



INTERAGENCY AGREEMENT SUMMARY

(Interagency Agreement between state agencies, including the University of Tennessee or Board of Regents colleges and universities)

Begin Date July 1, 2016	End Date June 30, 2019	Agency Tracking # 31865-00455	Edison ID 50403
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Contracting State Agency Name
Department of Intellectual and Development Disabilities

CFDA #
93.778 Dept of Health & Human Services/Title XIX

Service Caption
Administrative Functions & Services for the Employment and Community First (ECF) CHOICES Program

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Agreement Amount
2017	\$1,990,000.00	\$1,990,000.00			\$3,980,000.00
2018	\$1,990,000.00	\$1,990,000.00			\$3,980,000.00
2019	\$1,990,000.00	\$1,990,000.00			\$3,980,000.00
TOTAL:	\$5,970,000.00	\$5,970,000.00			\$11,940,000.00

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.

CPO USE - IA

Speed Chart (optional)	Account Code (optional)
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**INTERAGENCY AGREEMENT
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 Interagency Agreement (Agreement), 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 "Contracting State Agency", "Contractor", or "DIDD," is for the provision of administrative functions and services related to the Employment and Community First (ECF) CHOICES program, as further defined in the "SCOPE OF SERVICES."

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all services and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Agreement.
- A.2. The Contractor shall implement policies and practices as specified or approved by TennCare that are necessary to perform administrative functions and provide administrative services in a manner that is consistent with person-centered practices and self-determination (including the dignity of risk) and with the federal Home and Community-Based Settings Rule, the approved TennCare demonstration, and all applicable TennCare Administrative Rules, policies, procedures, workflow processes, and protocols. Refer to Contract Attachment A for Definitions associated with this document.

Referral and Intake

- A.3. The Contractor shall conduct Intake and make Referrals relating to the ECF CHOICES program for individuals who are not currently Medicaid eligible and for Medicaid eligible individuals who are members of UnitedHealthcare Community Plan (UHC) until such time as UHC implements ECF CHOICES as determined by TennCare. The Contractor shall conduct the Intake and Referral process as detailed below, except as otherwise specified by TennCare in writing. For purposes of this Agreement, such individuals shall be collectively referred to as Potential Applicants or Applicants, as applicable.
- A.4. Referral process: Referral for ECF CHOICES shall utilize an online self-referral screening tool developed by TennCare. The tool will be used to determine if the Potential Applicant is likely to qualify for the ECF CHOICES program and to prioritize the Referral for Intake based on established prioritization and enrollment criteria. The Contractor shall assist Potential Applicants in completing the online self-referral screening process, as specified in TennCare protocol. The Contractor shall also receive Referrals through the Contractor's centralized toll free numbers, fax, email, from TennCare, TennCare contracted Managed Care Organizations (MCOs) and other sources, and shall process Referrals received using the online self-referral screening tool per TennCare protocol.
- a. Upon receipt of a Referral by or on behalf of a Potential Applicant, the Contractor shall determine whether the Potential Applicant is currently Medicaid eligible, and if so, shall send the Referral to the member's TennCare MCO as prescribed in TennCare protocol. If the Potential Applicant is not Medicaid eligible or is a member of UHC as specified in Section A.3 of this Agreement, the Contractor shall proceed in assisting the Potential Applicant with the Referral process.
- b. Whenever possible when sending a Referral to a TennCare MCO, the Contractor shall complete this Referral via a "warm transfer," where the Contractor's Intake staff remain on the phone with the Potential Applicant at least until the Potential Applicant has a "live" connection with an MCO staff member who is able to assist the Potential Applicant or



person making the Referral on the Potential Applicant's behalf (not an automated system), and the purpose of the call has been explained to the MCO staff. The Contractor shall also ensure that the MCO's number has been provided to the Potential Applicant or person making the Referral on the Potential Applicant's behalf, in case the call is disconnected.

- c. For Potential Applicants who are not currently Medicaid eligible or are members of UHC who the Contractor is assisting with the Referral process, the Contractor may advise such Potential Applicants of the availability of the online self-Referral process, but must offer assistance to Potential Applicants in completing the Referral if needed or preferred by the Potential Applicant or person making the Referral on the Potential Applicant's behalf, up to and including completing and submitting the online Referral on the Potential Applicant's behalf.
 1. If Potential Applicants need or prefer assistance, the Contractor shall make every reasonable attempt to complete the Referral at the point of contact.
 2. If the Contractor's initial contact with the Potential Applicant is not telephonic, or if Contractor is unable to provide assistance at the point of contact, within two (2) business days of the initial contact the Contractor shall contact the Potential Applicant to conduct an initial telephonic Screening, using the online self-screening tool prescribed by TennCare.
- d. The Contractor may consider a Potential Applicant as unable to be reached if at least three (3) documented telephone attempts are made over five (5) business days on different days at different times of the day, and a letter is mailed to each Potential Applicant for whom the Contractor has an address or for whom an address can be obtained detailing how the Potential Applicant may obtain an ECF CHOICES Screening, including eligibility and enrollment criteria for the ECF CHOICES program as determined by TennCare.
- e. For Potential Applicants the Contractor is able to reach and who request the Contractor's assistance in completing the Referral process, the Contractor shall explain the ECF CHOICES program requirements, including eligibility, prioritization, and enrollment criteria as determined by TennCare, and using the electronic referral screening tool, conduct Screening, which includes capturing the information in the TennCare Referral Tracking System in the manner prescribed by TennCare for purposes of tracking and processing.
 1. If the Potential Applicant meets Screening criteria or does not meet Screening criteria but elects to proceed with the Intake process, the Contractor shall be notified by TennCare and shall complete the following:
 - i. Schedule a face-to-face Intake visit with the Potential Applicant in accordance with the timelines specified in this Section of the Agreement and inform the Potential Applicant of the documentation that the Potential Applicant will need to provide to the Contractor during the Intake visit.
 - a. For Potential Applicants on the TennCare ECF CHOICES Referral List who meet Screening criteria and are in one (1) of the priority categories for which enrollment is currently open or who may qualify in a Reserve Capacity Slot and for which slots are currently available, the Contractor shall complete the Intake visit within five (5) business days of notification of Referral from TennCare, except when the Potential Applicant requests a later date.



- b. For all other Potential Applicants on the ECF CHOICES Referral List except Potential Applicants referred from the DIDD waiting list for the 1915(c) HCBS waivers, the Contractor shall complete the Intake visit within thirty (30) calendar days of notification from TennCare.
 - c. A face-to-face Intake visit shall not be required for a person who was previously on the waiting list for the HCBS waivers for persons with ID in order for the person to be prioritized in the appropriate category for enrollment into ECF CHOICES. This information shall be obtained once the person is selected for potential enrollment as part of the Contractor's Enrollment visit. The Contractor shall proceed with Enrollment activities only in accordance with processes defined herein and upon confirming that the person meets specified prioritization or Reserve Capacity Slot criteria and will be enrolled into the program if all applicable eligibility and enrollment criteria are met.
 - d. TennCare retains the authority to modify these timelines as necessary for program implementation or efficient management of the Referral process.
2. If the Contractor is assisting a Potential Applicant who does not meet Screening criteria (i.e., does not appear to qualify for the program), the Contractor shall advise the Potential Applicant that he or she does not appear to qualify for the program, but shall also advise the Potential Applicant of the opportunity to be placed on the ECF CHOICES Referral List for potential Intake and Enrollment into the ECF CHOICES program in accordance with established prioritization and enrollment criteria, and, if selected for Enrollment and determined not eligible, to receive notice of such denial, including the Applicant's due process right to appeal.
- i. If the Potential Applicant indicates during the Screening process that he or she wants to be placed on the ECF CHOICES Referral List, the Contractor shall notify TennCare of such decision in the TennCare Referral Tracking System and TennCare shall place the Potential Applicant on the ECF CHOICES Referral List, including the outcome of the self-referral process.
- e. If during Screening or the subsequent Intake process, the Potential Applicant declines to continue with the Screening or Intake process for ECF CHOICES, the Contractor shall send a letter as prescribed by TennCare to the Potential Applicant or authorized representative explaining that the Potential Applicant has declined to continue with the Screening or Intake process for ECF CHOICES at this time and providing information on how to initiate the Referral process in the future if the Potential Applicant chooses.
- A.5 Intake visit. Within the timeframes specified in Section A.4 above, the Contractor shall conduct a face-to-face Intake visit with the Potential Applicant and collect all supporting documentation as required by TennCare to complete the Intake packet as described in this Section. The purpose of the Intake visit shall be to verify that the Potential Applicant is in the target population for ECF CHOICES and to gather basic information that will allow the Potential Applicant to be prioritized for enrollment based on established prioritization and enrollment criteria. The Contractor shall provide assistance as needed in requesting and/or obtaining documentation to verify target population, including administration of a life skills assessment in order to determine substantial functional limitations in three (3) or more major life activities (for purposes of a Developmental Disability (DD)) or limitations in two (2) or more adaptive skill areas (for purposes of an Intellectual Disability (ID)) as specified by TennCare. However, the Potential Applicant and/or authorized representative shall be responsible for providing proof of eligibility.



