



## CONTRACT AMENDMENT COVER SHEET

<b>Agency Tracking #</b> 31865-00365	<b>Edlson ID</b> 37107	<b>Contract #</b>	<b>Amendment #</b> 01		
<b>Contractor Legal Entity Name</b> Department of Intellectual and Developmental Disabilities			<b>Edlson Vendor ID</b> 0000000051		
<b>Amendment Purpose &amp; Effect(s)</b> Extends Term for One Year					
<b>Amendment Changes Contract End Date:</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		<b>End Date:</b> June 30, 2017			
<b>TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):</b>			<b>\$ 0.00</b>		
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
2014	\$1,316,968.50	\$2,500,331.50			\$3,817,300.00
2015	\$1,316,968.50	\$2,500,331.50			\$3,817,300.00
2016	\$1,316,968.50	\$2,500,331.50			\$3,817,300.00
2017					
<b>TOTAL:</b>	<b>\$3,950,905.50</b>	<b>\$7,500,994.50</b>			<b>\$11,451,900.00</b>
<b>American Recovery and Reinvestment Act (ARRA) Funding:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.  		<i>CPO USE</i>			
<b>Speed Chart (optional)</b>		<b>Account Code (optional)</b>			

**AMENDMENT #1  
TO CONTRACT #37107  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF FINANCE AND ADMINISTRATION,  
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION,  
BUREAU OF TENNCARE  
AND  
DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**

This Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration, Bureau of TennCare, hereinafter referred to as the "State" or "Procuring State Agency" and the Department of Intellectual and Developmental Disabilities, hereinafter referred to as the "Contractor" or "Contracting State Agency." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract Section A.3 is deleted in its entirety and replaced with the following:
  - A.3. TennCare approves the Contractor as a potential provider for only the following services:
    - a. Specialized Medical Equipment and Supplies and Assistive Technology;
    - b. Occupational Therapy; and
    - c. Physical Therapy.
2. Contract Section B.1 is deleted in its entirety and replaced with the following:
  - B.1. This Contract shall be effective for the period beginning July 1, 2013, and ending on June 30, 2017. The Contractor hereby acknowledges and affirms that the Procuring State Agency shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.
3. Contract Section C.1 is deleted in its entirety and replaced with the following:
  - C.1. Maximum Liability. In no event shall the maximum liability of the Procuring State Agency under this Contract exceed Eleven Million, Four Hundred Fifty One Thousand Nine Hundred Dollars and No Cents (\$ 11,451,900.00). Additionally, any payment for service(s) referenced in and subject to the provisions of this Contract shall be limited to and in accordance with the approved ISP or ISP\_Amendment for such service. The rate(s) specified in the TennCare rate schedule shall constitute the entire compensation due the Contractor for the service(s) and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. This rate schedule includes, but is not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

Required Approvals. The State is not bound by this Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

Amendment Effective Date. The revisions set forth herein shall be effective June 30, 2016. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

**IN WITNESS WHEREOF,**

**DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES:**

Debra K. Payne, Commissioner 5/24/14  
DATE

**DEPARTMENT OF FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE:**

Larry B. Martin / COK 5/25/14  
DATE



# CONTRACT

(fee-for-service contract between state agencies- NOT including the University of Tennessee or Board of Regents colleges and universities)

<b>Begin Date</b> July 1, 2013	<b>End Date</b> June 30, 2016	<b>Agency Tracking #</b> 31865-00365	<b>Edison ID</b> 37107
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**Contractor Agency Name**  
Department of Intellectual and Developmental Disabilities

<b>Subrecipient or Vendor</b> <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	<b>CFDA #</b> 93.778 Dept of Health & Human Services/Title XIX
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**Service Caption**  
HCBS Services for Persons with Intellectual Disabilities

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	\$1,316,968.50	\$2,500,331.50			\$3,817,300.00
2015	\$1,316,968.50	\$2,500,331.50			\$3,817,300.00
2016	\$1,316,968.50	\$2,500,331.50			\$3,817,300.00
<b>TOTAL:</b>	<b>\$3,950,905.50</b>	<b>\$7,500,994.50</b>			<b>\$11,451,900.00</b>

**American Recovery and Reinvestment Act (ARRA) Funding:**  YES  NO

**Budget Officer Confirmation:** There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.

*OCR USE - ID*



<b>Speed Chart (optional)</b>	<b>Account Code (optional)</b>
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**CONTRACT**  
**BETWEEN THE STATE OF TENNESSEE,**  
**DEPARTMENT OF FINANCE AND ADMINISTRATION,**  
**DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION,**  
**BUREAU OF TENNCARE**  
**AND**  
**DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration, Bureau of TennCare, hereinafter referred to as the "Procuring State Agency" or "TennCare," and the Department of Intellectual and Developmental Disabilities, hereinafter referred to as the "Contractor" or "DIDD," is for the provision of services to persons with intellectual disabilities (service recipients with mental retardation) under one or more of the Centers for Medicare and Medicaid Services (CMS) approved Section 1915(c) Home and Community Based Services (HCBS) waivers, hereinafter referred to as "waiver services," as further defined in the "SCOPE OF SERVICES."

**A. SCOPE OF SERVICES:**

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Contractor shall be established as an approved, potential provider of waiver services to persons with intellectual disabilities, operating as an Organized Health Care Delivery System (OHCDs) in accordance with the requirements set forth in federal and State law and regulations and the terms of the CMS approved Section 1915(c) waivers. Waiver services may be rendered only upon authorization by DIDD pursuant to an approved plan of care (i.e., the Individual Support Plan (ISP)), subject to review by TennCare (the Medicaid Agency) in accordance with the requirements of 42 C.F.R. § 441.301(b)(1)(i).

This Contract does not constitute such an authorization to provide service, and neither DIDD nor TennCare are under any obligation to authorize service delivery in any specific dollar amounts or to authorize any service at all to be delivered through the OHCDs during any period of this Contract.

- a. DIDD shall be responsible for approval of ISPs pursuant to TennCare approved DIDD policies and practices.
- b. Approval of ISPs may be subject to review, quality monitoring and additional approval by TennCare.
- A.3. TennCare approves the Contractor as a potential provider for only the following services:
- a. Specialized Medical Equipment and Supplies and Assistive Technology;
- b. Adult Dental Services;
- c. Occupational Therapy;
- d. Physical Therapy;
- e. Speech, Language and Hearing Services;
- f. Behavior Services; and
- g. Nutrition Services.
- A.4. As an OHCDs operating in accordance with federal and State law and regulations and the terms of the CMS approved Section 1915(c) waivers, the Contractor agrees to:



