li>(ii) anticipated goods or services contract descriptions;</li> <li>(iii) names and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled veterans) of anticipated subcontractors and supply contractors.</li> </ul> <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 <a href="https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810">https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&amp;XID=9810</a> 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>B.16.</b>	<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-year period. If so, provide the following information for all current and completed contracts:</p> <ul style="list-style-type: none"> <li>(a) the name, title, telephone number and e-mail address of the State contact responsible for the contract at issue;</li> <li>(b) the name of the procuring State agency;</li> <li>(c) a brief description of the contract’s specification for goods or scope of services;</li> <li>(d) the contract term; and</li> <li>(e) the contract number.</li> </ul> <p>NOTES:</p> <ul style="list-style-type: none"> <li>▪ 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.</li> <li>▪ Each evaluator will generally consider the results of inquiries by the State regarding all contracts responsive to Section B.16 of this RFQ.</li> </ul>
	<b>B.17.</b>	<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 RFQ and which represent:</p> <ul style="list-style-type: none"> <li>▪ two (2) accounts Respondent currently services <del>that are similar in size to the State;</del> <u>and</u></li> <li>▪ three (3) completed projects.</li> </ul> <p>References from at least three (3) different individuals are required to satisfy the</p>

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section B— General Qualifications &amp; Experience Items</b>
		<p>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 RFQ Attachment E. References that are not completed as required may be deemed nonresponsive 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 Attachment E, and make a copy for each reference.</p> <p>(b) Send a reference questionnaire and a new, standard #10 envelope to each reference.</p> <p>(c) Instruct the reference to:</p> <p>(i) complete the reference questionnaire;</p> <p>(ii) sign <u>and</u> date the completed reference questionnaire;</p> <p>(iii) seal the completed, signed, and dated reference questionnaire within the envelope provided;</p> <p>(iv) sign his or her name in ink across the sealed portion of the envelope; and</p> <p>(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> <p>(d) <u>Do NOT</u> open the sealed references upon receipt.</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"> <li>▪ 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.</li> <li>▪ The State will not review more than the number of required references indicated above.</li> <li>▪ 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.</li> <li>▪ The State is under <u>no</u> obligation to clarify any reference information.</li> </ul>
	<b>B.18.</b>	<p>Provide a statement and any relevant details addressing whether the Respondent is any of the following:</p> <p>(a) is presently debarred, suspended, proposed for debarment, or voluntarily excluded from covered transactions by any federal or state department or agency;</p> <p>(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;</p> <p>(c) is presently indicted or otherwise criminally or civilly charged by a government</p>

<b>RESPONDENT LEGAL ENTITY NAME:</b>		
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section B— General Qualifications &amp; Experience Items</b>
		entity (federal, state, or local) with commission of any of the offenses detailed above; and <ul style="list-style-type: none"> <li>▪ 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.</li> </ul>
	<b>B.19.</b>	Provide documentation of the Respondent’s capacity to serve custodial children and youth in out-of-home care by submitting a detailed and accurate account of the Responder’s bed capacity for each individual residential facility site and include the services that will be available at that location. Note: Responders must use <b>Attachment 4</b> to document this residential capacity.
	<b>B.20.</b>	Provide a brief overview that describes the Responder’s internal structures that assess and monitor quality and risk within the agency
	<b>B.21.</b>	Provide a brief overview of the Responder’s clinical programming including the names of the clinical staff and their credentials.
	<b>B.22.</b>	Provide a statement detailing the services that will be provided to children/youth that enter your program with a High School Diploma, GED or <i>HiSET</i> ® that will ensure independence and reintegration into the community.
<b>SCORE (for all Section B— Qualifications &amp; Experience Items above):</b> (maximum possible score = 60)		
<i>State Use – Evaluator Identification:</i>		

**ATTACHMENT C**

**TECHNICAL RESPONSE & EVALUATION GUIDE**

**SECTION C: TECHNICAL QUALIFICATIONS, EXPERIENCE & APPROACH.** The Respondent should explain its approach to providing goods or services to the State. The items listed below represent specific questions the State would request you answer in your response. For ease of review, please annotate your explanation so that it contains references to the items listed below where they are addressed. Respondent should not feel constrained to answer only the specific questions listed below in its explanation and should feel free to provide attachments if necessary in an effort to provide a more thorough response.

The Evaluation Team, made up of three (3) 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 scores as indicated.

<b>RESPONDENT LEGAL ENTITY NAME:</b>					
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section C— Technical Qualifications, Experience &amp; Approach Items</b>	<b>Item Score</b>	<b>Evaluation Factor</b>	<b>Raw Weighted Score</b>
	<b>C.1.</b>	Provide a narrative that illustrates the Respondent's understanding of the State's requirements and project schedule.		<b>35</b>	
	<b>C.2.</b>	Provide a narrative that illustrates how the Respondent will complete the delivery of goods or scope of services, accomplish required objectives, and meet the State's project schedule.		<b>35</b>	
	<b>C.3.</b>	Provide a narrative that illustrates how the Respondent will manage the project, ensure delivery of specified goods or completion of the scope of services, and accomplish required objectives within the State's project schedule.		<b>30</b>	
<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>			<b>Total Raw Weighted Score:</b> (sum of Raw Weighted Scores above)		
$\frac{\text{Total Raw Weighted Score}}{\text{Maximum Possible Raw Weighted Score}}$ <i>(i.e., 5 x the sum of item weights above)</i>			$\times 40$ <i>(maximum possible score)</i>		<b>= SCORE:</b>
<i>State Use – Evaluator Identification:</i>					

<b>RESPONDENT LEGAL ENTITY NAME:</b>					
<b>Response Page #</b> (Respondent completes)	<b>Item Ref.</b>	<b>Section C— Technical Qualifications, Experience &amp; Approach Items</b>	<b>Item Score</b>	<b>Evaluation Factor</b>	<b>Raw Weighted Score</b>
<i>State Use – Solicitation Coordinator Signature, Printed Name &amp; Date:</i>					

**ATTACHMENT D****STATEMENT OF CERTIFICATIONS AND ASSURANCES**

An individual responding in his or her individual capacity or legally empowered to contractually bind the Respondent must complete and sign the Statement of Certifications and Assurances below as required, and this signed statement must be included with the response as required by the Request for Qualifications.

**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 RFQ.
2. The Respondent will provide all specified goods or services as required by the contract awarded pursuant to this RFQ.
3. The Respondent accepts and agrees to all terms and conditions set out in the contract awarded pursuant to this RFQ.
4. The Respondent acknowledges and agrees that a contract resulting from the RFQ shall incorporate, by reference, all Response responses as a part of the contract.
5. The Respondent will comply, as applicable, 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 best of the undersigned's knowledge, information or belief, the information detailed within the Response to the RFQ is accurate.
7. The Response submitted to the RFQ was independently prepared, without collusion, and 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 the request or any potential resulting contract.
9. The Technical Response submitted in response to the RFQ shall remain valid for at least 120 days from the date is submitted to the State.
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 signature below, the signatory certifies legal authority to bind the responding entity to the provisions of this request and any contract awarded pursuant to it. The State may, at its sole discretion and at any time, require evidence documenting the signatory's authority to be personally bound or to legally bind the responding entity.**

**DO NOT SIGN THIS DOCUMENT IF YOU ARE NOT LEGALLY AUTHORIZED TO DO SO BY THE ENTITY RESPONDING TO THIS RFQ.**

**SIGNATURE & DATE:**

---

**PRINTED NAME & TITLE:**

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**LEGAL ENTITY NAME:**

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**ATTACHMENT E**

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**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 responsible for obtaining completed reference questionnaires as required (refer to RFQ Attachment B, General Qualifications & Experience Items, Item B.17.), and for enclosing the sealed reference envelopes within the Respondent's Technical Proposal.