- a. The completed Intake packet that the Contractor obtains must include:
 1. Supporting documentation needed to verify target population as prescribed by TennCare, which may include a completed life skills assessment tool, a psychological assessment, or other medical evidence; and
 2. Information as prescribed by TennCare to determine whether the primary caregiver of a Potential Applicant with ID meets the definition of an Aging Caregiver in TCA 33-5-112 as amended, or if the Potential Applicant may qualify for a Reserve Capacity Slot based on Emergent Circumstances or Multiple Complex Health Conditions, and if not, information necessary to determine which of the prioritization category criteria, if any, the Potential Applicant meets.
- b. If the Contractor obtains documentation sufficient to reasonably establish that the Potential Applicant has an ID or DD, the Contractor shall make one of the following determinations and document the outcome in the Referral Tracking System:
 1. Proceed with Enrollment because a Potential Applicant with ID, subject to all applicable enrollment criteria, qualifies for an available Reserve Capacity Slot based on having an Aging Caregiver;
 2. Proceed with Enrollment because the Potential Applicant, subject to all applicable enrollment criteria, qualifies in an available program slot based on prioritization criteria for which enrollment is currently open;
 3. Submit a Referral to the Interagency Review Committee because the Potential Applicant may qualify for a Reserve Capacity Slot based on Emergent Circumstances or Multiple Complex Health Conditions; or
 4. Confirm or modify, as applicable, the Potential Applicant's placement on the ECF CHOICES Referral List. This may include adjusting the Potential Applicant's priority group, when appropriate. Formal determination regarding whether an Applicant meets target population criteria shall occur during the level of care (medical eligibility) review process conducted by TennCare.
- c. If the Contractor does not obtain documentation sufficient to reasonably establish that the Potential Applicant has an ID or DD, the Contractor shall proceed as follows:
 1. Advise the Potential Applicant verbally that he or she does not appear to meet target population for enrollment into ECF CHOICES, and further advise that the Potential Applicant may request to remain on the ECF CHOICES Referral List, and if selected for Enrollment and found not to qualify for Enrollment, to receive formal notice of denial and due process, including the right to request a fair hearing regarding program eligibility.
 - i. If the Potential Applicant requests to remain on the ECF CHOICES Referral List, the Contractor shall note in the Referral record and in the Referral Tracking System the outcome of the Intake process.
 - ii. If the Potential Applicant does not want to remain on the ECF CHOICES Referral List, the Contractor shall ask the Potential Applicant to sign a statement withdrawing from the Referral process for ECF CHOICES, maintain such signed statement in the Referral record, and close the Referral in the Referral Tracking System.
- d. If the primary caregiver of a Potential Applicant with ID meets the statutory definition of an Aging Caregiver in TCA 33-5-112 as amended, or if, based on information the



Contractor gathers during the Intake visit, the Contractor determines that the Potential Applicant meets priority categories that are currently open for enrollment and for which slots are available, the Contractor may combine the Intake and Enrollment visits and may proceed with all applicable steps of the Enrollment visit as described in Section A.6.

- e. If the primary caregiver of a Potential Applicant with ID does not meet the statutory definition of an Aging Caregiver in TCA 33-5-112 as amended, or if, based on information the Contractor gathers during the Intake visit, the Contractor determines that the Potential Applicant does not meet priority categories that are currently open for enrollment and for which slots are available, the Contractor shall conduct the Intake and Enrollment visits separately. The Contractor shall complete an Enrollment visit only when there are program slots available, as applicable, and it is determined that the person will be enrolled into ECF CHOICES if all applicable enrollment criteria are met.
- f. If the Contractor determines that a Potential Applicant potentially meets Emergent Circumstances or Multiple Complex Health Conditions criteria for enrollment into a Reserve Capacity Slot, and there are Reserve Capacity Slots available, the Contractor shall gather information during the Intake visit and prepare such information for submission to the Interagency Review Committee.
 - 1. The Contractor shall participate with TennCare on the Interagency Review Committee. Both the Contractor and TennCare must agree that the person meets Emergent Circumstances or Multiple Complex Health Conditions criteria before enrollment into a Reserve Capacity Slot will proceed.
 - 2. Once the committee has approved a Potential Applicant for enrollment into ECF CHOICES in a Reserve Capacity Slot for which enrollment is currently open and a slot is available, the Contractor shall document the committee outcome in the TennCare Referral Tracking System and conduct a face-to-face Enrollment visit to complete the Pre-Admission Evaluation (PAE) application process.
- g. If the Potential Applicant's Intake and Enrollment visits do not occur during the same visit and the Potential Applicant is or becomes eligible for an Enrollment visit, the Contractor must attempt to contact the Potential Applicant as specified in Section A.4.c of this Agreement before determining that a Potential Applicant is unable to be reached for purposes of the Enrollment visit.

A.6. Face-to-face Enrollment visit. Except instances where the Intake and Enrollment visits are combined as described in Section A.5 above, within five (5) business days of the determination to proceed with enrollment of a Potential Applicant into ECF CHOICES (unless a later date is requested by the Potential Applicant), the Contractor shall conduct a second face-to-face visit with the Potential Applicant to complete the Enrollment packet.

- a. The Contractor shall provide or obtain the following information to complete the Enrollment packet:
 - 1. Obtain all documentation necessary for medical eligibility determination (PAE), including a life skills and problem behavior assessments (as applicable), Safety Determination Request Form (as applicable), and supporting medical documentation;
 - 2. Obtain any additional evidence, including the Contractor's documented observations supporting ID and/or DD diagnosis;
 - 3. Provide ECF CHOICES education to the Potential Applicant;



4. Provide Enrollment counseling and help to facilitate the Potential Applicant's MCO selection. The Contractor shall send a notice to the Potential Applicant who is currently enrolled with UHC and who opts not to enroll with another MCO, advising that this decision means the Potential Applicant is choosing not to continue with the ECF CHOICES Enrollment process;
 5. Signed acknowledgement by the Potential Applicant that the Contractor provided general information about ECF CHOICES and information about estate recovery and patient liability;
 6. A complete Medicaid application unless the person already has Medicaid and is a UHC member. The Contractor shall assist the Applicant with completing the application, gathering verifications, and sending the complete application to Tennessee Health Connection (TNHC) for review and determination; and
 7. Other documents as prescribed by TennCare.
- b. Within five (5) business days of the face-to-face Enrollment visit, the Contractor shall submit all documentation necessary for determination of medical eligibility, including, as applicable, the life skills and problem behavior assessments, Safety Determination Request Form and supporting documentation, to TennCare in a manner specified by TennCare.
1. If the Contractor is unable to obtain all required supporting documents within five (5) business days of the Enrollment visit with the Applicant, the Contractor must document and continue efforts to collect such documents until the Contractor obtains complete documentation and submits it to TennCare.
 2. The Contractor shall submit the PAE, including the life skills and problem behavior assessment, if applicable, Safety Determination Request Form, if applicable, and all supporting documentation gathered, to TennCare as soon as possible, but within no more than twenty (20) business days from the date of the face-to-face visit, regardless of whether the Contractor has received the supporting documentation.
 3. The Contractor shall submit the Medicaid financial application and all supporting financial documentation gathered to TennCare as soon as possible, but within no more than five (5) business days from the face-to-face visit, regardless of whether the Contractor has received all supporting financial documentation.
- c. If TennCare denies a PAE based on the Contractor's submission of insufficient information, inconsistency, or error in the PAE completion or submission process, the Contractor must immediately (within one (1) business day) revise the PAE to cure the deficiency and resubmit.
- d. If TennCare denies a PAE based on the Contractor's lack of supporting documentation, and within twenty-nine (29) days of denial the Contractor obtains additional supporting documentation, the Contractor must immediately (within one (1) business day of receipt of additional information) revise and resubmit with the supporting documentation.
- e. The Contractor must submit a new PAE if the Contractor receives supporting documentation thirty (30) or more days after the denial date.



- f. The Contractor must submit to TNHC, within two (2) business days of receipt, any additional financial documentation the Contractor receives after the Contractor submits the Medicaid application.