- a. Provide at least one (1) of the waiver services specified in Section A.3 using its own employees;
  - b. Ensure that each of its employees who provide one (1) of the waiver services specified in Section A.3 shall satisfy State minimum waiver provider qualifications for that service; and
  - c. Ensure that services provided under any of the CMS approved Section 1915(c) waivers will be provided in accordance with the service recipient's approved ISP as developed by his or her Independent Support Coordinator (ISC) in conjunction with the recipient's Circle of Support as provided in the Waivers.
- A.5. The Contractor, operating as an OHCDs, may subcontract for the waiver services specified in Section A.3 only after receiving written approval from TennCare, subject to the requirements specified herein. The Contractor shall ensure that any entity subcontracted to deliver an authorized waiver service shall meet State minimum waiver provider qualifications for that service and shall establish processes to verify and document that such qualifications are met. All subcontracts that the OHCDs enters into shall include, at a minimum, the following:
- a. Requirements that all employees of any subcontractor providing a waiver service shall meet State minimum waiver qualifications for the specific service provision;
  - b. Provisions that define a sound and complete procurement contract pursuant to 42 C.F.R. § 434.6 and 45 C.F.R. § 74, Appendix A;
  - c. Identification of the population covered by the subcontract;
  - d. A statement that TennCare maintains procedures for enrollment or reenrollment of the covered population served by the subcontractor;
  - e. A statement specifying the amount, duration, and scope of medical services to be provided or paid for;
  - f. Provisions that TennCare, CMS, the Department of Health and Human Services (HHS) and DIDD may evaluate, through inspection or other means, the quality, appropriateness and timeliness of services performed;
  - g. Procedures and criteria for terminating the subcontract, including a requirement that the subcontractor shall promptly supply all information necessary for the reimbursement of any outstanding waiver claims;
  - h. Provisions that the subcontractor shall maintain an appropriate record system for services to enrolled service recipients;
  - i. Provisions that the subcontractor shall safeguard information about service recipients as required by 42 C.F.R. §§ 431.300-307 and applicable state law;
  - j. Activities to be performed by the subcontractor that relate to third-party liability requirements in 42 C.F.R. §§ 433.135-154;
  - k. Identification of the waiver services to be provided;
  - l. Provisions that TennCare and DIDD reserve the right to review, approve, and monitor the subcontractor's compliance with all rules and requirements applicable to the waiver services provided, and compliance with the applicable sections of 42 C.F.R. § 434;
  - m. A requirement that no payment will be made by the subcontractor to a provider for provider-preventable conditions, as identified in the Tennessee State Medicaid plan;



- n. A provision that the subcontractor will require all providers to agree to comply with the reporting requirements in 42 C.F.R. § 447.26(d) as a condition of payment from the subcontractor;
  - o. A provision that the subcontractor will comply with such reporting requirements to the extent the subcontractor directly furnishes services; and
  - p. Provisions assuring that the subcontractor will observe and guarantee the free choice of the service recipient to obtain services from any qualified waiver provider.
- A.6. The Contractor shall not require providers to affiliate with the OHCDS and shall continue to provide opportunity for any willing, qualified provider to participate directly in the waiver programs and to enroll directly as a waiver provider.
- A.7. The Contractor shall not require waiver participants to receive services through the OHCDS. In addition to documentation of freedom of choice by the ISC, the OHCDS shall document the consumer's free choice of providers for waiver services delivered to him/her by the OHCDS or its subcontractors. The Contractor shall ensure that participants are permitted to select any qualified provider contracted with the OHCDS or an approved waiver provider that has not contracted with the OHCDS to deliver the services specified in the approved ISP.
- A.8. The Contractor shall maintain a copy of the DIDD Provider Manual for review by employees and subcontractors. The Contractor agrees that any authorized and approved services that it provides to eligible service recipients as indicated in the Contractor's approved ISPs shall be performed in accordance with this Contract and the DIDD Provider Manual as may be amended. The Contractor understands that it may be necessary for TennCare to amend or revise the DIDD Provider Manual during the period of this Contract, through memorandum, chapter requirements or otherwise, as well as through revisions to TennCare Rules. The Contractor understands and agrees that it will be subject to any such revisions.
- A.9. The Contractor shall perform any services referenced in and subject to this Contract only in facilities or programs that are licensed and certified as required in accordance with Title 33 of the *Tennessee Code Annotated (T.C.A.)* and other applicable state laws, rules, and regulations. If the Contractor or any of its employees, agents, or subcontractors is found to be providing services without required licensure and certification by state or federal agencies, including, but not limited to, TennCare, the Department of Health, the Department of Mental Health and Substance Abuse Services, applicable federal quality review monitoring agency or panel or any other state or federal agency with licensure and certification responsibilities, the Contractor shall not be entitled to compensation or reimbursement for such unlicensed/uncertified services delivered.
- A.10. The Contractor shall not interfere with or impede a service recipient's freedom of choice of providers of services mandated by state and federal law. The Contractor shall not require, lead or influence service recipients to choose the Contractor as a sole provider of multiple services as a condition of providing any other services generally offered by the Contractor.
- A.11. The Contractor, including any of the Contractor's employees, shall not:
- a. Receive financial or material benefits from any improper, exploitive or inappropriate financial arrangements with intellectually disabled service recipients; or
  - b. Be named as beneficiary of any transfer of a financial or material benefit, including wills, financial accounts, and life insurance policies purchased by or on behalf of intellectually disabled service recipient.

Notwithstanding Section A.11.b, if an employee of the Contractor is a service recipient family member, said employee may be named as beneficiary of a life insurance policy purchased by or on behalf of an intellectually disabled service recipient provided, however, that even family member employees in such transactions will be accountable under fiduciary principles concerning undue influence, unjust enrichment and/or the exploitation of a service recipient.



- A.12. The Contractor shall be responsible for form, storage, safekeeping, acquisition and maintenance of a record for each service recipient served, as described below, and as set out in the DIDD Provider Manual.
- a. Maintenance of records and reporting requirements shall be adequate to ensure acceptable and appropriate quality and continuity of care to service recipients in accordance with ISPs and Individualized Transition Plans. Service records will be made available to authorized federal and State officials, agents, and employees upon request at any time for survey, audit, inspection, review, evaluation and duplication as determined by an authorized federal agency or by the Procuring State Agency.
  - b. Medication Administration Records (MAR) must be maintained as required by applicable law and established procedures and be consistent with all current medical orders.
  - c. Service recipient records shall be available to authorized officials of ISC agencies where applicable. However, the Contractor shall not relinquish any control over DIDD service recipient records of any kind that are generated as a result of this Contract and shall not allow such records to be out of or kept separate from its control. Copies of said records may be made as needed by authorized officials of the ISC agencies.
  - d. Service recipient records shall corroborate any statement of service delivery and shall clearly document services actually provided or services offered, but refused by a service recipient.
  - e. The records required to be maintained above or in any other portion of this Contract will also be made available for inspection, review, survey, audit, evaluation and duplication by authorized federal or State officials, agents, employees or to any other person referenced in Title 33 of the T.C.A. and in the *Health Insurance Portability and Accountability Act of 1996* (HIPAA), as well as other applicable federal laws, rules or regulations as having legal access to protected, confidential service recipient records.

- A.13. The Contractor shall include the following language in its applications for employment of any person who may have direct contact with or direct responsibility for service recipients.

*I, the undersigned applicant, certify and affirm that, to the best of my knowledge and belief; I ["have" or "have not," as applicable] had a case of abuse, neglect, mistreatment or exploitation substantiated against me. As a condition of submitting this application and in order to verify this affirmation, I further release and authorize the Tennessee Department of Intellectual and Developmental Disabilities and the Bureau of TennCare to have full and complete access to any and all current or prior personnel or investigative records, from any party, person, business, entity or agency, whether governmental or non-governmental, as pertains to any allegations against me of abuse, neglect, mistreatment or exploitation and to consider this information as may be deemed appropriate. This authorization extends to providing any applicable information in personnel or investigative reports concerning my employment with this employer to my future employers who may be providers of State services.*

- A.14. The Contractor shall include the following language in its subcontracts for the service of any person or persons who may have direct contact with or direct responsibility for service recipients.

*The undersigned Contractor hereby certifies and affirms that, to the best of the Contractor's knowledge and belief, neither the Contractor nor its employees, who will provide service pursuant to this Contract, have or have[as applicable] not had a case of abuse, neglect, mistreatment or exploitation substantiated against them. As a condition of submitting this contract and in order to verify this affirmation, the Contractor releases and authorizes, the Tennessee Department of Intellectual and Developmental Disabilities and the Bureau of TennCare to have full and complete access to any and all current or prior personnel or investigative records, from any party, person, business or agency, as pertains to any substantiated allegations of abuse, neglect, mistreatment or exploitation.*



- A.15. The Contractor shall, within fifteen (15) business days of the effective date of this Contract, maintain in a file for requested review by the Procuring State Agency, a signed statement in the following form for all of the Contractor's current employees, subcontractors and volunteers.

