Contract No. _____

PROVIDER AGREEMENT
BETWEEN THE
STATE OF TENNESSEE,
DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES
AND BUREAU OF TENNCARE
AND
[PROVIDER'S NAME]

This Agreement, by and between the State of Tennessee, Department of Intellectual and Developmental Disabilities and Bureau of TennCare, hereinafter referred to as the "State" and [Provider's Name], hereinafter referred to as the "Provider", sets forth standards, requirements, and conditions under which the Provider, upon approval and authorization by the State, may render services to persons with intellectual disabilities (service recipients with mental retardation).

A. Standards, Requirements, and Conditions

A.1. Scope of Agreement. This Agreement shall establish the Provider as a potential, approved Provider of service to persons with intellectual disabilities, which may be rendered only upon authorization by the Department of Intellectual and Developmental Disabilities (DIDD) pursuant to an approved plan of care (i.e., the Individual Support Plan). This Agreement does not constitute such an authorization to provide service, and the State is under no obligation to authorize service delivery in any specific dollar amounts or to authorize any service at all from the Provider during any period of this Agreement.

A.2. Approved Service. The Provider is approved as a potential Provider of the services as set forth below:

(List Services)

A.3. DIDD Provider Manual. A copy of the DIDD Provider Manual shall be maintained by the State for review by the Provider. The Provider agrees that any authorized and approved services that it provides to eligible service recipients as indicated in State approved Individual Support Plans shall be performed in accordance with this Agreement and the Department of Intellectual and Developmental Disabilities (DIDD) Provider Manual as may be amended. The Provider understands that it may be necessary for the State to amend or revise the DIDD Provider Manual during the period of this Agreement, through memorandum, chapter requirements or otherwise, as well as, through revisions to the Bureau of TennCare Rules. The Provider understands and agrees that it will be subject to any such revisions.

A.4. State and Federal Compliance. The State and the Provider shall be subject to all relevant and applicable state and federal rules, regulations, and statutory requirements, including any amendments and/or revisions thereto, as they relate to this Agreement or any performance of approved service to eligible service recipients.

(a) Waiver Services— Any Waiver Service as detailed in the DIDD Provider Manual and performed by the Provider shall comply with terms of the Center for Medicare and Medicaid Services (CMS) approved 1915 (c) Home and Community Based Services Waiver for the Mentally Retarded and Developmentally Disabled (# 0128.90.R2A.02), herein referred to as the "Medicaid Waiver", the (CMS) approved 1915 (c) Home and Community Based Services Waiver for Persons with Mental Retardation (#0357.90.02), herein referred to as the "Arlington Waiver", and the (CMS) approved 1915 (c) Home and Community Based Services Waiver known as the Self-Determination Waiver Program (#0427.R01), herein referred to as the "Self Determination Waiver Program", or such other waivers as are approved for and implemented by DIDD which address services governed by this Agreement.

(i) Any Medicaid Waiver Service performed by the Provider shall be delivered in accordance with the applicable CMS-approved Medicaid Waiver application, including HCBS waiver service definitions, provider qualifications, and all applicable requirements specified in the CMS-approved waiver. No Provider shall be entitled to compensation or reimbursement for any services failing to meet these requirements.

(ii) A Provider of Medicaid Waiver Service shall complete and provide to the State a Disclosure of Ownership and Controlling Interest. Providers are required to provide any substantive changes in ownership and/or control to DIDD. (Refer to Attachment A).

(b) Advance Directives— The Provider shall comply with any state and federal requirements concerning advance directives and end of life issues as described in 42 *Code of Federal*

Regulations 417.436 Subpart 1. and as found in *Tennessee Code Annotated* 33-6, part 10 and, finally, as legally provided by the service recipient.

(c) Environmental Tobacco Smoke— Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Provider shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Agreement to individuals under the age of eighteen (18) years. The Provider shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Agreement.

A.5. Licensure. The Provider shall perform any services referenced in and subject to this Agreement only in facilities or programs that are licensed and certified as required in accordance with *Tennessee Code Annotated*, Title 33 and other applicable state law, rules or regulations. If the Provider or any of its employees, agents, or contractors is found to be providing services without required licensure and certification by state or federal agencies (including but not limited to DIDD, Bureau of TennCare, Department of Health, Department of Mental Health and Developmental Disabilities, applicable federal quality review monitoring agency or panel or any other state or federal agency with licensure and certification responsibilities, the Provider shall not be entitled to compensation or reimbursement for such unlicensed/uncertified services delivered.