Critical Incident Management

- A.7. The Contractor shall develop and implement, in coordination with TennCare and MCOs, a Critical Incident Management (CIM) system, which for purposes of this Agreement shall include processes for addressing Reportable Events classified as Tier 1 and Tier 2 Critical Incidents, as those terms are defined by TennCare.
- A.8. The Contractor, in coordination with TennCare and MCOs, shall identify and track those Reportable Events classified as Tier 1 and Tier 2 Critical Incidents and shall review and analyze such incidents to assist TennCare and MCOs in addressing health, safety, and welfare issues. The Contractor shall regularly review the number and types of these Critical Incidents (including, for example, the number and type of Tier 1 and Tier 2 Critical Incidents across settings, providers, and provider types) and findings from investigations (including findings from Adult Protective Services (APS) and Child Protective Services (CPS), if available); identify trends and patterns; identify opportunities for improvement; and develop and implement strategies to prevent and reduce the occurrence of Tier 1 and Tier 2 Critical Incidents and improve the delivery of services in ECF CHOICES.
- A.9. The Contractor shall develop and maintain a phone system with sufficient staff to receive and process potential Tier 1 Critical Incident notification calls. The Contractor shall ensure that such staff are trained to identify information needed from the provider to determine Tier 1 Critical Incidents appropriate for the Contractor's investigation, including when additional documentation or evidence is necessary to categorize the alleged Tier 1 Critical Incident.
- A.10. The Contractor shall be responsible for reviewing and investigating, if appropriate, all Critical Incidents in ECF CHOICES that are Tier 1 Critical Incidents as defined by TennCare. Such investigations shall be conducted in a manner that is consistent with person-centered practices and self-determination (including the dignity of risk) and with the federal HCBS Settings Rule, the approved TennCare demonstration, and all applicable TennCare Administrative Rules, policies, procedures, workflow processes and protocols pertaining to the ECF CHOICES program. Tier 1 Critical Incidents include the following:
- a. All allegations or suspicion of abuse (physical, sexual and emotional/psychological), neglect, or exploitation resulting in physical harm, pain, or mental anguish.
 - 1. Abuse, neglect, and exploitation shall be defined as in TCA 33-2-402 as amended and implemented as specified in TennCare protocol.
 - 2. Sexual abuse includes sexual battery by an authority figure as defined in TCA 39-13-527;
 - b. All unexpected or unexplained deaths, including suicide;
 - c. Serious injury, including serious injury of unknown cause. Serious injury is any injury requiring face-to-face medical treatment beyond first aid by a lay person, and includes, but is not limited to: fractures, dislocations, concussions, cuts or lacerations requiring sutures, staples, or Dermabond; torn ligaments (e.g., a severe sprain) or torn muscles or tendons (e.g., a severe strain) requiring surgical repair, second and third degree burns, and loss of consciousness. A lay person includes provider personnel who do not have formal medical training, whether or not they are certified by the Contractor. However, a provider's staff who have professional medical licensure (e.g., an RN, Physician's Assistant, Medical Doctor, etc.) are not considered lay persons for purposes of this Agreement.



- d. Suspicious injury (an injury in which abuse or neglect is suspected or is inconsistent with the explanation of how the injury was sustained);
 - e. Vehicle accident while transporting person resulting in injury requiring face-to-face medical treatment beyond first aid by a lay person or a serious traffic violation with significant risk of harm (e.g., reckless, careless, or imprudent driving, driving under the influence, speeding in excess of fifteen (15) miles per hour over the speed limit);
 - f. Medication error resulting in the need for face-to-face medical treatment based on injury or probable risk of serious harm, including physician services, emergency assistance, or transfer to an acute care facility for stabilization. Such errors include:
 - 1. Medication omission;
 - 2. Administration of the wrong drug;
 - 3. Administration of the wrong dose;
 - 4. Administration of a drug to the wrong person;
 - 5. Administration of a drug at the wrong time;
 - 6. Administration of a drug at the wrong rate;
 - 7. The wrong preparation of a drug; and
 - 8. The wrong route of administration of a drug;
 - g. Theft by provider personnel (employees or volunteers) of more than \$500 (Class E felony); and
 - h. The use of manual or mechanical restraint or protective equipment outside of the approved use in the member's person-centered plan of care (PCSP) or behavioral support plan (BSP) or intentionally inappropriate or in violation of guidelines specified in the member's PCSP or BSP.
- A.11. The Contractor shall notify TennCare in a manner specified by TennCare of all Tier 1 Critical Incident notifications within the next business day of the Contractor receiving notice of such allegations via the ECF CHOICES Reportable Event Form.
- A.12. The Contractor shall immediately report suspected abuse, neglect, and exploitation of members who are adults in accordance with TCA 71-6-103 and shall immediately report suspected brutality, abuse, or neglect of members who are children in accordance with TCA 37-1-403 or TCA 37-1-605 as applicable when its staff witness or discover any such incidents and shall cooperate with outside agencies (APS, CPS, or law enforcement) if such agencies investigate these incidents.
- A.13. The Contractor shall notify each provider against whom an allegation of a Tier 1 Critical Incident has been made of the Contractor's intent to investigate or not investigate, including instruction for placing staff on administrative leave, if appropriate, within the next business day of the Contractor receiving notice of such allegations. The Contractor shall determine that an alleged Critical Incident will not be investigated if after review the Contractor determines that the alleged Critical Incident does not meet the criteria for a Tier 1 Critical Incident. The Contractor shall further communicate with the provider to obtain additional information to support a Tier 1 Critical Incident, as needed.
- a. Providers may request an exception from the Contractor to removing an employee or volunteer from direct contact with an ECF CHOICES member as specified in TennCare



protocol. The Contractor shall establish and maintain a process to review and communicate determinations on such exception requests.

- b. The Contractor's exception removal process does not apply to ECF CHOICES members in consumer direction. Such members or their representatives, as applicable, shall determine whether to place a staff member on administrative leave, and the Contractor shall be responsible for verifying with the member or representative prior to visiting the member on-site whether a member or their representative has chosen to retain a worker against whom there is an allegation of Tier 1 physical or sexual abuse.
- A.14. The Contractor shall notify the MCO of the member relating to any Tier 1 Critical Incident allegation via agreed upon data exchange process by close of the next business day of the Contractor's determination that an incident meets Tier 1 Critical Incident criteria, including the Contractor's intent to investigate or its intent not to investigate as a result of evidence obtained.
 - A.15. If the Contractor determines upon review that the alleged Reportable Event is not Tier 1 Critical Incident, the Contractor shall amend the ECF CHOICES Reportable Event Form and send the revised form to the provider and member's MCO via agreed upon data exchange process by close of the next business day. Such submission to the MCO shall also include any supporting documentation used by the Contractor to categorize the Reportable Event as other than Tier 1 Critical Incident.
 - A.16. If the Contractor determines that an allegation constitutes a Tier 1 Critical Incident and investigation is therefore necessary, the Contractor shall complete its investigation within thirty (30) days of notification of the Critical Incident via the ECF CHOICES Critical Incident Form. If the Contractor has not completed the investigation within thirty (30) days due to circumstances beyond the Contractor's control, which shall include, but are not limited to, an ongoing law enforcement investigation or difficulties obtaining medical documentation, and not solely for Contractor staff convenience, the Contractor may utilize an extension period of up to thirty (30) additional days for completion of the investigation. The Contractor shall notify the member's MCO in a manner agreed upon between the Contractor and MCO of the needed extension. If the Contractor utilizes a thirty (30) day extension, the Contractor must either complete the investigation or decide to suspend its investigation pending the results of an ongoing law enforcement investigation, if applicable, by the end of this thirty (30) day extension period. If the Contractor suspends its investigation pending the results of an ongoing law enforcement investigation, the Contractor must notify the member's MCO in a manner agreed upon between the Contractor and the MCO of both the Contractor's decision to suspend its investigation and the results of the law enforcement investigation when those become available.
 - A.17. The Contractor shall provide the Contractor's completed investigation report concerning any Tier 1 Critical Incident to the provider, TennCare, and the member's MCO within no more than seven (7) days of the completion of the investigation via agreed upon data exchange process. If, as a result of a completed investigation, the Tier 1 Critical Incident is substantiated, the Contractor shall simultaneously submit notification of referral to the Abuse Registry Referral Committee (ARRC) to TennCare and the MCO.
 - A.18. The ARRC shall include, at a minimum, representatives from the Contractor, TennCare, and MCOs, as appropriate, and may include other entities such as representatives for provider agencies and advocacy organizations. The Contractor shall notify the member's MCO at least five (5) days in advance of the ARRC meeting relating to the MCO's member.
 - A.19. The ARRC shall only refer substantiated Tier 1 Critical Incidents to the Abuse Registry upon majority agreement from all ARRC members who participate in the review. The Contractor shall be the agency responsible for making any such referrals to the Abuse Registry.
 - A.20. In the event the individual who the ARRC refers to the Abuse Registry requests a hearing, the Contractor shall provide staff attorneys competent to represent the State in such hearings. Additionally, the Contractor shall provide staff attorneys competent to represent the State in any



hearings for individuals placed on the Abuse Registry who appeal placement on the Abuse Registry as a result of the Contractor's referral.