(Reference Questionnaire on following page)

**RFQ # 35910-02029 REFERENCE QUESTIONNAIRE**

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

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The "reference subject" specified above, intends to submit a response to the State of Tennessee in response to the Request for Proposals (RFQ) 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?**

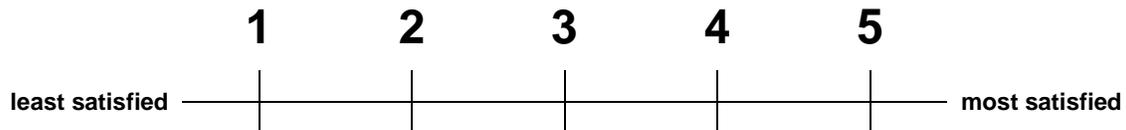
**(2) Please provide the following information about the individual completing this reference questionnaire on behalf of the above-named individual, company, organization, or entity.**

<b>NAME:</b>	
<b>TITLE:</b>	
<b>TELEPHONE #</b>	
<b>E-MAIL ADDRESS:</b>	

**(3) What goods or services does/did the reference subject provide to your company or organization?**

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

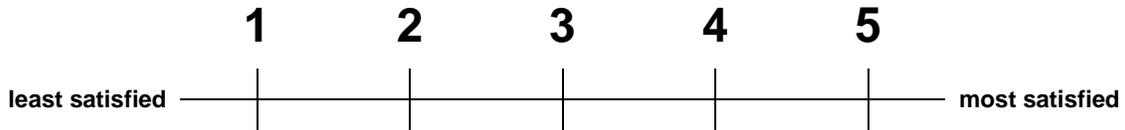
*Please respond by circling the appropriate number on the scale below.*



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

- (5) If the goods or services that the reference subject provided to your company or organization are completed, were the goods or services provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.**
- (6) If the reference subject is still providing goods or services to your company or organization, are these goods or services being provided in compliance with the terms of the contract, on time, and within budget? If not, please explain.**
- (7) How satisfied are you with the reference subject's ability to perform based on your expectations and according to the contractual arrangements?**
- (8) In what areas of goods or service delivery does/did the reference subject excel?**
- (9) In what areas of goods or service delivery does/did the reference subject fall short?**
- (10) What is the level of your satisfaction with the reference subject's project management structures, processes, and personnel?**

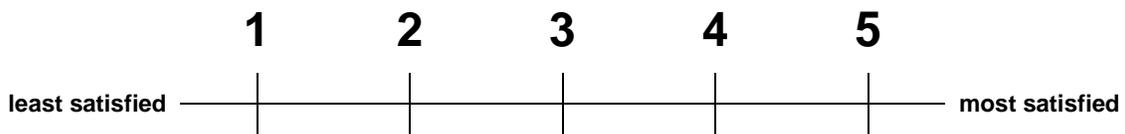
*Please respond by circling the appropriate number on the scale below.*



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

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

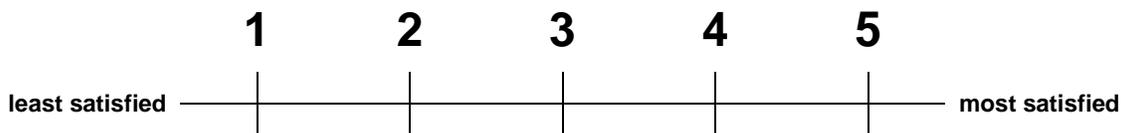
*Please respond by circling the appropriate number on the scale below.*



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

- (12) Would you contract again with the reference subject for the same or similar goods or 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>	
<b>GENERAL QUALIFICATIONS &amp; EXPERIENCE</b> (maximum: 60)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	<b>AVERAGE:</b>		<b>AVERAGE:</b>		<b>AVERAGE:</b>	
<b>TECHNICAL QUALIFICATIONS, EXPERIENCE &amp; APPROACH</b> (maximum: 40)						
<i>EVALUATOR NAME</i>						
<i>EVALUATOR NAME</i>						
<i>REPEAT AS NECESSARY</i>						
	<b>AVERAGE:</b>		<b>AVERAGE:</b>		<b>AVERAGE:</b>	
<b>TOTAL RESPONSE EVALUATION SCORE:</b> (maximum: 100)						
<i>Solicitation Coordinator Signature, Printed Name &amp; Date:</i>						

**ATTACHMENT G**

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**RFQ # 35910-02029 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 RFQ.

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF CHILDREN'S SERVICES  
AND  
CONTRACTOR NAME**

This Contract, by and between the State of Tennessee, Department of Children's Services (DCS), ("State") and Contractor Legal Entity Name ("Contractor"), is for the provision of Performance-Based Contracting Custodial Services, as further defined in the "SCOPE." State and 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 services and deliverables (collectively the "Services") as required, described, and detailed below and shall meet all service and delivery timelines as specified by this Contract.

- a. Services provided under this contract are delivered to children/youth placed into the custody of the state. Services are determined based on an assessment of the child/youth's needs and/or behaviors.

A.2. Definitions.

- a. "CANS" shall mean Child and Adolescent Needs and Strengths.
- b. "CFTM" shall mean Child and Family Team Meeting. See DCS Policy 31.7 <https://files.dcs.tn.gov/policies/chap31/31.7.pdf>
- c. "See DCS Policy 31.7 <https://files.dcs.tn.gov/policies/chap31/31.7.pdf>"CPM" shall mean the DCS Contractor Provider Manual, as provided at: <https://www.tn.gov/dcs/topic/DCS-Contract-Provider-Manual>
- d. "Day" shall be defined as any period of time in the 24 hour period of a calendar day.
- e. "Deliverables" shall mean all the Services delivered under this Contract, as defined in Section A and Attachment 1.
- f. "DCS" shall mean the Tennessee Department of Children's Services.
- g. "DHHS OIG" shall mean the United States Department of Health and Human Services Office of Inspector General.
- h. "DOJ" shall mean the United States Department of Justice.
- i. "F2F" shall mean face-to-face.
- j. "FSW" shall mean a DCS Home County Family Service Worker.
- k. "HCFA" shall mean the Division of Health Care Finance and Administration of the Tennessee Department of Finance and Administration.