*I, [NAME], certify and affirm that to the best of my knowledge and belief (I have or have not as applicable) had or received a finding of a substantiated case of abuse, neglect, mistreatment or exploitation against me. In order to verify this affirmation, I further release and authorize the Tennessee Department of Intellectual and Developmental Disabilities and the Bureau of TennCare to have full and complete access to any and all current or prior personnel or investigative records as pertains to any substantiated allegations against me of abuse, neglect, mistreatment or exploitation.*

- A.16. The Contractor shall be responsible for complying with all requirements of T.C.A. § 33-2-1202 for obtaining a criminal background check and/or fingerprint check from the Tennessee Bureau of Investigation or, as an alternative, a criminal background check from a licensed private investigation company. The Contractor shall not be entitled to reimbursement for any services delivered by staff for whom background and registry checks have not been completed. In addition, the Contractor shall be responsible for verifying through the State of Tennessee website or other appropriate databases that any person having direct contact with or direct responsibility for service recipients is not listed on the:

- a. Tennessee Department of Health Elderly or Vulnerable Abuse Registry. The Department of Health pursuant to T.C.A. § 68-11-1001 *et seq.* maintains this registry for individuals substantiated for abuse, neglect, mistreatment and exploitation of vulnerable persons, which includes persons with intellectual disabilities. The law contains all pertinent provisions for notice to individuals and procedures for an administrative appeal before any registry placement;
- b. Tennessee Sexual Offender List. The Tennessee Sexual Offender List is maintained pursuant to T.C.A. § 40-39-201 *et seq.* and provides a list of individuals convicted by a court of law of sexual offenses in Tennessee or who have been judicially determined to have some other sort of qualifying condition. Such sexual offenses are contained in the T.C.A. and Title 39 of the state criminal code; and
- c. Tennessee Felony Offender Information Lookup (FOIL). The information available on this list pertains to Tennessee felony offenders who are or who have been in the custody of the Tennessee Department of Correction or under the Supervision of the Tennessee Board of Probation and Parole. The information is submitted by various jurisdictions within Tennessee. Confirmation and/or elaboration should be obtained from the originating jurisdiction.

Said criminal background/fingerprint and registry checks shall be on all employees, contractors and volunteers whose job functions include direct contact with or direct responsibility for service recipients regardless of hire date.

- A.17. The Contractor will comply, to the extent applicable, in its business with the provisions of the Tennessee "Drug Free Work Place Programs" as found in T.C.A. § 50-9-101 *et seq.*
- A.18. The Contractor shall not have a blanket policy of not hiring felons. The Contractor shall use a process in which an applicant with a prior felony conviction, or specified misdemeanor conviction as listed below in this Section, may ask for an exemption to the felony hiring restriction. This request must be submitted to the Contractor and examined through the Contractor's exemption process. TennCare shall have the right of final approval of all exemptions. Furthermore, the Contractor shall not employ, retain, hire or contract with any individuals, as staff or volunteers, who would have direct contact with or direct responsibility for service recipients, and have been convicted of the following crimes (unless approved by the Contractor through the Contractor's exemption process and subsequently granted final approval by TennCare):
- a. Any felony;



- b. A misdemeanor involving physical harm to a person, including, but not limited to, neglect or abuse, or a misdemeanor involving financial harm/exploitation to a person, including, but not limited to, theft, misappropriation of funds, fraud, or breach of fiduciary duty; and/or
  - c. A misdemeanor involving illicit drugs, drug/alcohol misuse, or sexual misbehavior (e.g., indecent exposure or voyeurism). Misdemeanor convictions covered in this subparagraph (c) shall not have occurred during a period of less than ten (10) years prior to employment with the Contractor, unless the misdemeanor conviction is a first and only occurrence of a DUI (DUI 1), public intoxication, or simple possession of marijuana, then it shall not have occurred during a period of less than one (1) year prior to employment with the Contractor.
- A.19. If at any time, the Contractor identifies any actions of a Contractor employee, volunteer, subcontractor or any other person, entity or organization that may constitute abuse, neglect, mistreatment or exploitation of a service recipient, the Contractor shall report such conduct to the DIDD Investigations Section within four (4) hours of identifying any of the issues listed above in this Section. A Reportable Incident Form must also be submitted to DIDD Central Office by the next working day. The Contractor shall also report to the Procuring State Agency and any other entity with legal jurisdiction information related to the allegation(s) as completely as possible and shall cooperate with any subsequent investigations, whether by DIDD, the Procuring State Agency or another entity with legal jurisdiction. The Contractor shall grant the Procuring State Agency or its authorized representatives full and complete access to any and all records relating to the allegation.
- A.20. The Contractor shall assume liability for ensuring that a service recipient is provided adequate, appropriate and safe transportation, when transportation of a service recipient is part of a defined service.
- A.21. The Contractor shall comply with training requirements, including, but not limited to, Mandatory Technical Assistance, as specified in the DIDD Provider Manual or otherwise mandated in writing by the Procuring State Agency. The provider shall not be entitled to reimbursement for services delivered by staff who have not completed all applicable training requirements.
- A.22. The Contractor shall submit to the Deputy of Audit and Compliance of the Long-Term Services and Supports Division of TennCare, or their designee, all data and information required of a provider pursuant to the DIDD Provider Manual, in the manner prescribed by the DIDD Provider Manual, except any data and information that TennCare deems inapplicable and provides notice thereof in writing to the Contractor.
- A.23. The Contractor shall comply with all minimum technology requirements and shall update such requirements as mandated by the Procuring State Agency.
- A.24. Upon Contractor acceptance to supply approved service to an eligible service recipient as indicated in the DIDD approved ISP, the Contractor shall be obligated to deliver services in accordance with the ISP, including the amount, frequency, intensity, and duration of services specified, and shall be responsible for arranging back-up staff to address instances when other scheduled staff are not able to deliver services as scheduled. The Contractor shall, in any and all circumstances, continue to provide services that maintain continuity of care to the service recipient in accordance with his/her ISP until the service recipient is provided with other services, as mandated below, that are of acceptable and appropriate quality.
- a. Prior to discontinuing service to the eligible service recipient, the Contractor shall:
    - (1) Obtain TennCare approval, in the form of a signed service plan, to discontinue the service and cooperate with any subsequent, authorized service provider as is necessary;
    - (2) Provide a written notification of the planned service discontinuation to the service recipient, his/her conservator or guardian, his/her support coordinator, TennCare and DIDD Regional Office no less than sixty (60) days prior to the proposed date



of service termination;

- (3) Consult and cooperate with TennCare in the preparation of a discharge plan for those service recipients receiving care and services from the Contractor in the event of a proposed termination of service. Also, when appropriate, as part of the discharge plan, the terminating Contractor will meet, consult and cooperate with any new providers to ensure continuity of care and as smooth a transition as is possible;
- (4) Provide copies (or original documents as required) of the service recipient's records to the service recipient's new provider as directed by TennCare, as required by the DIDD Provider Manual. This records transfer shall be accomplished whether the Contractor continues as a waiver services provider for TennCare or ceases to offer services under this Contract and/or determines to no longer be an OHCDS provider. If the Contractor fails to comply with the terms of this paragraph, the Contractor will remain fully responsible for making the records available and liable to TennCare for all costs of making copies of the records for the new service provider;
- (5) Implement and comply with a TennCare-approved grievance and appeals process and, as required by TennCare, provide expert testimony by appropriate professionals during contested case hearings; and
- (6) Comply with all notice and appeal requirements, processes and timelines specified in federal regulation as modified or enhanced pursuant to the *Grier* Revised Consent Decree or other applicable federal court orders, and with all TennCare Rules, policies and procedures pertaining to such requirements, processes and timelines. The Contractor shall forward an expedited appeal to TennCare in twenty-four (24) hours or a standard appeal in five (5) days.