- a. The Contractor shall notify MCOs within two (2) business days when an individual is placed on the Abuse Registry after a hearing when one occurs. Such notification will allow all MCOs to ensure these workers do not support other ECF CHOICES members.
- A.21. The Contractor shall be responsible for keeping minutes of all ARRC meetings, which shall include the individuals present, the evidence considered, and the determination of the ARRC. Such minutes shall be sent to TennCare within seven (7) calendar days of each ARRC meeting in a manner specified by TennCare.
- A.22. The Contractor shall maintain a statewide system for tracking and trending all reported Tier 1 and Tier 2 Critical Incidents. The Contractor shall trend the Tier 1 and Tier 2 Critical Incident data in the following views:
- a. System-wide;
 - b. By program (HCBS Waiver or ECF CHOICES);
 - c. By provider type;
 - d. By provider;
 - e. By type of Critical Incident;
 - f. By individual alleged or substantiated, as applicable, in the Critical Incident; and
 - g. By any other perspective determined by TennCare to be beneficial for purposes of Critical Incident prevention, remediation, and system improvement.
- A.23. All Tier 1 and Tier 2 Critical Incident data shall be tracked and trended by the Contractor on at least a quarterly basis and shall be reported to TennCare as specified in Section A.37 of this Agreement. Such tracking and trending shall include evaluating the nature, frequency, and circumstances of reported Critical Incidents in order to determine how to prevent or reduce similar occurrences in the future.

Quality Monitoring

- A.24. The Contractor shall provide quality monitoring of ECF CHOICES services as determined by TennCare and as specified in this Section of the Agreement. Quality monitoring functions shall be performed in a manner that is consistent with person-centered practices and self-determination (including the dignity of risk) and with the federal HCBS Settings Rule, the approved TennCare demonstration, and all applicable TennCare Administrative Rules, policies, procedures, workflow processes and protocols Except as otherwise specified by TennCare in writing, such quality monitoring shall be completed for the following provider types:
- a. Employment Services and Supports, which include: exploration; discovery; situational observation and assessment; job development plan or self-employment plan; job development start up; self-employment start up; job coaching for individualized integrated, competitive employment; job coaching for self-employment; co-worker supports; supported employment – small group supports; integrated employment path service; and career advancement;
 - b. Community integration support services;
 - c. Community transportation (agency-provided only);
 - d. Independent living skills training;



- e. Personal assistance;
 - f. Community Living Supports (CLS) and Community Living Supports-Family Model (CLS-FM);
 - g. Respite (this service monitored in conjunction with Personal assistance and Supportive Home Care, not as a separate service); and
 - h. Supportive Home Care.
- A.25. The Contractor shall establish a system/process of notification with MCOs for the Contractor to receive notification of the initiation of ECF CHOICES services for provider types in Section A.24 above. The Contractor shall further coordinate consultation and annual survey dates, as applicable, with the MCOs.
- A.26. The Contractor shall perform consultation and annual surveys as described in Section A.27, using a tool prescribed by TennCare.
- A.27. Consultation Survey. The Contractor shall perform a consultation survey on all newly-contracted providers for each service type listed in Section A.24 above. A consultation survey is not needed when a provider has already had a consultation or annual Quality Assurance Survey resulting in a proficient or better rating for the provision of same or similar services under a 1915(c) Waiver, and is now contracting with one or more MCOs to provide ECF CHOICES services. The designation of same or similar services shall be applicable only to Personal Assistance, Supportive Home Care, Respite (when performed in conjunction with Personal Assistance and Supportive Home Care), Community transportation, CLS, and CLS-FM. The consultation survey shall occur between ninety (90) days and six (6) months from the date a new provider begins providing services to members enrolled in ECF CHOICES. Only one consultation survey will be required when the first service type surveyed is Employment, CLS, or CLS-FM. If a provider receives a consultation survey on any other ECF CHOICES service then begins to provide ECF CHOICES Employment, CLS, or CLS-FM, the Contractor shall conduct another consultation survey. Consultation surveys shall include:
- a. An individual and agency review of the ECF CHOICES services delivered by the new provider to ECF CHOICES members based on a sample size of ECF CHOICES members determined by TennCare and using a tool prescribed by TennCare. The review shall occur at members' residences or other locations as appropriate and shall be conducted using the tool prescribed by TennCare. As applicable, portions of the review may be conducted at the provider's administrative office, but each ECF CHOICES member in the sample shall be visited in the location where ECF CHOICES services, as applicable, are provided. For members who are employed, the Contractor shall only visit the member at the member's place of employment with member consent. Such visits shall be arranged by the Contractor so as not to be disruptive for the member and the member's employer.
 - b. For consultation surveys in which the Contractor rates the provider as fair or below fair, the Contractor shall, within two (2) business days, notify the MCO(s) with members being served by the provider and shall conduct a follow up visit ninety (90) days to six (6) months after the initial consultation visit. If, after the follow up consultation survey, the Contractor determines the provider has not achieved a rating of at least proficient, the Contractor shall, within one (1) business day, notify the MCO(s) with members being served by the provider.
- A.28. Annual Survey. The Contractor shall perform an annual survey of provider types in Section A.24 above. For newly-contracted providers, the first annual survey shall occur no later than twelve (12) months after the provider receives a consultation survey resulting in proficient or better, and may be conducted earlier as needed, and then once every calendar year thereafter. For all other providers providing the same or similar service under a 1915(c) waiver and ECF CHOICES, the



annual review shall occur once every calendar year or per the existing schedule for that provider. Less frequent surveys may be conducted for provider agencies demonstrating ongoing proficient or exceptional performance in overall operation after the first year of providing ECF CHOICES services. The annual review shall include:

- a. An individual and agency review of ECF CHOICES services delivered by the provider to ECF CHOICES members based on a sample size of ECF CHOICES members determined by TennCare and using a tool prescribed by TennCare. The review shall occur at the members' residences or other locations as appropriate. As applicable, portions of the review may be conducted at the provider's administrative office, but each ECF CHOICES member in the sample shall be visited in the location where ECF CHOICES services are provided. For members who are employed, the Contractor shall only visit the member at the member's place of employment with member consent. Such visits shall be arranged by the Contractor so as not to be disruptive for the member and the member's employer.

- A.29. Immediate Jeopardy. If the Contractor finds an instance of Immediate Jeopardy during the consultation or annual survey visit, the Contractor shall notify the MCO(s) with members at the provider site of the Immediate Jeopardy situation immediately while on-site, and shall collaborate with the MCO(s) to determine whether it is appropriate for the MCO(s) to send staff on-site to the provider until the Immediate Jeopardy situation is resolved. An Immediate Jeopardy situation requires immediate resolution by the provider and may require Contractor and/or MCO staff to remain on-site pending such resolution.
- A.30. Consultation with MCO staff. Prior to finalizing survey results, the Contractor shall schedule a meeting with the MCO(s) to discuss the findings and recommended results and schedule an exit conference for the survey so that the MCO(s) may send staff to attend the exit conference. This meeting may be conducted by conference call.
- A.31. Survey results. The Contractor shall send the results of all consultation and annual surveys to the MCO(s) contracted with the provider surveyed in accordance with Section A.37.d of this Agreement.

Training for ECF CHOICES providers

- A.32. The Contractor shall develop a web-based new provider orientation for ECF CHOICES provider types in Section A.24 above on the Contractor's quality monitoring processes and expectations and shall provide the video of such orientation to each MCO for such ECF CHOICES providers after prior approval of the orientation materials by TennCare.
- A.33. The Contractor shall allow ECF CHOICES direct support staff and providers access to the Relias Learning Sub-Portal (Relias) for all ECF CHOICES modules as specified by TennCare, including access to Relias for providers' direct support staff hired for the ECF CHOICES program prior to and at all times during such staffs' orientation and training processes for all such staff whenever they are hired and trained during the term of this Agreement.

Training of Contractor's staff

- A.34. In addition to the training currently required by the Contractor for its quality assurance staff, the Contractor's staff who will be conducting quality monitoring surveys under this Agreement shall complete all training in this Section as prescribed by TennCare.
 - a. The Contractor shall document initial and ongoing training that TennCare provides to Contractor staff who will conduct surveys under this Agreement. TennCare shall provide such training materials to the Contractor that shall include, at a minimum:
 1. Overview of ECF CHOICES and the ECF CHOICES benefits;
 2. Procedures and requirements for ECF CHOICES Intake processes;



3. Procedures and requirements for ECF CHOICES quality monitoring surveys;
 4. Identifying and reporting abuse and neglect of an ECF CHOICES member; and
 5. Identifying and reporting TennCare fraud and abuse to TennCare.
- b. The Contractor shall document initial and ongoing training that the Contractor provides to its staff based on the Contractor's training materials that shall include, at a minimum:
1. Health Insurance Portability and Accountability Act of 1996 (HIPAA) training;
 2. Conducting a home visit; and
 3. Cultural competency.
- c. The Contractor shall ensure that all staff who will conduct surveys under this Agreement have completed the required training prior to conducting such surveys, except that items in Sections A.34.b.2 and 3 above may be addressed as part of the surveyor mentoring process at the outset of employment, but shall be completed prior to a surveyor taking lead responsibilities.
- d. The Contractor shall maintain documentation of completion of such training for each staff member conducting surveys under this Agreement, and such documentation shall be provided to TennCare upon request.