- l. "ICD 10" shall mean the International Classification of Diseases code, 10<sup>th</sup> Version.
  - m. "Network Development" shall mean the unit within DCS that liaisons with the contract providers on matters related to placement and Services.
  - n. "OIG" shall mean the division of the Office of Inspector General, Department of Finance and Administration.
  - o. "PBC" shall mean the Performance Based Contracting ("PBC") model at: <https://www.tn.gov/dcs/topic/performance-based-contracting>
  - p. "Provider Scorecard" shall mean a spreadsheet of metrics regarding provider performance on several variables. This spreadsheet and detailed information is made available to providers on a monthly basis so that they may track these metrics and adjust their practice as specified on the spreadsheet.
  - q. "TBI MCFU" shall mean the Tennessee Bureau of Investigation Medicaid Fraud and Control Unit.
  - r. "TFACTS" shall mean Tennessee's Family and Child Tracking System. TFACTS is the Department's Child Welfare comprehensive Case Management System that will assist staff in managing their workloads and provide accurate & current data to assist in decision-making and program modification.
- A.3. The Contractor shall maintain appropriate licensure, as provided in Attachment 1 – Service Types, required to provide the Services covered by this contract. The Contractor must notify DCS Contracts and Grants Management Division immediately, in writing, of any change in licensure status.
- A.4. Accreditation. The Contractor shall also be accredited by an appropriate accrediting body as detailed in the Core Section of the CPM, Organizational and Administrative Requirements, 1 Accreditation/Licensing, page 3 available at: [http://www.tn.gov/assets/entities/dcs/attachments/Section\\_1-Core.pdf](http://www.tn.gov/assets/entities/dcs/attachments/Section_1-Core.pdf)
- The Contractor shall be accredited or actively pursuing accreditation by the Council on Accreditation or Commission on Accreditation of Rehabilitation Facilities, to provide the Residential Treatment: Special Needs Juvenile Justice Enhanced Safety Measures Services.
- A.5. The Contractor shall perform all Services in accordance with the PBC model as it is amended periodically and incorporated herein by reference.
- A.6. CPM Standards. The Contractor shall comply with and be evaluated against the following areas as detailed in the CPM, including any changes or additions that may subsequently be made:
- a. Core Requirements ([http://www.tn.gov/assets/entities/dcs/attachments/Section\\_1-Core.pdf](http://www.tn.gov/assets/entities/dcs/attachments/Section_1-Core.pdf))
  - b. Supervised Independent Living ([http://www.tn.gov/assets/entities/dcs/attachments/Section\\_12-Supervised\\_Independent\\_Living.pdf](http://www.tn.gov/assets/entities/dcs/attachments/Section_12-Supervised_Independent_Living.pdf))
  - c. Educational Standards ([http://www.tn.gov/assets/entities/dcs/attachments/Section\\_13-Education.pdf](http://www.tn.gov/assets/entities/dcs/attachments/Section_13-Education.pdf))
  - d. The Clinical Scope for the Specific Level of Service provided under the contract as detailed in the CPM, Section 2-6: <http://tn.gov/dcs/topic/DCS-Contract-Provider-Manual>
- A.7. The Contractor shall work in compliance with DCS' Continuous Quality Improvement Plan (<https://files.dcs.tn.gov/policies/chap1/CQIProgramManual2014.pdf>), which includes, but is not limited to, the Quality Service Review, and the Provider Scorecard established for the ongoing monitoring and evaluation of Contractor performance.

- A.8. CFTM. The Contractor must request a CFTM from the DCS Home County Family Service Worker (FSW) prior to the move of a child. Notification of emergency moves must be in accordance with the CPM and reported the next business day with an immediate request for a CFTM.
- A.9. Moves. Moves are considered any change in placement location, with the exception of temporary breaks in service, as further defined in the CPM. The Contractor must report the movement of all children within 24 hours, as provided in the CPM Core Section, Movement & Movement Reporting, Page 22, [http://www.tn.gov/assets/entities/dcs/attachments/Section\\_1-Core.pdf](http://www.tn.gov/assets/entities/dcs/attachments/Section_1-Core.pdf), of the move occurrence in TFACTS or any alternative method developed by the DCS to report placement moves.
- A.10. Foster Home Services. If the Services provided by the Contractor include foster care Services, the Contractor agrees to only place children in foster homes that are in full compliance with the safety requirements detailed in the Core Section of the CPM and DCS Policy 16.4 at: [http://www.tn.gov/assets/entities/dcs/attachments/Section\\_2-Foster\\_Care.pdf](http://www.tn.gov/assets/entities/dcs/attachments/Section_2-Foster_Care.pdf).
- A.11. CANS Assessment Analysis. The Contractor shall incorporate and accept the CANS assessment analysis for establishing a level of care recommendation as outlined in the CANS Comprehensive Multisystem Assessment Manual found at: <https://files.dcs.tn.gov/policies/chap11/CANSAssessmentManual.pdf>.
- A.12. TFACTS. The Contractor shall utilize TFACTS to document information pertaining to the child and family in accordance with the DCS CPM found at: [https://tfacts.tn.gov/logon.do?command.do\(overview\)=1](https://tfacts.tn.gov/logon.do?command.do(overview)=1).
- A.13. ICD 10. The Contractor shall identify each child served the proper ICD 10.F2F. The Contractor shall report all F2F contact information on every child currently placed with the Contractor into TFACTS as outlined in the DCS CPM, CFTM's, Contacts, and Visitation, page 38, [http://www.tn.gov/assets/entities/dcs/attachments/Section\\_1-Core.pdf](http://www.tn.gov/assets/entities/dcs/attachments/Section_1-Core.pdf) and DCS Policy 16.38 <https://files.dcs.tn.gov/policies/chap16/16.38.pdf>. The F2F contact information must be submitted to DCS through TFACTS and must include child specific identifying information related to the following:
- The number of F2F contact between a custodial child and his siblings;
  - The number of F2F contacts with parents or adults identified as potential permanency placement on permanency plan;
  - The number of children and families involved in service planning;
  - The number of F2F contacts between custodial child and Contractor's case manager; and,
  - The number of F2F contacts between a custodial child on a trial home visit and Contractor's case manager.
- All Personnel requirements for the delivery of Services are set forth in the CPM under Personnel Requirements, Sections 1-16, pages 5-16. [http://www.tn.gov/assets/entities/dcs/attachments/Section\\_1-Core.pdf](http://www.tn.gov/assets/entities/dcs/attachments/Section_1-Core.pdf)
- A.14. The Contractor may expand its service capacity in accordance with licensing requirements during the term of the contract upon request and approval by DCS.
- A.15. kidcentraltn.
- Under the guidance of the Gatekeeper, Contractor shall create and maintain an agency program profile in the designated state services directory located at [www.kidcentraltn.com](http://www.kidcentraltn.com). Contractor may provide more than one service that is appropriate for the directory. The Gatekeeper will provide instructions for the Services that should be included in the directory. Contractor shall update its agency program profiles in the designated state services directory at least every six (6) months. In addition, the Contractor shall update its agency program profiles within ten (10) business days of any change in Contractor's information.

For the purposes of this section, the Gatekeeper shall be the person designated by the State to do the following tasks: 1) invite the Contractor to create a profile; 2) review, approve, and publish program profiles created by the Contractor; and 3) monitor update activity of the Contractor.

- b. If the Contractor has a website, the Contractor must link to [www.kidcentraltn.com](http://www.kidcentraltn.com). If the Contractor will link to specific features of the [www.kidcentraltn.com](http://www.kidcentraltn.com) website such as the My Profile, Mobile App, Facebook, or State Services Directory features, as directed by the State. If the Contractor uses State funds to develop or distribute materials (print or electronic) intended for parents, families, children, or professionals working directly with children or families, the Contractor must place the kidcentral tn logo on those materials as directed by the State. Examples of covered materials include brochures, flyers, posters, and promotional postcards or mailers. The kidcentral tn logo can be found at [http://share.tn.gov/generalserv/ba09p/kc\\_templates.html](http://share.tn.gov/generalserv/ba09p/kc_templates.html). The full kidcentral tn brand for print materials including brochures, flyers, posters, or postcards, can be found at [http://share.tn.gov/generalserv/ba09p/kc\\_templates.html](http://share.tn.gov/generalserv/ba09p/kc_templates.html). The requirement to use the kidcentral tn logo does not apply to materials that were printed or designed prior to July 01, 2017. This kidcentral tn logo requirement does not apply to materials that originate from the federal government, national organizations, or other groups where the Contractor serves as a pass through for those materials. The kidcentral tn logo should not be applied to individualized correspondence or individualized materials that are intended for a single family or professional. The kidcentral tn logo should not be applied to materials where the subject matter is purely administrative, such as materials concerning rules, sanctions, regulations, or enforcement.