A.25. The Contractor shall create and maintain bookkeeping, accounting, financial, business and management records and reports of its operations subject to this Contract, including detailed documentation of service delivery to support the services rendered. Said records are to be maintained in compliance with generally accepted accounting principles and shall be available upon request to authorized representatives of TennCare and the Comptroller of the Treasury or such other state or federal employees having authority to access such records.

- a. For services provided under the Medicaid Program, records shall be available to TennCare and HHS, or their designees, for inspection, audit, reproduction, excerpts and transcription. These records shall be maintained as required by 45 C.F.R. § 74.53.
- b. Service recipient records must be preserved and maintained in accordance with federal and state laws and regulations including, but not limited to, T.C.A. § 33-3-101, which at the current time is for a minimum of ten (10) plus one (1) years after the discharge or death of a service recipient. This requirement will remain enforceable and in effect even if the Contractor has ceased doing business with the Procuring State Agency.
- c. The Contractor shall maintain documentation for all charges, costs and expenses billed or invoiced to the Procuring State Agency for services referenced in and subject to this Contract. The books, records, and documents of the Contractor in whatever form and insofar as they relate to services referenced in and produced as a result of this Contract shall be subject to inspection, survey and/or audit at any reasonable time and upon reasonable notice by the authorized federal agencies, the Procuring State Agency, the Comptroller of the Treasury, or their duly appointed representatives. This documentation shall be maintained for a minimum of five (5) years and produced upon request by the entities mentioned herein. This requirement will remain enforceable and in effect even if the Contractor has ceased doing business with TennCare.
- d. The Contractor shall provide federal, State and TennCare personnel, and its authorized designees and agents, with complete and unrestricted access to all information pertaining to waiver participants served directly through the OHCDS or through subcontracted providers, whether paper or electronic, including, but not limited to, all enrollee information received, transmitted, created or maintained by a subcontracted provider, and



all current and/or future databases. The Contractor shall make available to TennCare in a reasonable timeframe any data or report needed to ensure proper oversight of the Contractor and services delivered by the OHCDs.

- A.26. The Contractor shall cooperate fully in TennCare quality monitoring processes.
- a. The Contractor shall cooperate fully with TennCare Utilization (i.e., post-payment) Review processes and shall take prompt corrective action in response to findings, which shall include recoupment of funds when determined appropriate by TennCare, and which may also include submission of a Corrective Action Plan from DIDD (see Section E.13).
  - b. The Contractor shall cooperate fully with TennCare quality and compliance monitoring processes, which include, but may not be limited to:
    - (1) Review of individual ISPs;
    - (2) Review of individual records maintained by the Contractor for each service recipient served by the Contractor; and
    - (3) Review of policies, procedures and manuals utilized for the operation of the services provided.
- A.27 Nondiscrimination Compliance Requirements. In addition to the requirements of Section E.18 below, the Contractor's employees and subcontractors that provide services under the Waivers shall agree to the following:
- a. Comply with DIDD's Provider Manual and its written policies and procedures that demonstrate nondiscrimination in the provision of services to waiver service recipients.
  - b. Shall assist waiver service recipients with obtaining DIDD's standardized discrimination complaint form and contact information for the Contractor's Office of Civil Rights.
  - c. By August 1 of every year, subcontractors shall submit to the Contractor's Office of Civil Rights the DIDD Title VI Self-Survey.

**B. CONTRACT PERIOD:**

- B.1. This Contract shall be effective for the period beginning July 1, 2013, and ending on June 30, 2016. The Contractor hereby acknowledges and affirms that the Procuring State Agency shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.
- B.2. Term Extension. TennCare reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than 5 years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of a contract amendment. If a term extension necessitates additional funding beyond that which was included in the original Contract, an increase of TennCare's maximum liability will also be affected through contract amendment, and shall be based upon payment rates provided in the original Contract.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the Procuring State Agency under this Contract exceed Three Million, Eight Hundred Seventeen Thousand, Three Hundred Dollars and no cents (\$ 3,817,300.00) for FY 14, Three Million, Eight Hundred Seventeen Thousand, Three Hundred Dollars and no cents (\$ 3,817,300.00) for FY 15, and Three Million, Eight Hundred Seventeen Thousand, Three Hundred Dollars and no cents (\$ 3,817,300.00) for FY 16, with a total maximum liability of amount Eleven Million, four hundred fifty one thousand, nine hundred dollars and no cents (\$ 11,451,900.00). Additionally, any payment for service(s) referenced in and subject to the provisions of this Contract shall be limited to and in accordance with the approved ISP or ISP\_Amendment for such service. The rate(s) specified in the TennCare rate schedule shall constitute the entire compensation due the Contractor for the service(s) and



all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. This rate schedule includes, but is not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

- C.2. Compensation Firm. TennCare will refuse payment to the Contractor for services billed to TennCare that are beyond the level of services authorized by the TennCare through ISP, exceed payment rates for said services, or are not billed to TennCare within the appropriate time frame after the delivery of services.
- C.3. Payment Methodology. The Contractor shall be reimbursed according to the rate schedule approved by TennCare in a total amount not to exceed the Contract Maximum Liability established in Section C.1.
- a. Contractor compensation shall be contingent upon the satisfactory completion of authorized, approved service(s) as specified in the ISP.
  - b. Payment for service may also be as specified in accordance with services identified in the service recipient's TennCare approved Pre-Admission Evaluation or Transfer PAE, until such a time as an approved ISP is in place, to a maximum of 60 days.
  - c. The Contractor shall submit billing pursuant to established DIDD processes for completed, authorized, and approved service(s) to eligible service recipient(s) as stipulated in the ISP.
  - d. All payments to the Contractor for authorized services that are rendered during the billing period shall be invoiced by the Contractor and paid TennCare. The Contractor shall provide written notification to TennCare setting forth the amount, details, supporting documentation, and basis of any payment dispute within thirty (30) days after receiving payment for services.
- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. A payment by the Procuring State Agency shall not prejudice the Procuring State Agency's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the Procuring State Agency shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.
- C.6. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Procuring State Agency, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The Procuring State Agency 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 Procuring State Agency any amounts, which are or shall become due and payable to the Procuring State Agency by the Contractor.

**D. STANDARD TERMS AND CONDITIONS:**

- D.1. Required Approvals. The Procuring State Agency is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the



Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

- D.3. Termination for Convenience. The Contract may be terminated by either party by giving written notice to the other, at least thirty (30) days before the effective date of termination. Should the Procuring State Agency exercise this provision, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Should the Contractor exercise this provision, the Procuring State Agency shall have no liability to the Contractor except for those units of service which can be effectively used by the Procuring State Agency. The final decision as to what these units of service are shall be determined by the Procuring State Agency.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the Procuring State Agency shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the Procuring State Agency. Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the Procuring State Agency as requested.
- D.7. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.8. State Liability. The Procuring State Agency shall have no liability except as specifically provided in this Contract.
- D.9. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.10. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The Procuring State Agency:



Deputy Commissioner  
Department of Finance and Administration  
Division of Health Care Finance and Administration  
Bureau of TennCare  
310 Great Circle Road  
Nashville TN 37243  
Telephone # (615) 507-6443  
FAX # (615) 253-5607

The Contractor:

Commissioner  
Department of Intellectual and Developmental Disabilities  
Frost Building, 1<sup>st</sup> Floor  
161 Rosa L. Parks Blvd.  
Nashville, TN 37243  
Telephone # (615) 532-6533  
FAX # (615) 253-4089

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

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of state and/or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Procuring State Agency reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the Procuring State Agency. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the Procuring State Agency any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. 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 Procuring State Agency or acquired by the Contractor on behalf of the Procuring State Agency shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the Procuring State Agency to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the Procuring State Agency's information; or, disclosed by the Procuring State Agency to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the Procuring State Agency or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.



E.5. Compliance with Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH).