Staffing

- A.35. The Contractor shall maintain sufficient staff to meet the requirements of this Agreement, and shall increase staff capacity to meet demands as determined by TennCare as the volume of ECF CHOICES placements increases.
- A.36. Prior to the Contractor's staff entering an ECF CHOICES member's place of residence to conduct a consultation or annual survey, the Contractor shall document confirmation of the following requirements:
- a. The staff member successfully passed a criminal background check;
 - b. The staff member does not appear on the Tennessee Abuse Registry, Tennessee Felony Offender Registry, or the National and Tennessee Sexual Offender Registry; and
 - c. The staff member has completed all required training as prescribed in Section A.34 above.

Reporting

- A.37. The Contractor shall submit to TennCare reports under this Agreement within the following timeframes as follows:
- a. Quarterly Intake Report. The Contractor shall submit a Quarterly Intake Report in a format developed by TennCare by the 20th calendar day of the month following the end of each quarter. This report shall include the following information:
 1. Total number of ECF CHOICES Potential Applicants the Contractor assisted with Intake;



- i. Of the total number, the number of Potential Applicants who were not currently Medicaid eligible;
 - ii. Of the total number, the number of Potential Applicants who were currently Medicaid eligible and members of UHC;
 2. Total number of Applicants the Contractor submitted to TennCare for an eligibility determination;
 3. Total number of Potential Applicants who declined to continue Screening or Intake for ECF CHOICES services; and
 4. Total number of Potential Applicants the Contractor was unable to reach.
- b. Quarterly Critical Incident Report – Tier 1. The Contractor shall submit a Quarterly ECF CHOICES Tier 1 Critical Incidents Report in a format developed by TennCare by the 20th calendar day of the month following the end of each quarter. The report shall include the following information (except as modified by TennCare), which shall be separated on a monthly basis within each quarter:
 1. For Tier 1 Critical Incident allegations:
 - i. The total number of Tier 1 Critical Incident allegations received;
 - ii. The total number of Tier 1 Critical Incident allegations sent to TennCare within the next business day of Contractor receipt;
 - iii. The total number of Tier 1 Critical Incident allegations not sent to TennCare within one (1) business day of Contractor receipt, including reason(s) for the delay;
 - iv. Tier 1 Critical Incident allegations stratified by type of Critical Incident;
 - v. Tier 1 Critical Incident allegations stratified by type of setting;
 - vi. Tier 1 Critical Incident allegations by provider type;
 - vii. Tier 1 Critical Incident allegations by provider;
 - viii. Tier 1 Critical Incident allegations by individual alleged or substantiated;
 - ix. Of the total number of Tier 1 Critical Incident allegations a breakdown of the number investigated and the number for which the Contractor declined to investigate because the Contractor determined upon review that the incident did not rise to the level of a Tier 1 Critical Incident;
 - x. Number of substantiations for each Tier 1 Critical Incident allegation investigated by the Contractor;
 - xi. Tier 1 Critical Incident allegations, investigations and substantiations by program (1915c HCBS Waiver and ECF CHOICES); and
 - xii. A narrative summary for the quarter broken down by month of the Contractor's findings from trending Tier 1 Critical Incidents, including suggestions for improvement to prevent and decrease Tier 1 Critical Incidents.
- c. Quarterly Critical Incident Report – Tier 2. The Contractor shall submit a Quarterly ECF CHOICES Tier 2 Critical Incidents Report in a format developed by TennCare by the 20th



calendar day of the month following the end of each quarter. The report shall include the following information (except as modified by TennCare), which shall be separated on a monthly basis within each quarter:

1. For Tier 2 Critical Incident allegations:
 - i. The total number of Tier 2 Critical Incidents received;
 - ii. Tier 2 Critical Incidents stratified by type of incident;
 - iii. Tier 2 Critical Incidents stratified by type of setting;
 - iv. Tier 2 Critical Incidents by provider type;
 - v. Tier 2 Critical Incidents by provider;
 - vi. Tier 2 Critical Incidents by individual;
 - vii. Tier 2 Critical Incidents by program (1915c HCBS Waiver and ECF CHOICES); and
 - viii. A narrative summary for the quarter broken down by month of the Contractor's findings from trending Tier 2 Critical Incidents, including suggestions for improvement to prevent and decrease Tier 2 Critical Incidents.

d. Quality Monitoring Reports. The Contractor shall submit two types of reports for quality monitoring under this Agreement.

1. Individual Consultation and Annual Survey Reports. The Contractor shall send a copy of each consultation and annual survey to the MCO(s) upon completion of the survey and within thirty (30) days of completion of the survey in a manner agreed upon by TennCare and the Contractor.
2. Quarterly Quality Monitoring Reports. The Contractor shall submit a Quarterly ECF CHOICES Quality Monitoring Report in a format developed by TennCare by the 20th calendar day of the month following the end of each quarter. The report shall include the following information, which shall be separated on a monthly basis within each quarter:
 - i. The total number of surveys performed within each month of the quarter;
 - ii. The total number of consultation surveys performed within each month of the quarter, separated by result (e.g., proficient, fair, or below fair);
 - iii. The total number of follow up consultation surveys performed for providers the Contractor rated as fair or below fair within each month of the quarter, separated by the initial ratings and including the result of the follow up consultation survey;
 - iv. The total number of annual surveys performed within each month of the quarter, separated by result (e.g., proficient, fair, or below fair); and
 - v. The number of Immediate Jeopardy situations identified during consultation and annual surveys, including the timeframe in which the MCO(s) was/were notified, and the resulting actions taken by the Contractor to mitigate the situation.



3. The Contractor shall also provide, in a format specified or approved by TennCare, a quarterly and annual analysis of quality monitoring data in the ECF CHOICES program. Such analysis shall include how providers are performing by service type and by region, and the performance of providers and the system over time, overall and by quality measurement area. All quality monitoring data and individual surveys shall be available for review by TennCare upon request.

Information Systems (Systems)

- A.38. The Contractor shall develop, maintain, and modify as needed, Systems that enable the Contractor to meet the requirements of this Agreement and that are in compliance with this Agreement and all applicable state and federal laws, rules, and regulations, including HIPAA.
- A.39. The Contractor shall possess Systems capacity sufficient to handle the workload projected for the start date of operations, which shall be scalable and flexible so that the Contractor can adapt the Systems as needed, within time frames negotiated between the Contractor and TennCare, in response to changes in the Agreement requirements, increases in enrollment estimates, and other Systems changes.
- A.40. The Contractor shall maintain sufficient staff trained on its Systems to perform the data exchange requirements in this Agreement.
- A.41. The Contractor shall develop and sign business associate agreements or data usage agreements with all ECF CHOICES providers that are not contracted with the Contractor as 1915c Waiver providers and shall sign such an agreement with the FEA for the purposes of exchanging and tracking information related to Tier 1 and Tier 2 Critical Incidents in ECF CHOICES.

Requirements for contracting and training relating to Intake assessment

- A.42. The Contractor shall be required to maintain and amend as requested its existing contracts with DDM Ascend for the administration of the ICAP assessment and its contract with the Administration on Intellectual and Developmental Disabilities for the administration of the Supports Intensity Scale (SIS) assessment for the duration of this Agreement, or as otherwise specified by TennCare.