## **B. TERM OF CONTRACT:**

- B.1. This Contract shall be effective on July 01, 2017 ("Effective Date"), and extend for a period of thirty-six (36) months after the Effective Date ("Term"). The State shall have no Services provided by the Contractor prior to the Effective Date.
- B.2. Renewals. 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 each 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 (60) months.
- B.3. Term Extension. The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

## **C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed the authorized number of children/youth served times the number of days Services were provided times the level of service rate (youth served X number of days X rate). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor. The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with

the payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Price Changes. Prices listed in awarded published catalog, price lists or price schedule shall remain firm for each fiscal year, dependent on the legislative approval of the DCS budget.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for 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 Services as set forth in Section A.
  - b. The Contractor shall be compensated based upon the following payment methodology, as specified below:

<b>Services Description</b>	<b>Amount (per child per day)</b>
Primary Assessment Center	\$153.67
Contracted Foster Care	\$48.70
Medically-Fragile Foster Care	\$99.45
Independent Living	\$50.04
Level 2 Continuum	\$120.00
Level 2	\$125.00
Level 2-Special Population	\$135.00
Level 2-Enhanced A&D	\$150.00
Level 2 Continuum-Special Needs	\$150.00
Level 2 Continuum-Group Care (JJ)	\$175.00
Level 3 Continuum	\$175.00
Level 3 Continuum-Special Needs	\$200.00
Level 3 Enhanced Sex Offender or A&D	\$275.00
Level 3	\$229.50
Level 3 Continuum-Special Needs Enhanced (JJ)	\$300.00
Special Needs Juvenile Justice (JJ) Enhanced Safety Measures	\$475.00
Level 3-Autism Spectrum-Neurodevelopmental Disorders Residential Treatment Center (L3 AS-ND RTC)	\$300.00
Level 3-Severely Emotionally Disturbed-Psychiatric Residential Treatment Facility (L3 SED-PRTF)	\$325.00
Level 3-Autism Spectrum-Neurodevelopmental Disorders Psychiatric Residential Treatment Facility – Mid-Level Intensity (L3 AS-ND PRTF Mid)	\$460.00
Level 3-Severely Emotionally Disturbed-Psychiatric Residential Treatment Facility – High Level Intensity (L3 SED-PRTF High)	\$565.00
Level 3-Autism Spectrum-Neurodevelopmental Disorders Psychiatric Residential Treatment Facility – High Level Intensity (L3 AS-ND PRTF High)	\$565.00
Level 4	\$340.00
Level 4-Special Needs	\$482.50

\* NOTICE: The amount(s) per compensable increment detailed above shall be contingent upon the State's receipt of an invoice (as required in section C.5., below) for said service(s) within thirty (30) days after the end of the calendar month in which the service(s) were rendered. At the sole discretion of the State, the amount per compensable increment of any service for which the State receives an invoice later than prescribed herein shall be subject to a reduction in amount of up to 100%. In the case of an untimely invoice, before any payment will be considered by the State, the Contractor must submit a written request regarding the untimely invoice, which shall detail the reason the invoice is untimely as well as the Contractor's plan for submitting all future invoices no later than prescribed herein, and it must be signed by an individual empowered to bind the Contractor to this Contract.

- c. A "day" shall be defined as any period of time in the 24-hour period of a calendar day. The Contractor shall be paid the full rate per day per client placed with the Contractor, EXCEPT the Contractor shall NOT be paid any amount for the day that the client is removed from the placement with the Contractor.

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 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 Services have been provided to the following address:

Department of Children's Services  
Payables  
8<sup>th</sup> Floor, UBS Building  
315 Deaderick Street  
Nashville, TN 37243-1290

- 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: DCS Network Development;
- (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 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 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 Services completed and shall not include any charge for future 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 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 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 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:

Susan Mitchell, Executive Director Network Development  
 Tennessee Department of Children's Services  
 9<sup>th</sup> Floor, UBS Building  
 315 Deaderick St.  
 Nashville, TN 37243  
[Susan.Mitchell@tn.gov](mailto:Susan.Mitchell@tn.gov)  
 Phone: 615-741-0461  
 Fax: 615-532-1130

## 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 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 satisfactory, authorized Services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any Services not requested by the State or 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. 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 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.
- 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 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 A, 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 greater of a) five million dollars (\$5,000,000) or b) an amount equal to two (2) times the amounts paid to the State under Section C.1. and as may be amended. 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 the greater of a) five million dollars (\$5,000,000) or b) an amount equal to two (2) times the amounts paid to the State under 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, 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.
- 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 the RFQ Proposal, Brian A. Modified Settlement Agreement, Department of Children's Services Policy and the document entitled "DCS Provider Policy Manual", available at (<http://www.tn.gov/dcs/topic/DCS-Contract-Provider-Manual>), including any changes or additions that may subsequently be made;
  - 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 with investment activities in Iran, shall be a material provision of this Contract. The Contractor agrees, 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 provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this

Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.

The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance ("TDCI") and signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3<sup>rd</sup> floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The Contractor's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers' compensation.

All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor's policy.

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. 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.

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.

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

To achieve the required coverage levels, a combination of a specific policy written with an umbrella policy covering liabilities above stated limits is acceptable (For example: If appropriate limits are two million dollars (\$2,000,000) per occurrence and two million dollars (\$2,000,000) aggregate, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) aggregate written with an umbrella policy for one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) aggregate. If the deficient underlying policy is for 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 as well.

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).
  - 2) 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.
- c. Automobile Liability Insurance.
  - 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
  - 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.
- d. Professional Liability Insurance.
  - 1) Professional liability insurance shall be written on an occurrence basis. This coverage may be written on a claims-made basis but must include an extended reporting period or "tail coverage" of at least two (2) years after the Term;
  - 2) Any professional liability insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) in the aggregate; and
  - 3) If the Contract involves the provision of Services by medical professionals, a policy limit not less than two million (\$2,000,000) per claim and three million dollars (\$3,000,000) in the aggregate for medical malpractice insurance.
- e. Sexual Misconduct & Molestation.
  - 1) Sexual misconduct and molestation insurance written on an occurrence basis. This coverage may be written on a claims-made basis but must include an extended reporting period or "tail coverage" of at least two (2) years after the Term.

- 2) Any sexual misconduct and molestation insurance policy shall have a limit not less than one million (\$1,000,000) per occurrence and two million (\$2,000,000) in the aggregate.
- f. Cyber Liability and Network Security Insurance.  
Cyber liability and Network Security Insurance, covering network and privacy risks, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, or other negligence in the handling of confidential information, privacy perils, and including coverage for related regulatory defense and penalties; data breach expenses, in an amount not less than one million dollars (\$1,000,000.00) per occurrence or claim, one million dollars (\$1,000,000.00) in the aggregate including but not limited to consumer notification, whether or not required by law, in the performance of Services hereunder.
- g. Umbrella/Excess Liability.  
The contractor shall maintain an Umbrella/Excess liability insurance in the amount of five million dollars (\$5,000,000) each occurrence and in the aggregate and will apply over all liability policies required herein, except Professional Liability and Cyber / Network Security Liability, and will include, but not limited to Commercial General Liability, Automobile Liability, Employers' Liability, and Sexual Misconduct and Molestation Liability.