- a. The Contractor and TennCare shall comply with obligations under HIPAA and HITECH in the American Recovery and Reinvestment Act of 2009 (ARRA) and their accompanying regulations, and as amended.
- b. The Contractor warrants to TennCare that it is familiar with the requirements of HIPAA and HITECH and their accompanying regulations, and shall comply with all applicable HIPAA and HITECH requirements in the course of this Contract, including, but not limited to, the following:
  - (1) Compliance with the Privacy Rule, Security Rule, and Notification Rule;
  - (2) The creation of and adherence to sufficient Privacy and Security Safeguards and Policies;
  - (3) Timely Reporting of Violations in the Access, Use and Disclosure of PHI; and
  - (4) Timely Reporting of Privacy and/or Security Incidents.
- c. The Contractor warrants that it shall cooperate with TennCare, including cooperation and coordination with TennCare privacy officials and other compliance officers required by HIPAA and HITECH and their accompanying regulations, in the course of performance of this Contract so that the parties to this Contract will be in compliance with HIPAA and HITECH.
- d. The Contractor and TennCare shall sign documents, including, but not limited to, business associate agreements, as required by HIPAA and HITECH, that are reasonably necessary to keep the Contractor and TennCare in compliance with HIPAA and HITECH.
- e. As a party to this Contract, the Contractor hereby acknowledges its designation as a covered entity and/or business associate under the HIPAA regulations and agrees to comply with all applicable HIPAA and HITECH (hereinafter "HIPAA/HITECH") regulations.
- f. In accordance with HIPAA/HITECH regulations, the Contractor shall, at a minimum:
  - (1) Comply with the requirements of HIPAA/HITECH, including, but not limited to, the transactions and code sets, privacy, security, and identifier regulations, by their designated compliance dates. Compliance includes meeting all required transaction formats and code sets with the specified data sharing agreements required under the regulations;
  - (2) Transmit/receive from/to its employees, subcontractors, clearinghouses, and TennCare all transactions and code sets required by the HIPAA/HITECH regulations in the appropriate standard formats, utilizing appropriate and adequate safeguards, as specified under the law and as directed by TennCare so long as TennCare direction does not conflict with the law;
  - (3) Agree that if it is not in compliance with all applicable standards defined within the transactions and code sets, privacy, security and all subsequent HIPAA/HITECH standards, that it will be in breach of this Contract and will then take all reasonable steps to cure the breach or end the violation, as applicable. Since inability to meet the transactions and code sets requirements, as well as the privacy and security requirements, can bring basic business practices among the Contractor and TennCare and the Contractor and its subcontractors to a halt, if for any reason the Contractor cannot meet the requirements of this Section, TennCare may terminate this Contract in accordance with the Business Associate Agreement ancillary to this Contract;
  - (4) Ensure that Protected Health Information (PHI) exchanged between the Contractor and TennCare is used only for the purposes of treatment, payment, or



health care operations and health oversight and its related functions. All PHI not transmitted for these purposes or for purposes allowed under the federal HIPAA/HITECH regulations shall be de-identified to secure and protect the individual service recipient's PHI;

- (5) Report to TennCare's Privacy Office immediately upon becoming aware of any use or disclosure of PHI in violation of this Contract by the Contractor, its officers, directors, employees, subcontractors or agents or by a third party to which the Contractor disclosed PHI;
- (6) Specify in its agreements with any agent or subcontractor that will have access to PHI that such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Contractor pursuant to this Section;
- (7) Make available to TennCare persons served the right to amend their PHI in accordance with the federal HIPAA regulations. The Contractor shall also send information to persons served educating them of their rights and necessary steps in this regard;
- (8) Make a service recipient's PHI accessible to TennCare immediately upon request by TennCare;
- (9) Make its internal policies and procedures, records and other documentation related to the use and disclosure of PHI available to the U.S. Secretary of Health and Human Services for the purposes of determining compliance with the HIPAA/HITECH regulations upon request;
- (10) Create and adopt policies and procedures to periodically audit adherence to all HIPAA/HITECH regulations, and for which the Contractor acknowledges and promises to perform, including but not limited to, the following obligations and actions:
  - (i) Agree to ensure that any agent, including a subcontractor, to whom the Contractor provides PHI that was created, received, maintained, or transmitted on behalf of TennCare, agrees to use reasonable and appropriate safeguards to protect the PHI.
  - (ii) If feasible, return or destroy all PHI, in whatever form or medium (including any electronic medium) and all copies of any data or compilations derived from and allowing identification of any individual who is a subject of that PHI upon termination, cancellation, expiration or other conclusion of this Contract, and in accordance with this Section of this Contract. The Contractor shall complete such return or destruction as promptly as possible, but not later than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of this Contract. The Contractor shall identify any PHI that cannot feasibly be returned or destroyed. Within such thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of this Contract, the Contractor shall: (1) certify on oath in writing that such return or destruction has been completed; (2) identify any PHI which cannot feasibly be returned or destroyed; and (3) certify that it will only use or disclose such PHI for those purposes that make its return or destruction infeasible;
  - (iii) Implement all appropriate administrative, physical and technical safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Contract and, including, but not limited to, privacy, security and confidentiality requirements in 45 C.F.R. §§ 160 and 164;
  - (iv) Set up appropriate mechanisms to limit use or disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use or disclosure;



- (v) Create and implement policies and procedures to address present and future HIPAA/HITECH regulatory requirements as needed, including, but not limited to: use and disclosure of data; de-identification of data; minimum necessary access; accounting of disclosures; service recipient's right to amend, access, request restrictions; notice of privacy practices and right to file a complaint;
  - (vi) Provide an appropriate level of training to its staff and employees regarding HIPAA/HITECH-related policies, procedures, service recipient rights and penalties prior to the HIPAA/HITECH implementation deadlines and at appropriate intervals thereafter;
  - (vii) Track training of the Contractor's staff and employees and maintain signed acknowledgements by staff and employees of the Contractor's HIPAA/HITECH policies;
  - (viii) Be allowed to use and receive information from TennCare where necessary for the management and administration of this Contract and to carry out business operations where permitted under the regulations;
  - (ix) Be permitted to use and disclose PHI for the Contractor's own legal responsibilities;
  - (x) Adopt the appropriate procedures and access safeguards to restrict and regulate access to and use by the Contractor's employees, subcontractors and other persons performing work for the Contractor to have only minimum necessary access to PHI and personally identifiable data within their organization;
  - (xi) Continue to protect and secure PHI AND personally identifiable information relating to persons served who are deceased;
  - (xii) Be responsible for informing TennCare persons served receiving the Contractor's services of their privacy rights in the manner specified under the regulations;
  - (xiii) Make available PHI in accordance with 45 C.F.R. § 164.524;
  - (xiv) Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526; and
- g. The Contractor shall track all security incidents as defined by HIPAA/HITECH, and, as required by the HIPAA/HITECH Reports. The Contractor shall periodically report in summary fashion such security incidents.
- h. The Contractor and TennCare are "information holders" as defined in T.C.A. § 47-18-2107. In the event of a breach of the security of the Contractor's information system, as defined by T.C.A. § 47-18-2107, the Contractor shall indemnify and hold TennCare harmless for expenses and/or damages related to the breach. Such obligations shall include, but not be limited to, mailing notifications to affected persons served. Substitute notice to written notice, as defined by T.C.A. § 47-18-2107(e)(2) and (3), shall only be permitted with TennCare's express written approval. The Contractor shall notify TennCare's Privacy Offices immediately upon becoming aware of any security incident that would constitute a "breach of the security of the system" as defined in T.C.A. § 47-18-2107.
- i. Notification of Breach & Notification of Provisional Breach. The Contractor shall notify TennCare's Privacy Offices 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 persons served PHI maintained or held by the Contractor, including any unauthorized acquisition of person's served PHI by a Contractor's employee, subcontractor 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.6. 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.7. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

E.8. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.