TennCare Responsibilities

- A.43. TennCare shall be responsible for the following under this Agreement:
 - a. Maintaining statewide Referral Tracking System and ensure access for all necessary Contractor staff;
 - b. Notifying the Contractor, via Referral Tracking System of Applicants approved for Intake;
 - c. Determining financial and/or medical (i.e., level of care) eligibility, as applicable;
 - d. Representing and participating in Interagency Review Committee;
 - e. Providing, via 271 file transaction, the names and contact information of ECF CHOICES members for the Contractor to conduct consultation and annual surveys, including the location of the member's residence. This information shall be provided upon a person's enrollment in ECF CHOICES and as file data is updated;
 - f. Providing initial training for Contractor staff on the following:
 1. ECF CHOICES program, including Reserve Capacity Slots and priority enrollment criteria;



2. Intake and Enrollment requirements and processes, including data entry in Referral Tracking System;
 3. Completion and submission of the PAE application, including life skills and problem behavior assessment and Safety Determination Request Form;
 4. Use of quality monitoring tool(s); and
 5. Use of reporting templates;
- g. Providing report format templates for all required reports;
 - h. Providing protocols and guidance for specified processes as detailed in this Agreement;
 - i. Designating staff as ECF CHOICES contacts for the Contractor and communicating those contacts to the Contractor;
 - j. Providing representation for and participating on the ARRC; and
 - k. Reviewing and working with MCOs to address survey findings, including resolution of individual findings as well as systemic improvements regarding the ECF CHOICES benefits.
- A.44. Corrective Action Plan. TennCare and the Contractor shall meet on a regularly scheduled basis to review the performance of the activities under this Agreement. TennCare shall notify the Contractor in writing of any specific performance deficiencies and request corrective action. The Contractor shall respond in writing with a corrective action plan within thirty (30) days of receipt of such notification and implement and monitor the plan upon approval by TennCare.
- A.45. Readiness Review. Prior to the effective date of this Agreement and any amendments to this Agreement, the Contractor shall demonstrate to TennCare's satisfaction that it is able to meet the requirements of this Agreement. The Contractor shall cooperate in a "readiness review" conducted by TennCare to review the Contractor's readiness to meet the requirements of this Agreement. This review may include, but is not limited to, desk and on-site review of documents provided by the Contractor, a walk-through of the Contractor's operations, system demonstrations (including systems connectivity testing), and interviews with Contractor's staff. The scope of the review may include any and all requirements of this Agreement as determined by TennCare. Based on the results of the review activities, TennCare will issue a letter of findings and, if needed, will request a corrective action plan from the Contractor.

B. INTERAGENCY AGREEMENT TERM:

- B.1. This Interagency Agreement shall be effective on July 1, 2016 ("Effective Date"), and extend for a period of thirty- six (36) months after the Effective Date ("Term"). The Procuring State Agency shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.
- B.2. Renewal Options. This Interagency Agreement may be renewed upon satisfactory completion of the Term. The State reserves the right to execute renewal options under the same terms and conditions for a period not to exceed twenty-four (24) months each by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.



C. **PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the Procuring State Agency under this Agreement exceed Eleven Million Nine Hundred Forty Thousand Dollars (\$11,940,000.00). This amount shall constitute the entire compensation due the Contracting State Agency for all goods delivered and accepted or services completed and the Contracting State Agency obligations hereunder regardless of the difficulty, hours worked, or materials or equipment required. This Agreement amount includes, but is not limited to, all applicable taxes, fees, overhead, profit, and all other direct and indirect costs incurred or to be incurred by the Contracting State Agency.
- C.2. Compensation Firm. The payment rates and the maximum liability of the Procuring State Agency under this Agreement are firm for the duration of the Agreement and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. Upon completion of the work described in Section A of this Agreement, the Procuring State Agency shall submit a journal voucher, in form and substance acceptable to TennCare, and with all of the necessary supporting documentation prior to any payment. The Procuring State Agency will be compensated for the direct costs of administering this program and applicable indirect costs in accordance with federally approved cost allocation plans.
- 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 Interagency Agreement, 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 Interagency Agreement 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 and the Contracting State Agency are not bound by this Agreement until it is signed by the agency head or the agency head's designee. Each agency's legal counsel shall review and approve the Agreement as to form and legality.
- D.2. Modification and Amendment. Any modifications, amendments, renewals or extensions shall be in writing, signed, and approved by all parties who signed and approved this Agreement.
- D.3. Termination for Convenience. This Agreement 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 the option of terminating this Agreement for convenience, the Contracting State Agency shall be entitled to compensation for all goods delivered and accepted or satisfactory and authorized services completed as of the termination date. Should the Contracting State Agency exercise this provision, the Procuring State Agency shall have no liability to the Contracting State Agency except for those goods delivered and accepted or those units of service that were satisfactorily completed by the Contracting State Agency. The final



decision as to the acceptability of goods or whether units of service were satisfactorily completed shall be determined by the Procuring State Agency in its sole discretion.

- D.4. Subject to Funds Availability. This Agreement 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 this Agreement upon written notice to the Contracting State Agency. Said termination shall not be deemed a breach of this Agreement by the Procuring State Agency. Upon receipt of the written notice, the Contracting State Agency shall cease all work associated with this Agreement. Should such an event occur, the Contracting State Agency shall be entitled to compensation for all satisfactory and goods delivered and accepted or authorized services completed as of the termination date. Upon such termination, the Contracting State Agency 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.
- D.5. Completeness. This Agreement is complete and contains the entire understanding between the parties relating to this subject matter, including all the terms and conditions of the parties' agreement. There are no other prior or contemporaneous agreements that modify, supplement, or contradict any of the express terms of the agreement.
- D.6. Communications and Contacts. All instructions, notices, consents, demands, or other communications shall be made in writing and directed to the following designated contact persons:

The Procuring State Agency:

Deputy Commissioner
Department of Finance and Administration
Bureau of TennCare
310 Great Circle Road
Nashville, Tennessee 37247-6501
Telephone # (615) 507-253-5607

The Contractor:

Debra K. Payne, Commissioner
Citizens Plaza Building
400 Deaderick St, 10th floor
Nashville, TN 37243
Telephone # (615) 532-6533
FAX# (615) 532-9940

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

- D.7. Termination for Cause. If the Contracting State Agency fails to properly perform its obligations under this Interagency Agreement in a timely or proper manner, or if the Contracting State Agency violates any terms of this Interagency Agreement, the Procuring State Agency shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services.
- D.8. Subcontracting. The Contracting State Agency shall not assign this Interagency Agreement or enter into a subcontract for any of the services performed under this Interagency Agreement without obtaining the prior written approval of the Procuring State Agency. Notwithstanding any use of approved subcontractors, the Contracting State Agency shall be the prime contractor and shall be responsible for all work performed.



- D.9. Monitoring. The Contracting State Agency's activities conducted and records maintained pursuant to this Interagency Agreement shall be subject to monitoring and evaluation by the Procuring State Agency, the Comptroller of the Treasury, or their duly appointed representatives.
- D.10. Progress Reports. The Contracting State Agency shall submit brief, periodic, progress reports to the Procuring State Agency as requested.
- D.11. State and Federal Compliance. The Contracting State Agency shall comply with all applicable state and federal laws and regulations in the performance of this Agreement.
- D.12. Headings. Section headings are for reference purposes only and shall not be construed as part of this Agreement.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. 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 Interagency Agreement; 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 Interagency Agreement.

- E.2. HIPAA Compliance. The State and the Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Interagency Agreement.
 - a. The Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Interagency Agreement.
 - b. The Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of this Interagency Agreement so that both parties will be in compliance with the Privacy Rules.



- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and the Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Interagency Agreement is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- E.3. Business Associate. Contractor hereby acknowledges its designation as a business associate under HIPAA and agrees to comply with all applicable HIPAA regulations. In accordance with the HIPAA regulations, the Contractor shall, at a minimum:
- a. Comply with requirements of the HIPAA, including, but not limited to, the transactions and code sets, privacy, security, and identifier regulations. Compliance includes meeting all required transaction formats and code sets with the specified data sharing agreements required under the regulations;
 - b. Transmit/receive from/to its providers, subcontractors, clearinghouses and HCFA all transactions and code sets required by HIPAA in the appropriate standard formats, utilizing appropriate and adequate safeguards, as specified under the law and as directed by HCFA so long as HCFA direction does not conflict with the law;
 - c. 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 standards, that it will be in breach of this Interagency Agreement 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 between HCFA and the Contractor and between the Contractor and its providers and/or subcontractors to a halt, if for any reason the Contractor cannot meet the requirements of this Section, HCFA may terminate this Interagency Agreement.
 - d. Ensure that Protected Health Information (PHI) exchanged between the Contractor and HCFA 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 regulations shall be de-identified to secure and protect the individual enrollee's PHI;
 - e. Report to HCFA's Privacy Office immediately upon becoming aware of any use or disclosure of PHI in violation of this Interagency Agreement by the Contractor, its officers, directors, employees, subcontractors or agents or by a third party to which the Contractor disclosed PHI;
 - f. 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;
 - g. Make its internal policies and procedures, records and other documentation related to the use and disclosure of PHI available upon request to the U.S. Secretary of Health and Human Services for the purposes of determining compliance with the HIPAA regulations;
 - h. Create and adopt policies and procedures to periodically audit adherence to all HIPAA regulations;