**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. 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. Family Educational Rights and Privacy Act & Tennessee Data Accessibility, Transparency and Accountability Act. The Contractor shall comply with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. 1232(g)) and its accompanying regulations (34 C.F.R. § 99) ("FERPA"). The Contractor warrants that the Contractor is familiar with FERPA requirements and that it will comply with these requirements in the performance of its duties under this Contract. The Contractor agrees to cooperate with the State, as required by FERPA, in the performance of its duties under this Contract. The Contractor agrees to maintain the confidentiality of all education records and student information. The Contractor shall only use such records and information for the exclusive purpose of performing its duties under this Contract.

The Contractor shall also comply with Tenn. Code Ann. § 49-1-701, *et seq.*, known as the "Data Accessibility, Transparency and Accountability Act," and any accompanying administrative rules or regulations (collectively "DATAA"). The Contractor agrees to maintain the confidentiality of all records containing student and de-identified data, as this term is defined in DATAA, in any databases, to which the State has granted the Contractor access, and to only use such data for the exclusive purpose of performing its duties under this Contract.

Any instances of unauthorized disclosure of data containing personally identifiable information in violation of FERPA or DATAA that come to the attention of the Contractor shall be reported to the State within twenty-four (24) hours. Contractor shall indemnify and hold harmless State, its employees, agents and representatives, from and against any and all claims, liabilities, losses, or causes of action that may arise, accrue, or result to any person or entity that is injured or damaged as a result of Contractor's failure to comply with this section.

- E.4 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.5 Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which Services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
- E.6. Prison Rape Elimination Act (PREA). The Contractor must comply with the Prison Rape Elimination Act (PREA) of 2003 (Federal law 42 U.S.C. 15601 et. seq.), with all applicable Federal PREA standards, and with all State policies and standards related to PREA for preventing, detecting, monitoring, investigating, and eradicating any form of sexual abuse within facilities/programs/offices owned, operated, or contracted.
- E.7. 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 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 twenty-four (24) 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.8. 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/excomp.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 qualified.
  - vi. 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/>
- E.9. Drug -Free Workplace. The Contractor shall provide a drug-free workplace pursuant to the "Drug-Free Workplace Act," 41 U.S.C. §§ 8101 through 8106, and its accompanying regulations.
- E.10. Supplemental Conflict of Interest. The Contractor shall not have as any owner, member of the board of directors, or member of the board of trustees, a person who also holds any other position that may influence the placements provided to children in the plaintiff class of Brian A. v. Haslam. Such positions include, but are not limited to juvenile court judges, referees, or other court officers involved in the individual cases of children in foster care.
- E.11. Monitoring Sub-Contractors. The Contractor shall develop written procedures for monitoring all of its State-approved subcontractors. The procedures must clearly outline the process for assuring that all subcontractors are in compliance with DCS policy and the current iteration of the Contract Provider Manual. Subcontracting guidelines detailed at the following web site: <http://www.tn.gov/dcs/section/providers>
- The Contractor shall have an established quality assurance/quality improvement plan for all subcontractors.
- The Contractor shall also maintain an internal quality improvement process that assesses the overall quality and performance of its subcontractors.
- E.12. Working Capital. The Contractor must have a minimum of sixty (60) days working capital in the event payment to the Contractor is interrupted by an emergency or for reasons beyond the Contractor's control to ensure continuity of operations. Working capital must be documented by a review of the Contractor's balance sheet and income statement. Working capital is defined as current assets minus current liabilities. Current assets may include marketable securities as long as they have not been legally pledged against a long term equity interest. Credit lines are not working capital.
- Working capital requirements shall be met at the time of initial contracting and maintained during subsequent contracting periods. In the event working capital declines below the sixty (60) day requirement, the Contractor shall be placed on probation and the Contract will be subject to cancellation at the discretion of the State.

- E.13. Contractor Contact. The Contractor shall provide information to the Network Development unit relative to the Contractor's contact, who is empowered to make placement decisions on behalf of the Contractor, to allow access to placement 24 hours a day seven days a week to DCS. The information to be provided is as follows: gatekeeper/representative name(s); title; direct telephone number(s), cell phone number and/or pager number(s).
- E.14. Performance Standards. The Contractor hereby acknowledges and agrees that its performance under this Contract shall meet the standards set forth in Section A of this Contract, the CPM, the Brian A. Settlement Agreement, and the conditions set forth in this Contract. If the Contractor fails to meet these standards, the State, at its exclusive option, may allow up to six (6) months for the provider to achieve compliance with the standards. If performance deficiencies are not resolved to the satisfaction of the State within the prescribed time, and if no extenuating circumstances can be documented by the Contractor to the State's satisfaction, the State may cancel the Contract at the State's discretion.
- E.15. Notification of Closure. The Contractor shall notify the State of the closure of its agency or facility no less than thirty (30) days prior to the actual date of closure. Failure to provide the State thirty (30) days written notice of the Contractor's intent to close its operations or any part of its operation shall be considered a breach of this Contract.
- E.16. Closure Transition. Within thirty (30) days from the closure notification date, the Contractor shall work with the State to transition all custodial youth placed with the Contractor, shall reconcile all records, transfer case files to DCS, and complete the Contract transition.
- E.17. State Ownership of Case Files. The State shall have ownership, right, title, and interest in all case files created, designed, developed, derived, documented, installed, or maintained on behalf of the State pursuant to this Contract. The State shall have unlimited rights to all said case files. The Contractor shall furnish such information and data upon the request of the State, in accordance with this Contract and applicable State law.
- E.18. Permanent Education Records. The Contractor shall maintain educational records permanently. These records shall be cut off at discharge or graduation. If the Contractor's school ceases operation, or the State ceases to contract with the Contractor, the permanent educational records for students who have been in State custody shall be forwarded to the State by the Contractor. The Contractor shall bear all costs for the transfer of all records. Both paper and electronic media shall be included. Records include, but are not limited to: institution academic transcripts, grade reports, records of grade changes, copies of GED Certificates or State issued diplomas/certificates of any kind, standardized examination reports, birth records, grade point average (GPA), class rank, letters of recommendation and related documentation and correspondence. Records from closed Contractor schools shall be forwarded at least five (5) business days prior to closure to: DCS Records Management.
- E.19. Mergers, Dissolutions, Partnerships & Joint Ventures. Prior to any dissolution, merger, or acquisition of the Contractor, the Contractor shall provide notification to the State ninety (90) days.
- E.20. Background Checks. Prior to the provision of any Services, all Contractor personnel that have direct contact with children shall comply with DCS Policy 4.1. Employee Background Checks.
- E.21. TennCare Registration & Validation. The Contractor shall register at: <https://pdms.tennCare.tn.gov/Account/Login.aspx> with HCFA in order to obtain a valid Tennessee Medicaid ID and National Provider Identifier (NPI) Number. In addition, the Contractor shall annually validate their registration with HCFA. Failure to maintain a valid Tennessee Medicaid ID

will result in the termination of your contract with the Department of Children's Services (DCS) and the reimbursement of all TennCare funds dispersed during the period of ineligibility.