A.6. Service Recipients Freedom of Choice. The Provider shall not interfere or impede with a service recipient's freedom of choice of Providers of services mandated by state and federal law. The Provider shall not have any supported living or residential habilitation housing arrangements for service recipients that impede the service recipient's exercise of freedom of choice of Providers. A Provider of supported living services or residential habilitation shall not force a service recipient to move from the Provider's residence if the service recipient chooses another supported living Provider. The Provider shall not require, lead or influence service recipients to choose the Provider as a sole Provider of multiple services as a condition to provide any other services generally offered by the Provider.

A.7. Service Recipients Right to Vote. The Provider, as appropriate, shall support and encourage that any DIDD service recipient is afforded an unrestricted right to vote in any and all governmental elections and will provide reasonable assistance when required in exercising this right of citizenship. In compliance with the terms of this agreement and with all applicable local, state and federal laws, rules and regulations, the Provider shall also ensure that any DIDD service recipient is not unduly influenced by Provider's or Provider employees' words or actions in the exercise of the right to vote.

A.8. Conflicts of Interest.

(a) The Provider warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation or gifts in exchange for acting as an officer, agent, employee, subcontractor or consultant to the Provider in connection with any service contemplated under this Agreement, EXCEPT the Provider may employ or contract with a state employee as may be approved by the State, PROVIDED THAT:

(i) such state employee does not hold an Executive Service position in state government;

(ii) such state employee has no professional responsibility directly related to any authorized service recipient of the Provider at any time during the employee's employment or contract with the Provider;

(iii) such state employee presents to the Provider an Approval For State Employee To Work For DIDD Service Provider memorandum, duly signed by the head of Department of Intellectual and Developmental Disabilities; and

(iv) the Provider submits to the Human Resources office of DIDD a monthly listing of all state employees paid by the Provider during the reporting period, if applicable.

(b) The Provider, including any Provider employees, shall not:

(i) financially benefit or materially profit from any improper, exploitive or inappropriate financial arrangements with intellectually disabled service recipients; or

(ii) be named as beneficiary of any life insurance policy purchased by or on behalf of intellectually disabled service recipient.

(c) Notwithstanding the foregoing section A.8.(b)(ii), if the Provider is a service recipient family member, said Provider may be named as beneficiary of a life insurance policy purchased by or on behalf of an intellectually disabled service recipient provided, however, that even family member Providers in such transactions will be accountable under fiduciary principles concerning undue influence, unjust

enrichment and/or the exploitation of a service recipient.

A.9. Service Records. The Provider shall be responsible for form, storage, safekeeping, acquisition and maintenance of a record for each service recipient served, as described below, and as set out in the DIDD Provider Manual.

(a) Maintenance of records and reporting requirements shall be adequate to ensure acceptable and appropriate quality and continuity of care to service recipients in accordance with Individualized Support Plans and Individualized Transition Plans. Service records will be made available to authorized State officials, agents, and employees upon request at any time for survey, audit, inspection, review, evaluation and duplication as determined by the State.

(b) Medication Administration Records (MAR) must be maintained as required by applicable law and established procedures and be consistent with all current medical orders.

(c) Service recipient records shall be available to authorized officials of Independent Support Coordination (ISC) agencies where applicable. However, the Provider shall not relinquish any control over DIDD service recipient records of any kind that are generated as a result of this agreement and shall not allow such records, to be out of or kept separate from its control.

(d) Service recipient records shall corroborate any statement of service delivery and shall clearly document services actually provided or services offered, but refused by a service recipient.

(e) The records required to be maintained above or in any other portion of this document will also be made available for inspection, review, survey, audit, evaluation and duplication by authorized State officials, agents, employees or to any other person referenced in Title 33 of the *Tennessee Code Annotated* and in the *Health Insurance Portability and Accountability Act of 1996* (HIPAA), as well as, other applicable federal laws, rules or regulations as having legal access to protected, confidential service recipient records.

A.10. Financial and Business Records. The Provider agrees to create and maintain bookkeeping, accounting, financial, business and management records and reports of its operations subject to this Agreement, including detailed documentation of service delivery to support the services rendered. Said records are to be maintained in compliance with generally accepted accounting principles and shall be available upon request to authorized representatives of DIDD and the Comptroller of the Treasury or such other state or federal employees having authority to access such records.