The Contractor shall provide immediate written notice to the Procuring State Agency if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- E.9. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including, but not limited to, those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

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

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

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 CFR 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 its term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the amendment to this Contract becomes effective.
- d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

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

- E.10. State and Federal Compliance. The Contractor shall be subject to all relevant and applicable state and federal rules, regulations, consent decrees, court orders and statutory requirements, including any amendments and/or revisions thereto, as they relate to this Contract or any performance of approved service to eligible service recipients.
- a. Waiver Services - Any Waiver Service as detailed in the DIDD Provider Manual and performed by the Contractor shall comply with terms of the CMS approved 1915 (c) Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled (# 0128.90.R2A.02), herein referred to as the "Medicaid Waiver", the CMS approved 1915 (c) Home and Community Based Services Waiver for Persons with Mental Retardation (#0357.90.02), herein referred to as the "Arlington Waiver", and the CMS approved 1915 (c) Home and Community Based Services Waiver known as the Self-Determination Waiver Program (#0427.R01), herein referred to as the "Self Determination Waiver Program", or such other waivers as are approved for and implemented by DIDD which address services governed by this Contract. Any Medicaid Waiver Service performed by a waiver services provider shall be delivered in accordance with the applicable CMS approved Medicaid Waiver application, including HCBS waiver service definitions, provider qualifications, and all applicable requirements specified in the CMS approved waiver. No waiver services provider shall be entitled to compensation or reimbursement for any services failing to meet these requirements.
  - b. Advance Directives— The Contractor shall comply with any state and federal requirements concerning advance directives and end of life issues as described in 42 *Code of Federal Regulations* 417.436 Subpart 1. and as found in *Tennessee Code Annotated* 33-6, part 10 and, finally, as legally provided by the service recipient.
- E.11. Limited English Proficient Persons. With regard to Limited English Proficient persons, the Contractor shall comply with:
- a. Presidential Executive Order 13166 of August 11, 2000, (65 FR 50121); and
  - b. Department of Health and Human Services "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" (68 FR 47311 - August 8, 2003).
- E.12. Assessment of Liquidated Damages. In addition to the other remedies described in Section D.4, TennCare may choose to assess liquidated damages as referenced in Attachment A for each instance in which the Contractor fails to properly perform its obligations as defined under this Contract in an appropriate and/or timely manner, including monitoring and oversight of its subcontractor(s) to ensure compliance with this Contract. Upon determination that the Contractor has failed to perform one or more of the services described in Section A in this Contract in an appropriate and/or timely manner or violated any other provision of this Contract, TennCare will notify the Contractor in writing of the deficiency. The Contractor must work to immediately correct such deficiency. The Contractor shall have a reasonable period of time as specified by TennCare



from the date of notification to provide proof that such deficiency has been fully resolved to the satisfaction of TennCare. TennCare shall determine this period of time based on the urgency of the potential consequences of the deficiency, and this period of time shall be no less than 10 calendar days and no more than 30 calendar days from the date of notification by TennCare. The Deputy Commissioner of TennCare, or their designee, shall determine when a deficiency has been satisfactorily cured. Resolution of the identified deficiency within the specified timeframe does not preclude TennCare's ability to assess a one-time penalty for each instance of such deficiency.

Should the deficiency remain beyond the timeframe specified by TennCare, TennCare may impose additional damages for each day that the deficiency remains unresolved and/or satisfactory documentation thereof is not provided to TennCare. The damages may be retroactive to the date of notice of deficiency and will be deducted from the monthly payments to the Contractor.

E.13. Recoupment. Recoupment is the return of unearned amounts paid to a Contractor resulting from non-compliance with the provisions of this Contract. Recoupment of funds paid to the Contractor may be imposed by TennCare as a result of survey, audit, or review processes conducted by, the Office of the Comptroller, utilization reviews by CMS, other federally designated agencies, TennCare, or other evidence.

- a. TennCare or its designated fiscal agent may recoup funds for reasons including, but not limited to, the following:
  - (1) No PAE or Transfer Form (for ISC Agencies, if applicable) for individuals served;
  - (2) No 2362 (for ISC Agencies, if applicable) for individuals served;
  - (3) No current Medicaid Waiver Re-evaluation;
  - (4) Billing for services for which no or inadequate supporting documentation is found;
  - (5) Billing for services which were not provided;
  - (6) Billing for multiple services concurrently, except where specifically authorized by TennCare;
  - (7) Not meeting defined requirements of service category (consistent lack of adherence to fundamental requirements of each service category);
  - (8) Services provided at locations other than those specifically approved for an individual;
  - (9) Amounts or types of service approved by TennCare, which were billed but were not provided;
  - (10) Required and approved staffing or caseload ratios not being met; and
  - (11) Services performed by staff who have not completed background or registry checks, or who have not completed all applicable training requirements.
- b. The following informal administrative review of recoupments will be permitted. This Opportunity for Recoupment Review (ORR) will be in addition to any other administrative/audit analysis offered to the Contractor by the respective auditing/surveying entity, as applicable.
  - (1) When a recoupment is determined to be appropriate, TennCare will notify the Contractor as soon as possible with a written description of the amount to be recouped, an explanation of the basis for the recoupment and, when appropriate, a list of documentation which has not been supplied or found to be missing. TennCare will give the Contractor an opportunity to produce, but not recreate, missing information.
  - (2) The Contractor shall have fifteen (15) business days from the date of the mailing/delivery of the above notice to advise TennCare in writing that the Contractor requests such informal administrative review. This notification may be



accomplished by written correspondence, facsimile transmission or email. If a request is not received by TennCare's Director of Intellectual and Developmental Disability (ID/DD) Services in the time prescribed, the Contractor has waived his ORR and TennCare will proceed to collect the recoupment amount.

- (3) If, however, the Contractor does submit a written request for informal administrative review, then TennCare's Director of ID/DD Services will arrange for an interview with the Contractor or its designee as soon as practicable. The Contractor may raise questions and/or present or produce documentation or other information/explanations to address identified deficiencies in order to reduce or eliminate the recoupment, when appropriate.
- (4) TennCare's Director of ID/DD Services shall review relevant information and allow the Contractor to ask questions/and or present its position concerning the recoupment. TennCare cannot independently overturn recoupment actions initiated by CMS, or another federal or State agency. TennCare shall render its determination, along with the rationale supporting its decision, in writing no later than ten (10) business days thereafter, which in the case of recoupment actions initiated by CMS, or another federal or State agency, shall be subject to final determination by the initiating entity. It is agreed that the process described in this subsection is an informal, contractual review, which affords the Contractor subject to a possible recoupment a chance to submit its views and any contrary or additional information relevant to a final conclusion of a proposed recoupment. The Contractor is limited to the ORR, described herein, as its sole remedy regarding any recoupments to which it may be subject.
- (5) If, following the ORR process set forth above, TennCare determines recoupment of funds is warranted, TennCare's Director of ID/DD Services will prepare a Report/Summary of Findings, which provides details of the recoupment issues. This document will specify the amount of recoupment and direct the Contractor to contact TennCare's Director of ID/DD Services by a specified date regarding the schedule for recoupment, which shall be finally determined at the sole discretion of TennCare. TennCare shall send the Report/Summary of Findings to the Contractor by either electronic or certified mail within fifteen (15) working days of its final determination.
- (6) The Contractor shall not bill or accept any payment from the service recipient, his/her parent, guardian, spouse or any other legally responsible party for any recoupment amounts.

E.14. Fraud. The Contractor shall report to TennCare, Office of Inspector General, and the Tennessee Bureau of Investigation Medicaid Fraud Control Unit (TBI MFCU) any incident(s) of Medicaid or TennCare fraud. Furthermore, the Contractor shall fully participate and cooperate with any investigation into such circumstances conducted by TBI MFCU and shall allow the inspection, duplication and/or removal of its records in compliance with State and Federal laws pursuant to a TBI MFCU investigation.