- i. Agree to ensure that any agent, including a subcontractor, to whom it provides PHI that was created, received, maintained, or transmitted by or on behalf of HCFA agrees to use reasonable and appropriate safeguards to protect the PHI.
 - j. 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 the Agreement, and in accordance with this Section of this Interagency Agreement. 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 the Agreement. 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 the Agreement, the Contractor shall: (1) certify an 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;
 - k. 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 Interagency Agreement and, including, but not limited to, privacy, security and confidentiality requirements in 45 CFR Parts 160 and 164;
 - l. 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;
 - m. Create and implement policies and procedures to address present and future HIPAA regulatory requirements as needed, including, but not limited to: use and disclosure of data; de-identification of data; minimum necessary access; accounting of disclosures; enrollee's right to amend, access, request restrictions; notice of privacy practices and right to file a complaint;
 - n. Provide an appropriate level of training to its staff and employees regarding HIPAA related policies, procedures, enrollee rights and penalties prior to the HIPAA implementation deadlines and at appropriate intervals thereafter;
 - o. Track training of Contractor's staff and employees and maintain signed acknowledgements by staff and employees of the Contractor's HIPAA policies;
 - p. Be allowed to use and receive information from HCFA where necessary for the management and administration of this Interagency Agreement and to carry out business operations where permitted under the regulations;
 - q. Be permitted to use and disclose PHI for the Contractor's own legal responsibilities;
 - r. Adopt the appropriate procedures and access safeguards to restrict and regulate access to and use by Contractor's employees and other persons performing work for the Contractor to have only minimum necessary access to PHI and personally identifiable data within their organization;
 - s. Continue to protect and secure PHI and personally identifiable information relating to enrollees who are deceased; and
 - t. Track all security incidents as defined by HIPAA and periodically report such incidents to HCFA in summary fashion.
- E.4. Information Holders. HCFA and the Contractor are "information holders" as defined in TCA 47-18-2107. In the event of a breach of the security of Contractor's information system, as defined by



TCA 47-18-2107, the Contractor shall indemnify and hold HCFA harmless for expenses and/or damages related to the breach. Such obligations shall include, but not be limited to, mailing notifications to affected enrollees. Substitute notice to written notice, as defined by TCA 47-18-2107(e)(2) and (3), shall only be permitted with HCFA's express written approval. The Contractor shall notify HCFA's Privacy Office immediately upon becoming aware of any security incident that would constitute a "breach of the security of the system" as defined in TCA 47-18-2107.

- E.5. Notification of Breach and Notification of Suspected Breach. - The Contractor shall notify HCFA's Privacy Office immediately upon becoming aware of any incident, either confirmed or suspected, that represents or may represent unauthorized access, use or disclosure of encrypted or unencrypted computerized data that materially compromises the security, confidentiality, or integrity of enrollee PHI maintained or held by the Contractor, including any unauthorized acquisition of enrollee PHI by an employee or otherwise authorized user of the Contractor's system. This includes, but is not limited to, loss or suspected loss of remote computing or telework devices such as laptops, PDAs, Blackberrys or other Smartphones, USB drives, thumb drives, flash drives, CDs, and/or disks.
- E.6. Authority. If other State or local agencies or offices perform services for TennCare, including the Contractor, these entities do not have the authority to change or disapprove any administrative decision of TennCare, or otherwise substitute their judgment for that of TennCare with respect to the application of policies, rules and regulations issued by TennCare.
- E.7. Applicable Laws, Rules, Policies and Court Orders. The Contractor agrees to comply with all applicable federal and State laws, rules, regulations, sub-regulatory guidance, executive orders, HCFA Waivers, and all current, modified or future Court decrees, orders or judgments applicable to the State's TennCare and CHIP programs. Such compliance shall be performed at no additional cost to the State.
- E.8. Disclosure of Personal Identity Information. The Contractor shall report to the State any instances of unauthorized disclosure of confidential information that come to the attention of the Contractor. Any such report shall be made by the Contractor within twenty-four (24) hours after the instance has come to the attention of the Contractor. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Contractor shall bear the cost of notification to individuals having personal identity information involved in a potential disclosure event, including individual letters and/or public notice.
- E.9. Severability. If any terms and conditions of this Interagency Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Interagency Agreement are declared severable.
- E.10. Records. The Contractor shall maintain documentation for all charges under this Interagency Agreement. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Interagency Agreement, shall be maintained for a period of six (6) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- E.11. Social Security Administration (SSA) Required Provisions for Data Security. The Contractor shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. § 3541, *et seq.*), and related National Institute of Standards and Technology guidelines. In addition, the Contractor shall have in place administrative, physical, and technical safeguards for data.



- a. The Contractor shall not duplicate in a separate file or disseminate, without prior written permission from TennCare, the data governed by the Interagency Agreement for any purpose other than that set forth in this Interagency Agreement for the administration of the TennCare program. Should the Contractor propose a redisclosure of said data, the Contractor must specify in writing to TennCare the data the Contractor proposes to redisclose, to whom, and the reasons that justify the redisclosure. TennCare will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the TennCare program.
- b. The Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Interagency Agreement.
- c. The Contractor shall provide a current list of the employees of such Contractor with access to SSA data and provide such lists to TennCare.
- d. The Contractor shall restrict access to the data obtained from TennCare to only those authorized employees who need such data to perform their official duties in connection with purposes identified in this Interagency Agreement. The Contractor shall not further duplicate, disseminate, or disclose such data without obtaining TennCare's prior written approval.
- e. The Contractor shall ensure that its employees:
 - (1) properly safeguard PHI/PII furnished by TennCare under this Interagency Agreement 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's employee is at his or her regular duty station;
 - (3) ensure that laptops and other electronic devices/ media containing PHI/PII are encrypted and/or password protected;
 - (4) send emails containing PHI/PII only if encrypted or if to and from addresses that are secure; and,
 - (5) limit disclosure of the information and details relating to a PHI/PII loss only to those with a need to know.

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

- f. Loss or Suspected Loss of Data – If an employee of the Contractor becomes aware of suspected or actual loss of PHI/PII, he or she must immediately contact TennCare **within 1 hour** to report the actual or suspected loss. The Contractor will use the Loss Worksheet located at http://www.tn.gov/assets/entities/tenncare/attachments/phi_piiworksheet.pdf to quickly gather and organize information about the incident. The Contractor must provide TennCare with timely updates as any additional information about the loss of PHI/PII becomes available.

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

- g. TennCare may immediately and unilaterally suspend the data flow under this Interagency Agreement, or terminate this Interagency Agreement, if TennCare, in its sole



discretion, determines that the 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 Interagency Agreement.

h. Legal Authority – Federal laws and regulations giving SSA the authority to disclose data to TennCare and TennCare's authority to collect, maintain, use and share data with Contractor is protected under federal law for specified purposes:

- (1) Sections 1137, 453, and 1106(b) of the Act (42 U.S.C. 1320b-7, 653, and 1306(b)) (income and eligibility verification data);
- (2) 26 U.S.C. 6103(l)(7) and (8) (tax return data);
- (3) Section 202(x)(3)(B)(iv) of the Act (42 U.S.C. 401(x)(3)(B)(iv)) (prisoner data);
- (4) Section 205(r)(3) of the Act (42, U.S.C. 405(r)(3)) and Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, 7213(a)(2) (death data);
- (5) Sections 402, 412, 421, and 435 of Pub. L. 104-193 (8 U.S.C. 1612, 1622, 1631, and 1645) (quarters of coverage data);
- (6) Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. 111-3 (citizenship data); and
- (7) Routine use exception to the Privacy Act, 5 U.S.C. 552a(b)(3) (data necessary to administer other programs compatible with SSA programs).

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 Contractor must follow with regard to use, treatment, and safeguarding data.

i. 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 CFR 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.12. Nondiscrimination Compliance Requirements.

- a. The Contracting State Agency agrees that it shall comply with the applicable federal and State civil rights laws and regulations, which may include, but are not limited to, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and 42 U.S.C. § 18116. As part of this compliance no person on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classifications protected under federal or state laws shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of the Contracting State Agency's obligation under its agreement with TennCare or in the employment practices of the Contractor.
- b. The Contracting State Agency agrees that its civil rights compliance staff member will work directly with TennCare's Nondiscrimination Compliance Director in order to implement and coordinate nondiscrimination compliance activities. The Contractor shall provide to TennCare, within ten (10) days of signing this Contract, the name and contact information of its civil rights compliance staff member. If at any time that position is reassigned to another staff member, the new staff member's name and contract information shall be reported in writing to TennCare within ten (10) calendar days of assuming these duties.