- E.22. 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 not duplicate in a separate file or disseminate, without prior written permission from DCS, the data governed by the Contract for any purpose other than that set forth in this Contract for the administration of the TennCare program. Should the Contractor propose a redisclosure of said data, the Contractor must specify in writing to TennCare the data the Contractor proposes to redisclose, to whom, and the reasons that justify the redisclosure. TennCare will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the TennCare program.
  - b. The Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Contract.
  - c. The Contractor shall provide a current list of the employees of such contractor with access to SSA data and provide such lists to DCS upon request.
  - d. The Contractor shall restrict access to the data obtained from TennCare 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.
  - e. The Contractor shall ensure that its employees:
    - (1) properly safeguard PHI/PII furnished by TennCare under this Contract from loss, theft or inadvertent disclosure;
    - (2) understand 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 encrypted or if to and from addresses that are 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 TennCare or DCS 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.
  - f. Loss or Suspected Loss of Data – If an employee of the Contractor becomes aware of suspected or actual loss of PHI/PII, he or she must immediately contact DCS immediately upon becoming aware to report the actual or suspected loss. The Contractor will use the Loss Worksheet located at [http://www.tn.gov/tenncare/forms/phi\\_piiworksheet.pdf](http://www.tn.gov/tenncare/forms/phi_piiworksheet.pdf) to quickly gather and organize information about the incident. The Contractor must provide DCS with timely updates as any additional information about the loss of PHI/PII becomes available.
  - g. If the Contractor experiences a loss or breach of said data, DCS 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. DCS may immediately and unilaterally suspend the data flow under this Contract, or terminate this Contract, if DCS, in its sole discretion, determines that the Contractor has: (1) made an unauthorized use or disclosure of DCS SSA-supplied data; or (2) violated or failed to follow the terms and conditions of this Contract.
  - i. In order to meet certain requirements set forth in the State's Computer Matching and Privacy Protection Act Agreement (CMPPA) with the SSA, the Parties acknowledge that this Section shall be included in all agreements executed by or on behalf of the State. The Parties further agree that FISMA and NIST do not apply in the context of data use and disclosure under this Agreement as the Parties shall neither use nor operate a federal information system on behalf of a federal executive agency. Further, NIST is applicable to federal information systems; therefore, although encouraged to do so, the State, its contractors, agents and providers are not required to abide by the NIST guidelines.
  - j. 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.
- E.23. Notification of Data Breach and Notification of Provisional Data Breach — The Contractor shall notify DCS's Privacy Office immediately upon becoming aware of any incident, either confirmed or provisional, 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.24. Evidence-Based Programs. Pursuant to Tenn. Code Ann. § 37-5-121, the Department of Children's Services is prohibited from expending state funds on any juvenile justice program or program related to the prevention, treatment or care of delinquent juveniles, including any service model or delivery system in any form or by any name, unless the program is evidence-based. "Evidence-based" means a program or practice that is governed by a program manual or protocol that specifies the nature, quality, and amount of service that constitutes the program; and scientific research using methods that meet high scientific standards for evaluating the effects of such programs must have demonstrated with two (2) or more separate client samples that the program improves client outcomes central to the purpose of the program.

The Contractor and any of the Contractor's subcontractors shall cooperate with the State in evaluating whether its services are evidence-based or otherwise, and will provide program and service details, efficacy data and any information required or requested by the State, consistent with State and federal law regarding confidentiality, for the purpose of complying with this statute for monitoring and quality control. The Contractor further acknowledges and understands that the intent of the law is to discontinue programs and services that are not supported by the evidence of impartial scientific investigation as outlined by statute, rules and regulations which have been, or may be, promulgated by the Department of Children's Services. By affixing its signature below, the Contractor understands and agrees that the Department of Children's Services is compelled by law to terminate this Grant instrument if services with any Contractor or the Contractor's subcontractor(s) are not proven to be evidence-based and if continuation of this Grant shall cause the Department of Children's Services not to be in compliance with such statute within the timetable set forth in Tenn. Code Ann. § 37-5-121.

E.25. Requirements of HCFA.

- a. The Contractor, including but not limited to, its employees, agents, subcontractors, or anyone acting for or on behalf of the Contractor shall comply with the requirements as stipulated in the Interagency Contract, as provided in Attachment 5, as the procuring State agency and as required by Code of Federal Regulations, Title 42, Part 455.100, *et seq.*: The Contractor shall submit an annual *Ownership and Financial Disclosure Form*. The disclosure form can be accessed via the TennCare Provider Portal at: <https://pdms.tennicare.tn.gov/Account/Login.aspx?ReturnUrl=%2fDefault.aspx>) to DCS. DCS shall collect and store its Contractor's ownership and disclosure forms and furnish them to TennCare upon request.
  
- b. Contractor Requirements: Participation in the TennCare program shall be limited to Contractors who:
  1. Agree that the Contractor may not refuse to provide covered medically necessary or covered preventive services to a child under the age of twenty-one (21) or a TennCare Medicaid patient under this Contract for non-medical reasons. However, the Contractor shall not be required to accept or continue treatment of a patient with whom the Contractor feels he/she cannot establish and/or maintain a professional relationship.
  2. Agree that emergency services be rendered without the requirement of prior authorization of any kind.
  3. Records Retention. A TennCare record is any record, in whatever form, including, but not limited to medical records, billing records, financial records including 1099 forms, and/or any records related to services rendered, staff, equipment, financial records, medical records, administrative costs, quality, appropriateness and timeliness of services and/or any records relevant to an administrative, civil and/or criminal investigation and/or prosecution. The CONTRACTOR as well as its subcontractor and providers shall maintain TennCare records necessary to demonstrate that covered services were provided in compliance with state and federal requirements. An adequate record system shall be maintained and that all records be maintained for five (5) years from the close of the provider agreement (behavioral health records shall be maintained at the provider level for ten (10) years after the termination of the provider agreement pursuant to TCA 33-3-101) or retained until all evaluations, audits, reviews or investigations or prosecutions are completed for recording enrollee services, servicing providers, charges, dates and all other commonly accepted information elements for services rendered to enrollees pursuant to the provider agreement (including but not limited to such records as are necessary for the evaluation of the quality, appropriateness, and timeliness of services performed under the provider agreement and administrative, civil or criminal investigations and prosecutions).
  4. TennCare Records-Access/Audit: As a condition of participation in TennCare, enrollees and providers shall give HCFA or its authorized representative, the Office of the Comptroller of the Treasury ("COT"), and any health oversight agency, such as the Tennessee Office of the Inspector General ("OIG"), the Tennessee Bureau of Investigation, Medicaid and Control Unit ("TBI MFCU"), the Department of Health of Human Services, Office of Inspector General (DHHS OIG), and the federal Department of Justice (DOJ), and any other authorized state or federal agency, access to their records. Said records shall be made available and furnished immediately upon request by the provider in either paper or electronic form, at no cost to the requesting party, for fiscal audit, medical audit, medical review, utilization review, and other periodic monitoring as well as for