(a) For services provided under the Medicaid Program, records shall be available to the Bureau of TennCare and the U.S. Department of Health and Human Services, or their designees, for inspection, audit, reproduction, excerpts and transcription. These records shall be maintained as required by Article 45, *Code of Federal Regulations* Part 74.

(b) Service recipient records must be preserved and maintained in accordance with Federal and State laws and regulations including but not limited to *Tennessee Code Annotated*, Section 33-3-101, which at the current time is for a minimum of ten (10) plus one (1) years after the discharge or death of a service recipient. This requirement will remain enforceable and in effect even if a Provider has ceased doing business with the state.

(c) The Provider shall maintain documentation for all charges, costs and expenses billed or invoiced to the State for services referenced in and subject to this Agreement. The books, records, and documents of the Provider in whatever form and insofar as they relate to services referenced in and produced as a result of this Agreement shall be subject to inspection, survey and/or audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. This documentation shall be maintained for a minimum of five (5) years and produced upon request by the entities mentioned herein. This requirement will remain enforceable and in effect even if a Provider has ceased doing business with the state.

(d) Provider recipients of $500,000 or more in aggregate state and federal funds shall undergo, at their expense, an annual independent audit of records in accordance with the requirements of the Tennessee Comptroller of the Treasury. A copy of the report of the annual independent audit will be submitted within 14 days of completion/availability to the DIDD Director of Internal Audit and the applicable Regional Director

(e) The Provider's activities and records maintained pursuant to this Agreement, in whatever form, shall be subject to survey, audit, assessment, inspection, duplication, monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly designated representatives.

(f) The Provider shall submit cost reports and any other financial data as requested by the State in form, manner and substance designated by the State. The Provider will also fully cooperate and provide timely response to any requests for information made by the State, as it deems necessary to comply with *Tennessee Code Annotated*, Section 33-5-108.

(g) The Provider shall submit at least annually a list of board members and their contact information and shall provide updates when appropriate.

A.11. Provider Personnel.

(a) Employment Applications— The Provider shall include the following language in its applications for employment of any person who may have direct contact with or direct responsibility for service recipients.

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

(b) Contract employees — The Provider shall include the following language in its contracts for the service of any person or persons who may have direct contact with or direct responsibility for service recipients.

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

(c) Provider Staff Protection from Harm Statements— The Provider shall, within fifteen (15) business days of the effective date of this Agreement, maintain in a file for requested review by the State, a signed statement in the following form for all of the Provider's current employees, contractors and volunteers.

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

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

(i) the Tennessee Department of Health Elderly or Vulnerable Abuse Registry. The Department of Health pursuant to *Tennessee Code Annotated,* Section 68-11-1001 *et. seq.* maintains this registry for individuals substantiated for abuse, neglect, mistreatment and exploitation of vulnerable persons, which includes persons with intellectual disabilities. The law contains all pertinent provisions for notice to individuals and procedures for an administrative appeal before any registry placement;

(ii) the Tennessee Sexual Offender List. The Tennessee Sexual Offender List is maintained pursuant to *Tennessee Code Annotated*, Section 40-39-201 *et.seq.* and provides a list of individuals convicted by a court of law of sexual offenses in Tennessee or who have been judicially determined to have some other sort of qualifying condition. Such sexual offenses are contained in the law and in *Tennessee Code Annotated*, Title 39 of the state criminal

code; and

(iii) the Tennessee Felony Offender Information Lookup (FOIL). The information available on this list pertains to Tennessee felony offenders who are or who have been in the custody of the Tennessee Department of Correction or under the Supervision of the Tennessee Board of Probation and Parole. The information is submitted by various jurisdictions within Tennessee. Confirmation and/or elaboration should be obtained from the originating jurisdiction. Said criminal background/fingerprint and registry checks shall be on all employees, contractors, and volunteers whose job functions include direct contact with or direct responsibility for service recipients regardless of hire date

(e) Drug Free Work Place— to the extent applicable, the Provider will comply in its business with the provisions of the Tennessee "Drug Free Work Place Programs" as found at *Tennessee Code Annotated*, Section 50-9-101, *et seq.*

(f) Prohibited Staff— The Provider shall not employ, retain, hire or contract with any individuals, as staff or volunteers, who would have direct contact with or direct responsibility for service recipients; and who have been convicted of:

(i) any felony; or

(ii) a misdemeanor involving physical harm to a person including but not limited to neglect or abuse or a misdemeanor involving financial harm/exploitation to a person including but not limited to theft, misappropriation of funds, fraud or breach of fiduciary duty; or

(iii) a misdemeanor involving illicit drugs, drug/alcohol misuse or sexual misbehavior (e.g. indecent exposure, voyeurism). Misdemeanor convictions covered in this subparagraph, (f) (i) (3), shall not have occurred during a period of less than ten years prior to employment with the Provider.