E.15. Social Security Administration (SSA) Required Provisions for Data Security. 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, Contractor shall have in place administrative, physical, and technical safeguards for data.

- a. Contractor shall not duplicate in a separate file or disseminate, without prior written permission from TennCare, the data governed by the Contract for any purpose other than that set forth in this Contract. Should Contractor propose a redisclosure of said data, 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 program.



- b. Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Contract.
- c. Contractor shall provide a current list of the employees of such contractor with access to SSA data and provide such lists to TennCare upon request.
- d. 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. Contractor shall not further duplicate, disseminate, or disclose such data without obtaining TennCare's prior written approval.
- e. 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 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 Contractor becomes aware of suspected or actual loss of PHI/PII, he or she must immediately contact TennCare immediately upon becoming aware to report the actual or suspected loss. Contractor will use the Loss Worksheet, which can be found 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. Contractor must provide TennCare with timely updates as any additional information about the loss of PHI/PII becomes available.

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

- g. TennCare may immediately and unilaterally suspend the data flow under this Contract, or cause Contractor to terminate this Contract, if TennCare, in its sole discretion, determines that Contractor has: (1) made an unauthorized use or disclosure of TennCare SSA-supplied data; or (2) violated or failed to follow the terms and conditions of this Contract.
- h. In order to meet certain requirements set forth in TennCare's Computer Matching and Privacy Protection Act Contract (CMPPA) with the SSA, the Parties acknowledge that this Section shall be included in all Contracts executed by or on behalf of TennCare and Contractor further agree that FISMA and NIST do not apply in the context of data use and disclosure under this Contract as Contractor and Contractor 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, TennCare, its contractors, agents and providers are not required to abide by the NIST guidelines.
- i. This Section further carries out Section 1106(a) of the Act (42 U.S.C. 1306), the regulations promulgated pursuant to that section (20 C.F.R. Part 401), the Privacy of



1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget ("OMB") guidelines, the Federal Information Security Management Act of 2002 ("FISMA") (44 U.S.C. 3541 et seq.), and related National Institute of Standards and Technology ("NIST") guidelines, which provide the requirements that the SSA stipulates that Contractor must follow with regard to use, treatment, and safeguarding data in the event data is exchanged with a federal information system.

j. Definitions

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

E.16. Medicaid and CHIP – Verification of Income and Eligibility. The Contractor must provide safeguards that restrict the use or disclosure of information concerning applicants and beneficiaries to purposes directly connected with the administration of the plan:

a. Purposes directly related to the administration of Medicaid and CHIP include:

- (1) establishing eligibility;
- (2) determining the amount of medical assistance;
- (3) providing services for beneficiaries; and,
- (4) conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to Medicaid or CHIP administration.

b. The Contractor must have adequate safeguards to assure that—

- (1) Information is made available only to the extent necessary to assist in the valid administrative purposes of those receiving the information, and information received under 26 USC section 6103(l) is exchanged only with parties authorized to receive that information under that section of the Code; and,
- (2) the information is adequately stored and processed so that it is protected against unauthorized disclosure for other purposes.



- c. The Contractor must have criteria that govern the types of information about applicants and beneficiaries that are safeguarded. This information must include at least:
- (1) Names and addresses;
  - (2) Medical services provided;
  - (3) Social and economic conditions or circumstances;
  - (4) Contractor evaluation of personal information;
  - (5) Medical data, including diagnosis and past history of disease or disability; and
  - (6) Any information received for verifying income eligibility and amount of medical assistance payments, including income information received from SSA or the Internal Revenue Service,
  - (7) Any information received for verifying income eligibility and amount of medical assistance payments
  - (8) Income information received from SSA or the Internal Revenue Service must be safeguarded according to Medicaid and CHIP requirements
  - (9) Any information received in connection with the identification of legally liable third party resources.
  - (10) Social Security Numbers.
- d. The Contractor must have criteria approved by TennCare specifying:
- (1) the conditions for release and use of information about applicants and beneficiaries;
  - (2) Access to information concerning applicants or beneficiaries must be restricted to persons or Contractor representatives who are subject to standards of confidentiality that are comparable to those of TennCare.
  - (3) The Contractor shall not publish names of applicants or beneficiaries.
  - (4) The Contractor shall obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility and the amount of medical assistance payment to an authorized individual or entity;
  - (5) If, because of an emergency situation, time does not permit obtaining consent before release, the Contractor shall notify TennCare, the family or individual immediately after supplying the information.
  - (6) The Contractor's policies must apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials.
- e. The Contractor shall notify TennCare of any requests for information on applicants or beneficiaries by other governmental bodies, the courts or law enforcement officials ten (10) days prior to releasing the requested information.
- f. If a court issues a subpoena for a case record or for any Contractor representative to testify concerning an applicant or beneficiary, the Contractor must notify TennCare at least ten (10) days prior to the required production date so TennCare may inform the court of the applicable statutory provisions, policies, and regulations restricting disclosure of information, effective until Jan. 1, 2014.
- g. The Contractor shall not request or release information to other parties to verify income, eligibility and the amount of assistance under Medicaid or CHIP, prior to express approval from TennCare.

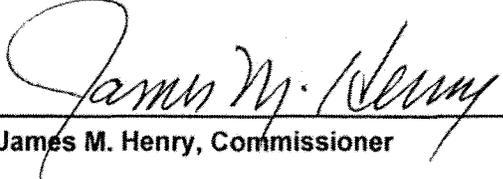
E.17. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination



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

IN WITNESS WHEREOF,

DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES:

  
\_\_\_\_\_  
James M. Henry, Commissioner

5/24/13  
DATE

DEPARTMENT OF FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE:

  
\_\_\_\_\_  
Mark A. Emkes, Commissioner

5/28/2013  
DATE



**Attachment A  
Assessment of Liquidated Damages**

It is acknowledged by TennCare and the Contractor that in the event of failure to meet the requirements provided in this Contract and all documents incorporated herein, TennCare will be harmed. The actual damages which TennCare will sustain in the event of and by reason of such failure are uncertain and are extremely difficult and impractical to ascertain and determine. The parties therefore acknowledge that the Contractor shall be subject to damages as described below. It is further agreed that the Contractor shall pay TennCare liquidated damages as directed by TennCare and not to exceed the fixed amount as stated below; provided however, that if it is finally determined that the Contractor would have been able to meet the Contract requirements listed below but for TennCare's failure to perform as provided in this Contract, the Contractor shall not be liable for damages resulting directly therefrom.

In addition to the specific liquidated damages listed below, TennCare shall have the right to assess a general liquidated damages claim of five hundred dollars (\$500) per calendar day for each day that the Contractor fails to comply with the provisions and requirements of this Contract. The damage that may be assessed shall be \$500 per calendar day for each separate failure to comply with the Contract, plus, if applicable, an additional \$500 per calendar day for each affected TennCare enrollee.