administrative, civil and criminal investigations or prosecutions upon the request of an authorized representative of the Contractor, HCFA or authorized federal, state and COT personnel, including, but not limited to, the OIG, the TBI MFCU, the DHHS OIG and the DOJ. Said records are to be provided by the provider at no cost to the requesting agency HCFA, DHHS OIG, COT, OIG, TBI MFCU, DOJ and their authorized agents, as well as any authorized state or federal agency or entity shall have the right to access through inspection, evaluation, review or request, whether announced or unannounced, or other means, any TennCare records pertinent to this Contract including, but not limited to medical records, billing records, financial records including 1099 forms, and/or any records related to services rendered, quality, appropriateness and timeliness of services and/or any records relevant to an administrative, civil and/or criminal investigation and/or prosecution. Such evaluation, inspection, review or request, and when performed or requested, shall be performed with the immediate cooperation of the provider, during normal business hours, except under special circumstances when after hour admission shall be allowed. Special circumstances shall be determined by the requesting agency. Upon request, the provider shall assist in such reviews including the provision of complete copies of medical records at no cost to the requesting agency. Contractor acknowledges that HIPAA does not bar disclosure of protected health information (PHI) to health oversight agencies, including, but not limited to TennCare, OIG, TBI MFCU, DHHS OIG and DOJ and their authorized agents. Any authorized state or federal agency or entity, including, but not limited to TENNCARE, OIG, TBI MFCU, DHHS OIG, DOJ, Office of the Comptroller of the Treasury, may use these records and information for fiscal audit, medical audit, medical review, utilization review and administrative, civil or criminal investigations and prosecutions.

5. Agree that an adequate records system be maintained at the site where medical services are rendered and that enrollees (for purposes of behavioral health records, enrollee includes an individual who is age sixteen (16) or over) and/or an enrollee's authorized representatives shall be given access to the enrollees' medical records to the extent and in the manner provided by T.C.A. Sections 63-2-101, 63-2-102, and 33-3-104 *et seq.*, and, subject to reasonable charges, be given copies thereof upon request.
6. Accept monitoring, whether announced or unannounced, of services rendered to enrollees sponsored by the Contractor.
7. Whether announced or unannounced, participate and cooperate in any internal and external Quality Management/Quality Improvement, utilization review, peer review and/or appeal procedures established by DCS and/or TennCare.
8. Monitor the quality of services delivered and initiate corrective action where necessary to improve quality of care, in accordance with that level of medical care which is recognized as acceptable professional practice in the respective community in which the Contractor practices and/or the standards established by TennCare.
9. Provide for submission of all reports and clinical information required by DCS.
10. Cooperate with all appropriate state and federal Agencies, including TBI MFCU and/or TN OIG, in investigating fraud and abuse. In addition, the Contractor shall fully comply with the provisions of T.C.A. Sections 71-5-2601 and 71-5-2603 in performance of its obligations under this Contract, including:
  - (a) Fraud and abuse in the administration of the program. Suspected fraud and abuse in the administration of the program shall be reported to TBI

- MFCU and/or TN OIG, as well as to TennCare office of Program Integrity.
- (b) Contractor fraud and abuse. All confirmed or suspected contractor fraud and abuse shall immediately be reported to TBI MFCU as well as to TennCare office of Program Integrity.
- (c) Enrollee fraud and abuse. All confirmed or suspected enrollee fraud or abuse shall be reported immediately to TN OIG.
11. Secure all necessary liability and malpractice insurance coverage as is necessary to adequately protect the enrollees and DCS under this Contract. The Contractor shall provide such insurance coverage at all times during the Contract and upon execution of the Contract furnish DCS with written verification of the existence of such coverage.
12. The Contractor acknowledges that this Contract incorporates by reference all applicable federal and state laws, TennCare rules and regulations, policies, consent decrees or court orders, and revisions of such laws or regulations, policies and orders shall automatically be incorporated into the Contract, as they become effective or amended. In the event that changes in the Contract are needed as a result of revisions and applicable federal or state law materially affecting the position of either party, DCS and Contractor agree to negotiate such further amendments as may be necessary to correct any inequities.
13. The Contractor recognizes that in the event of termination of the Contract between DCS and TennCare for any reason, the Contractor shall immediately make available, to TennCare, or its designated representative, in a usable form, any or all TennCare Related Documents, whether medical or financial, related to the Contractor's activities undertaken pursuant to the DCS/Contractor Contract. The provision of such records shall be at no expense to TennCare.
14. The Contractor warrants that no part of the total Contract amount provided herein shall be paid directly, indirectly or through a parent organization, subsidiary or an affiliate organization to any state or federal officer or employee of the State of Tennessee or any immediate family member of a state or federal officer or employee of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract unless disclosed to the Commissioner, Tennessee Department of Finance and Administration. For purposes of this Contract, "immediate family member" shall mean a spouse or minor child(ren) living in the household.
- Quarterly, by January 30, April 30, July 30, and October 30 each year, or at other times or intervals as designated by the Director of the Bureau of TennCare and communicated, in writing, to the Contractor by DCS, disclosure shall be made by the Contractor to DCS in writing and DCS shall forward the disclosure to the Director of the Bureau of TennCare, Department of Finance and Administration. The disclosure shall include, but not be limited to, the following:
- (a) A list of any state or federal officer or employee of the State of Tennessee as well as any immediate family member of a state or federal officer or employee of the State of Tennessee who receives wages or compensation from the Contractor; and
- (b) A statement of the reason or purpose for the wages or compensation.
- The disclosures shall be made by the Contractor and reviewed by TennCare in accordance with Standard Operating Procedures and the disclosures shall be distributed to, amongst other persons, entities and organizations, the Commissioner, Tennessee Department of Finance and Administration, the

Tennessee Ethics Commission, the TennCare Oversight Committee and the Fiscal Review Committee.

This Contract may be terminated by the State or the Contractor may be subject to sanctions under this Contract if it is determined that the Contractor, its agents or employees offered or gave gratuities of any kind to any state or federal officials or employees of the State of Tennessee or any immediate family member of a state or federal officer or employee of the State of Tennessee if the offering or giving of said gratuity is in contravention or violation of state or federal law. It is understood by and between the parties that the failure to disclose information as required by this Contract may result in termination of this Contract and the Contractor may be subject to sanctions in accordance with the provisions of this Contract. The Contractor certifies that no member of or delegate of Congress, the United States General Accounting Office, DHHS, Centers for Medicare and Medicaid Services (CMS), or any other federal agency has or will benefit financially or materially from this Contract.