IN WITNESS WHEREOF,

DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES:

Debra K. Payne

 Debra K. Payne, Commissioner 6-13-16
DATE

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

Larry B. Martin

 Larry B. Martin, Commissioner 6/14/16
DATE



ATTACHMENT A

DEFINITIONS

1. **Aging Caregiver** – Pursuant to TCA 33-5-112 as amended, the older custodial parent or custodial caregiver of an individual who has an Intellectual Disability and who is at least 75 (seventy-five) years of age. A Potential Applicant for ECF CHOICES who has an Aging Caregiver shall, subject to all applicable eligibility and enrollment criteria, be enrolled in ECF CHOICES Group 5, unless the Applicant qualifies and elects to enroll in an available ECF CHOICES Group 4 slot, or cannot be safely served in ECF CHOICES Group 5 and meets eligibility criteria, including Nursing Facility Level of Care, to enroll in an available ECF CHOICES Group 6 slot. Reserve Capacity Slots shall be established in ECF CHOICES Group 5 based on the number of persons with an Intellectual Disability who have an Aging Caregiver who are expected to be served in each program year.
2. **Applicant** – Individuals for whom the Contractor shall process an application for enrollment into ECF CHOICES. An Applicant is entitled to a determination regarding his or her eligibility to enroll in the ECF CHOICES program and to due process, including notice and the right to request a fair hearing, if the application is denied.
3. **Critical Incident** – For the purposes of ECF CHOICES, a Critical Incident is a type of Reportable Event that is classified as either Tier 1 or Tier 2 as defined by TennCare. The Contractor shall be responsible for investigating Tier 1 Critical Incidents and for tracking and trending Tier 1 and Tier 2 Critical Incidents.
4. **Developmental Disability (DD)** – Pursuant to TCA 33-1-101 as amended, a Developmental Disability in a person over five (5) years of age means a condition that:
 - (i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - (ii) Manifested before twenty-two (22) years of age;
 - (iii) Is likely to continue indefinitely;
 - (iv) Results in substantial functional limitations in three (3) or more of the following major life activities:
 - (a) Self-care;
 - (b) Receptive and expressive language;
 - (c) Learning;
 - (d) Mobility;
 - (e) Self-direction;
 - (f) Capacity for independent living; or
 - (g) Economic self-sufficiency; and
 - (v) Reflects the person's need for a combination and sequence of special interdisciplinary or generic services, supports, or other assistance that is likely to continue indefinitely and need to be individually planned and coordinated.

Developmental Disability in a person up to five (5) years of age means a condition of substantial developmental delay or specific congenital or acquired conditions with a high probability of



resulting in Developmental Disability as defined for persons over five (5) years of age if services and supports are not provided.

5. **ECF CHOICES Referral List** – The listing of Potential Applicants who have completed a Screening process to express their interest in applying for enrollment into the ECF CHOICES program.
6. **Emergent Circumstances** – For purposes of Reserve Capacity Slots in ECF CHOICES, a limited number of individuals who meet criteria specified in TennCare Rules and protocol and for which enrollment into ECF CHOICES is the most appropriate way to provide needed supports, as determined through an Interagency Review Committee process, including both TennCare and the Contractor.
7. **Employment and Community First (ECF) CHOICES** – A managed long-term services and supports program that offers home and community-based services to eligible individuals with Intellectual and Developmental Disabilities enrolled in the program in order to promote competitive employment and integrated community living as the first and preferred option. The ECF CHOICES program will begin implementation at a date to be determined by TennCare, but no sooner than July 1, 2016.
8. **Enrollment** – One of three (3) components of the ECF CHOICES Referral List management process that occurs only when a Potential Applicant has been determined to meet criteria for an available Reserve Capacity Slot or for one of the categories for which enrollment into ECF CHOICES is currently open, and when there is an appropriate slot available for the person to enroll, subject to all applicable eligibility and enrollment criteria. Enrollment into ECF CHOICES may be approved only by TennCare, and subject to the availability of an appropriate slot for the person to enroll if all applicable eligibility and enrollment criteria are met.
9. **Immediate Jeopardy** – For the purposes of this Agreement, Immediate Jeopardy shall mean a situation discovered during the course of the Contractor's quality monitoring activities in which the provider's non-compliance with one or more program requirements has caused, or is likely to cause, serious injury, harm, impairment, or death to a member. An Immediate Jeopardy situation requires immediate resolution by the provider and may require Contractor and/or MCO staff to remain on-site pending such resolution. When such incidents occur outside of the course of the Contractor's quality monitoring activities, these incidents will be addressed as Critical Incidents as specified in this Agreement, TennCare's contract with its MCOs, and TennCare Protocol.
10. **Information System(s) (Systems)** – A combination of computing and telecommunications hardware and software that is used in: (a) the capture, storage, manipulation, movement, control, display, interchange and/or transmission of information, i.e., structured data (which may include digitized audio and video) and documents as well as non-digitized audio and video; and/or (b) the processing of information and non-digitized audio and video for the purposes of enabling and/or facilitating a business process or related transaction.
11. **Intake** – One of three (3) components of the ECF CHOICES Referral List management process during which basic documentation is gathered to confirm information self-reported in the Screening process, including whether a person has an Intellectual or Developmental Disability (i.e., is in the target population for ECF CHOICES) and other information that will be used to prioritize the person for enrollment into ECF CHOICES based on established prioritization and enrollment criteria. Intake is generally performed during a face-to-face interview with the Potential Applicant. The result of Intake could be 1) a decision to proceed with Enrollment because a person with ID qualifies for an available Reserve Capacity Slot based on an Aging Caregiver or meets certain prioritization criteria and there is an appropriate slot available for enrollment; 2) referral to the Interagency Review Committee because the person may qualify for a Reserve Capacity Slot based on Emergent Circumstances or Multiple Complex Health Conditions; or 3) continued placement on the ECF CHOICES Referral List in the appropriate category.



12. **Intellectual Disability (ID)** – Pursuant to TCA 33-1-101, an Intellectual Disability is defined as substantial limitations in functioning:
- (i) As shown by significantly sub-average intellectual functioning that exists concurrently with related limitations in two (2) or more of the following adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work; and
 - (ii) That are manifested before eighteen (18) years of age.
13. **Interagency Review Committee** - The committee composed of staff from the Contractor and TennCare that reviews requests submitted on behalf of a Potential Applicant in order to determine whether the Potential Applicant meets emergent or Multiple Complex Health Conditions criteria as defined in TennCare Rules. A determination by the Interagency Review Committee that a Potential Applicant meets Emergent Circumstances or Multiple Chronic Health Conditions criteria shall be required before the Contractor or an MCO proceeds with an Enrollment visit to determine if the Applicant qualifies to enroll in ECF CHOICES in a Reserve Capacity Slot designated for such purpose.
14. **Multiple Complex Health Conditions** – For purposes of reserve capacity in ECF CHOICES, a limited number of individuals who have multiple complex chronic or acquired health conditions that prevent the person from being able to work, and who are in urgent need of supports in order to maintain the current living arrangement and delay or prevent the need for more expensive services, and for which enrollment into ECF CHOICES is the most appropriate way to provide needed supports, as determined through an Interagency Review Committee review process, including both TennCare and the Contractor.
15. **Potential Applicant** – Individuals for whom the Contractor shall perform Referral and Intake functions as specified in TennCare Rules and under this Agreement. A Potential Applicant is entitled to a determination regarding his or her eligibility to enroll in the ECF CHOICES program and, if the application is denied, to due process, including notice and the right to request a fair hearing only when the Potential Applicant meets criteria for an available Reserve Capacity Slot or meets prioritization criteria for an available program slot for which enrollment is currently open and will be enrolled into the program if all applicable eligibility and enrollment criteria are met.
16. **Referral** – An expression of interest by or on behalf of a Potential Applicant in applying for the ECF CHOICES program.
17. **Referral Tracking System** – Electronic statewide system developed and maintained by TennCare for the receipt, tracking and disposition of all persons referred to ECF CHOICES, including all documentation required for disposition of Referral.
18. **Reportable Event** – For the purposes of ECF CHOICES, a Reportable Event is an event that is classified as Tier 1, Tier 2, or Tier 3 as defined by TennCare that the contracted provider shall be responsible for reporting to the member's MCO and/or the Contractor, as specified by TennCare. TennCare MCOs and the Contractor, as applicable, shall be responsible for managing, tracking and trending these events in order to prevent similar occurrences in the future whenever possible.
19. **Reserve Capacity Slot** – For the purposes of ECF CHOICES, the state's authority to reserve a finite number of program slots in a particular ECF CHOICES Group for persons in specified circumstances; such as person with ID who has an Aging Caregiver, Emergent Circumstances, and Multiple Complex Health Conditions as defined in TennCare Rule and in this Agreement.
20. **Screening** – One of three (3) components of the ECF CHOICES Referral List management process that includes providing basic education about the program, including eligibility criteria and enrollment processes, and helps to gather basic information that can be used to determine if the Potential Applicant is likely to qualify for the program, and that allows the Potential Applicant to be prioritized for Intake based on established prioritization and enrollment criteria.



21.

TennCare Managed Care Organization (MCO) - An appropriately licensed Health Maintenance Organization (HMO) contracted by TennCare for the coordination and provision of physical and behavioral health services to Medicaid enrollees and for members enrolled in CHOICES and ECF CHOICES, long-term services and supports.