	<b>PROGRAM ISSUES</b>	<b>LIQUIDATED DAMAGES</b>
1	<p>A. Failure to include the required provisions set forth in Section A.5 in all of Contractor's subcontracts for the provision of waiver services to be provided pursuant to this Contract.</p> <p>B. Failure to ensure a subcontractor meets State minimum waiver provider qualifications for subcontracted services as required in Section A.5.</p>	<p>Five Hundred Dollars (\$500.00) per subcontract, per calendar day, until corrected.</p> <p>Five Hundred Dollars (\$500.00) per subcontract, per calendar day, until corrected.</p>
2	<p>A. Failure to document freedom of choice as required in Section A.7.</p> <p>B. Impeding or interference with waiver recipients' free choice of waiver services providers as required in Section A.10.</p>	<p>Five Hundred Dollars (\$500.00) per occurrence, per recipient</p> <p>Five Hundred Dollars (\$500.00) per occurrence, per recipient</p>
3	Failure to comply with provision prohibiting Contractor and/or its employees from receiving financial or material benefits from any intellectually disabled service recipients through improper, exploitive or inappropriate financial arrangements as set forth in Section A.11.	Five Hundred Dollars (\$500.00) per occurrence, per recipient
4	Failure to comply with the records, information, data and reporting requirements of Sections A.12, Section A.22 and A.25.	Five Hundred Dollars (\$500.00) per occurrence, per recipient per calendar day
5	Failure to comply with any of the requirements of Sections A.13, A.14, A.15, A.19 regarding allegations of abuse, neglect, mistreatment or exploitation against any of Contractor's employees, subcontractors or volunteers.	Five Hundred Dollars (\$500.00) per occurrence, per recipient per calendar day



	PROGRAM ISSUES	LIQUIDATED DAMAGES
6	Failure to comply with any of the requirements of Sections A.16 and A.18 regarding criminal background checks, including the failure to establish an evaluation process as specified in A.18, and prohibition against utilizing certain persons as employees, subcontractors and volunteers.	Five Hundred Dollars (\$500.00) per occurrence, per recipient per calendar day
7	Failure to provide service recipient with adequate, appropriate and safe transportation pursuant to Section A.20.	Five Hundred Dollars (\$500.00) per occurrence, per recipient per calendar day
8	Failure to timely provide service recipient with ISP approved services or to comply with the requirements for discontinuing such services pursuant to the requirements of Section A.24 and the recipient's ISP.	Five Hundred Dollars (\$500.00) per occurrence, per recipient per calendar day, beginning the next calendar day after default by the Contractor, in addition to the costs of services not provided
9	Failure to cooperate in the TennCare quality monitoring process required in Section A.26.	Five Hundred Dollars (\$500.00) per occurrence
10	A. Failure to cooperate with the nondiscrimination requirements of Sections A.27 and E.17.  B. Failure to cooperate with the LEP requirements of Section E.11.	Five Hundred Dollars (\$500.00) per occurrence, per recipient  Five Hundred Dollars (\$500.00) per occurrence, per recipient
11	Failure to comply with any applicable state and federal rules, regulations, statutory requirements and consent decrees or court orders, including any amendments and/or revisions thereto, pursuant to Section E.10.	Five Hundred Dollars (\$500.00) per occurrence per calendar day
12	Failure to provide continuation or restoration of services where enrollee was receiving the service as required by TennCare rules or regulations or any subsequent amendments thereto, applicable state or federal law, and all court orders and consent decrees governing appeal procedures as they become effective. (Section A.24).	An amount sufficient to at least offset any savings the Contractor achieved by withholding the services and promptly reimbursing the enrollee for any costs incurred for obtaining the services at the enrollee's expense, plus Five Hundred Dollars (\$500.00) per enrollee, per calendar day beyond the 2 <sup>nd</sup> business day after an On Request Report is sent by TennCare regarding an enrollee's request for continuation of benefits is not adequately responded to.



	PROGRAM ISSUES	LIQUIDATED DAMAGES
13	Failure to comply with the notice requirements of TennCare rules and regulations or any subsequent amendments thereto, and all court orders and consent decrees governing appeal procedures, as they become effective. (Section A. 24).	Five Hundred Dollars (\$500.00) per occurrence in addition to Five Hundred Dollars (\$500.00) per calendar day for each calendar day required notices are late or deficient or for each calendar day beyond the required time frame that the appeal is unanswered in each and every aspect and/or each day the appeal is not handled according to the provisions set forth by this agreement or required by TennCare.
14	Failure to forward an expedited appeal to TennCare in twenty-four (24) hours or a standard appeal in five (5) days. (Section A.24).	Five Hundred Dollars (\$500.00) per enrollee, per calendar day that the appeal is not forwarded to TennCare within, or beyond, the applicable time period.
15	Failure to provide complete documentation, including medical records, and comply with the timelines for responding to a medical appeal as set forth in TennCare rules and regulations and all court orders and consent decrees governing appeals procedures as they become effective. (Section A.24).	Five Hundred Dollars (\$500.00) per enrollee, per calendar day for each calendar day beyond the required time frame that the appeal is unanswered in each and every aspect and/or each day the appeal is not handled according to the provisions set forth by this agreement or required by TennCare.
16	Per the Revised Grier Consent Decree, "Systemic problems or violations of the law" (e.g., a failure in 20% or more of appealed cases over a 60-day period) regarding any aspect of medical appeals processing pursuant to TennCare rules and regulations and all court orders and consent decrees governing appeal procedures, as they become effective (Section A. 24).	<p>First occurrence: Five Hundred Dollars (\$500.00) per instance of such "systemic problems or violations of the law", even if damages regarding one or more particular instances have been assessed (in the case of "systemic problems or violations of the law" relating to notice content requirements, plus Five Hundred Dollars (\$500.00) per defective notice sent even if a corrected notice was issued upon request by TennCare).</p> <p>Damages per instance of such "systemic problem or violation of the law" shall increase in Five Hundred Dollar (\$500.00) increments for each subsequent "systemic problem or violation of the law" (\$500 per instance the first time a "systemic problem or violation of the law" relating to a particular requirement is identified; \$1,000 per instance for the 2nd time a "systemic problem or violation of the law" relating to the same requirement is identified; etc.), plus \$500 per each separate defective notice sent to each enrollee even if a corrected notice was issued upon request by TennCare.</p>
17	Failure to comply with HIPAA and HITECH Rules resulting in an unauthorized disclosure of PHI pursuant to Section E.5.	The damage that may be assessed shall be up to One Thousand Dollars (\$1,000.00) per incident.
18	Failure to have adequate Privacy and Security Safeguards and Policies pursuant to Section E.5.	The damage that may be assessed shall be up to Five Hundred Dollars (\$500.00) per calendar day until cured.
19	Failure to timely report violations in Use and Disclosure of PHI pursuant to Section E.5.	The damage that may be assessed shall be up to Five Hundred Dollars (\$500.00) per calendar day until cured.



	<b>PROGRAM ISSUES</b>	<b>LIQUIDATED DAMAGES</b>
20	Failure to timely report Privacy/Security incidents pursuant to Section E.5.	The damage that may be assessed shall be up to Five Hundred Dollars (\$500.00) per calendar day until cured, not to exceed Ten Thousand Dollars (\$10,000.00).
21	Failure to comply with limitations on use, treatment, and safeguarding of data pursuant to Section E.15.	The damage that may be assessed shall be Five Hundred Dollars (\$500.00) per recipient, per occurrence.
22	Failure to provide safeguards that restrict the use or disclosure of information concerning applicants and beneficiaries to purposes directly connected with the administration of the plan pursuant to Section E.16.	The damage that may be assessed shall be Five Hundred Dollars (\$500.00) per recipient, per occurrence.
23	Failure to ensure that all State data containing protected health information (PHI), as defined in HIPAA, is secured through commercially reasonable methodology in compliance with HITECH, such that it is rendered unusable, unreadable and indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111-5 on the HHS Web site which compromises the security or privacy of TennCare enrollee protected health information (See ancillary Business Associate Agreement executed between the parties.)	The damage that may be assessed shall be Five Hundred Dollars (\$500.00) per recipient per occurrence, and, if the State deems credit monitoring and/or identity theft safeguards are needed to protect those State recipients whose PHI was placed at risk by Contractor's failure to comply with the terms of this Contract, the Contractor shall be liable for all costs associated with the provision of such safeguard services
24	Failure by the Contractor to prevent the use or disclosure of State recipient data or State confidential data in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States (See ancillary Business Associate Agreement executed between the parties.)	The damage that may be assessed shall be Five Hundred Dollars (\$500.00) per recipient per occurrence.