15. Accept general and targeted education regarding emergency appeals, including when an emergency appeal is appropriate, and procedures for providing written certification thereof, and comply with the appeal process, including but not limited to, assisting an enrollee by providing appeal forms and contact information including the appropriate address, telephone number, and/or fax number for submitting appeals for state level review.
16. Display notices of the enrollee's right to appeal adverse action affecting services in public areas of their facility(ies) in accordance with TennCare rules and regulations, subsequent amendments, or any and all consent decrees and court orders. DCS shall ensure that Contractors have correct and adequate supply of public notices. DCS shall ensure that the Contractor will comply with the appeal process, including but not limited to the following:
  - (a) assisting an enrollee by providing appeal forms and contact information including the appropriate address for submitting appeals for state level review; and,
  - (b) require, in advance, that the Contractor seek prior authorization, when s/he feels s/he cannot order a drug on the TennCare Preferred Drug List (PDL) as well as taking the initiative to seek prior authorization when contacted by an enrollee or pharmacy regarding denial of a pharmacy service due to system edits (i.e., therapeutic duplication, etc.).
17. Acknowledge that the Contractor has been informed of the package of benefits that Early and Periodic Screening, Diagnosis and Treatment (EPSDT TENNderCare) offers as set out in the TennCare Contractor Risk Agreement (CRA) and which requires Contractors to make treatment decisions based upon children's individual medical and behavioral health needs. The Contractor further acknowledges that a copy of the CRA can be accessed on the TennCare web site shall be furnished to the Contractor upon request. The TennCare Web site is found at: <http://tn.gov/assets/entities/tenncare/attachments/MCOStatewideContract.pdf>
18. Agree not to encourage or suggest, in writing or verbally, that TennCare children be placed into state custody in order to receive medical or behavioral services covered by TennCare.
19. No person on the grounds of handicap, and/or disability, age, race, color, religion, sex, national origin, or any other classifications protected under federal or state laws shall be excluded from participation in, except as specified in Section A.2.3.5, or be denied benefits of, or be otherwise subjected to discrimination in the performance of Contractor's obligation under its agreement with the DCS or in the employment practices of the Contractor. Contractor shall upon request show proof of such nondiscrimination compliance and shall post notices of nondiscrimination in

conspicuous places available to all employees, TennCare applicants, and enrollees.

Contractor shall have written procedures for the provision of language assistance services to members and/or the member's representative. Language assistance services include interpretation and translation services and effective communication assistance in alternative formats for any member and/or the member's representative who needs such services, including but not limited to, members with Limited English Proficiency and individuals with disabilities.

Contractor agrees to cooperate with HCFA and DCS during discrimination complaint investigations.

Contractor shall assist TennCare enrollees in obtaining discrimination complaint forms and contact information for the DCS and HCFA nondiscrimination offices.

20. Agree that if any requirement in the Contractor's Contract with DCS is determined by TennCare to conflict with the Contract between TennCare and DCS, such requirement shall be null and void and all other provisions shall remain in full force and effect.
21. Certify by signing this Contract, that the Contractor has not been excluded from participation in the Medicare and/or Medicaid programs pursuant to Sections 1128 or 1156 of the Social Security Act or who are otherwise not in good standing with the TennCare program. Require Providers to screen their employees and contractors 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. The provider shall be required to immediately report to the MCO any exclusion information discovered. The provider shall be informed that civil monetary penalties may be imposed against providers who employ or enter into contracts with excluded individuals or entities to provide items or services to TennCare members.
22. Agree to provide hours of operation that are no less than the hours of operation offered to commercial enrollees.
23. Agree that the Contractor shall not enter into any subsequent agreements or subcontracts for any of the work contemplated under this Contract without approval of DCS.
24. Nondiscrimination Compliance Requirements. In addition to the requirements of Section D.7 and E.23, the Contractor hereby agrees that it will comply with the following:
  - (a) The Contractor shall comply with DCS's written policies and procedures that demonstrate nondiscrimination in the provision of services to TennCare enrollees.
  - (b) The Contractor shall have available copies of DCS's standardized discrimination complaint form to provide to an enrollee upon request. When a request for assistance with filing a complaint is made to the Contractor, the Contractor shall assist the complainant in accessing help from DCS. Assistance shall include obtaining a standardized complaint form, language assistance and assistance with communication in alternative formats.
25. Contractor understands that payment by TennCare is conditioned upon the invoice, claim or bill and the underlying transaction complying with Medicaid laws, regulations, and program instructions (including, but not limited to, the Federal anti-kickback statute, and the Stark law and federal requirements on disclosure, debarment and exclusion screening), and is conditioned on Contractor compliance with all applicable conditions of participation in

Medicaid. Contractor understands and agrees that each invoice, claim or bill submitted by Contractor to TennCare constitutes a certification that Contractor has complied with all applicable Medicaid laws, regulations and program instructions (including, but not limited to, the Federal anti-kickback statute and the Stark law), in connection with payment and the services provided under this Agreement.

Per 42 CFR 455.18: "I understand that payment and satisfaction of this claim will be from federal and state funds, and that any false claims, statements, documents, or concealment of a material fact, may be prosecuted under applicable federal and/or state laws." Acknowledgement by Contractor of this statement shall be made for all claims submitted by the Contractor by either an actual or electronic signature during either the claims submission or claims payment process.

- 26. In accordance with the Affordable Care Act and TennCare policy and procedures, the Contractor and its subcontractors and providers shall report overpayments and, when it is applicable, return overpayments within sixty (60) days from the date the overpayment is identified. Overpayments that are not returned within sixty (60) days from the date the overpayment was identified may result in a penalty pursuant to state or federal law.
- 27. The Contractor and its subcontractors and Providers shall comply with the provisions of 42 U.S.C. § 1396a(a)(68) *et seq.* as applicable, regarding policies and education of employees as regards the terms of the False Claims Act and whistleblower protections.

E. 26 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 RFQ #35910-02029 (*Pro Forma* Attachment B) 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 quarterly 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 required form and substance.

**IN WITNESS WHEREOF,**

**CONTRACTOR LEGAL ENTITY NAME:**

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**CONTRACTOR SIGNATURE**

**DATE**

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

**DEPARTMENT OF CHILDREN'S SERVICES:**

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**BONNIE HOMMRICH, COMMISSIONER**

**DATE**

***Pro Forma ATTACHMENT A***  
***(Fill out only by selected Contractor)***

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

<b>SUBJECT CONTRACT NUMBER:</b>	
<b>CONTRACTOR LEGAL ENTITY NAME:</b>	
<b>EDISON VENDOR IDENTIFICATION NUMBER</b>	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that 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.

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**CONTRACTOR SIGNATURE**

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

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**PRINTED NAME AND TITLE OF SIGNATORY**

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**DATE OF ATTESTATION**

**Pro Forma ATTACHMENT B****(Fill out only by selected Contractor)**

## SAMPLE LETTER OF DIVERSITY COMMITMENT

**(Company Letterhead/Logo)**

(Address)

(Date)

(Salutation),

(Company Name) is committed to achieving or surpassing a goal of (numeral) percent spend with certified diversity business enterprise firms on State of Tennessee contract # (Edison document #). Diversity businesses are defined as those that are owned by minority, women, small business and Tennessee service-disabled veterans which are certified by the Governor's Office of Diversity Business Enterprise (Go-DBE).

We confirm our commitment of (percentage) participation on the (Contract) by using the following diversity businesses:

- (i) Name and ownership characteristics (i.e., ethnicity, gender, Tennessee service-disabled veteran) of anticipated diversity subcontractors and suppliers:

\_\_\_\_\_

- (ii) Participation estimates (expressed as a percent of the total contract value to be dedicated to diversity subcontractors and suppliers):

\_\_\_\_\_ %.

- (iii) Description of anticipated services to be performed by diversity subcontractors and suppliers:

\_\_\_\_\_

\_\_\_\_\_

We accept that our commitment to diversity advances the State's efforts to expand opportunity of diversity businesses to do business with the State as contractors and sub-contractors.

Further, we commit to:

1. Using applicable reporting tools that allow the State to track and report purchases from businesses owned by minority, women, Tennessee service-disabled veterans and small business.
2. Reporting quarterly to the Go-DBE office the dollars spent with certified diversity businesses owned by minority, women, Tennessee service-disabled veterans and small business accomplished under contract # (Edison number).

(Company Name) is committed to working with the Go-DBE office to accomplish this goal.

Regards,

**(Company authority – signature and title)**