A.12. Reporting Suspicion of Abuse, Neglect, Mistreatment or Exploitation. If at any time, the Provider identifies any actions of a Provider employee, volunteer, contractor or any other person, entity or organization that may constitute abuse, neglect, mistreatment or exploitation of a service recipient, the Provider shall immediately, and in all cases within four hours, report such conduct to the DIDD Investigations Section. A Reportable Incident Form must also be submitted to DIDD Central Office by the next working day. The Provider shall also report information related to the allegation(s) as completely as possible and shall cooperate with any subsequent investigations, whether by DIDD or by another entity with legal jurisdiction. The Provider shall grant DIDD or its authorized representatives full and complete access to any and all records relating to the allegation.

A.13. Fraud. The Provider shall report to DIDD, Office of Inspector General, and the Tennessee Bureau of Investigation Medicaid Fraud Control Unit (TBI MFCU) any incident(s) of Medicaid or TennCare fraud. Furthermore, the Provider shall fully participate and cooperate with any investigation into such circumstances conducted by TBI MFCU and shall allow the inspection, duplication and/or removal of its records in compliance with State and Federal laws pursuant to a TBI MFCU investigation.

A.14. Transportation of Service Recipients. When transportation of a service recipient is part of a defined service, the Provider shall assume liability for ensuring that service recipient is provided adequate, appropriate and safe transportation.

A.15. Provider Training. The Provider shall comply with training requirements, including but not limited to Mandatory Technical Assistance, as specified in the DIDD Provider Manual or otherwise mandated in writing by the State. The provider shall not be entitled to reimbursement for services delivered by staff who have not completed all applicable training requirements.

A.16. Timely Reports. The Provider shall submit to the State all required financial, program, statistical and other reports, information and data, along with the appropriate supporting documentation within the time frames allotted and on the forms/formats prescribed by DIDD. Also, when specified, information provided for in this paragraph will be presented in accordance with the DIDD Provider Manual.

A.17 Minimum Provider Technology Requirements. The Provider shall substantially comply with all minimum technology requirements and shall update such requirements as mandated by DIDD.

A.18. Service Authorization. The State may authorize the performance of approved service to eligible service recipients referenced in Section A.2. above by means of an Authorization To Vendor (refer to Attachment B).

(a) Any payment for service referenced in and subject to the provisions of this Agreement shall be limited to and in accordance with the approved Individual Support Plan or Individual Support Plan Amendment for such service.

(i) Provider compensation shall be contingent upon the satisfactory completion of authorized, approved service as specified in the Individual Support Plan.

(ii) The Service Rates detailed in a valid and current Individual Support Plan shall constitute the entire compensation due the Provider for the service and all of the Provider's obligations hereunder regardless of the difficulty, materials, or equipment required. The Service Rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs, expenses and charges incurred or to be incurred by the Provider.

(iii) The State will refuse payment to the Provider for services billed to the State that are beyond the level of services authorized by the State through Individual Support Plans, exceed payment rates for said services or are not billed to the State within the appropriate time frame after the delivery of services.

(b) Payment for service may also be as specified in accordance with services identified in the service recipient's TennCare approved Pre-Admission Evaluation or Transfer PAE, until such a time as an approved Individual Support Plan is in place, to a maximum of 60 days.

(c) The Provider shall submit monthly invoices, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall be submitted for completed, authorized, approved service to eligible service recipient(s) as stipulated in the Individual Support Plan. The adequacy of the supporting documentation to substantiate each Provider invoice shall be determined at the sole discretion of DIDD.

(d) All payments to the Provider for authorized services are final payments for the billing period invoiced by the Provider and paid by the State. The Provider shall provide written notification to the State setting forth the amount, details and basis of any payment dispute within thirty (30) days after receiving payment for services.

A.19. Continuity of Care. Upon Provider acceptance to supply approved service to an eligible service recipient as indicated in the State approved Individual Support Plan, the Provider shall be obligated to deliver services in accordance with the Individual Support Plan, including the amount, frequency, intensity, and duration of services specified, and shall be responsible for arranging back-up staff to address instances when other scheduled staff are not able to deliver services as scheduled. The Provider shall, in any and all circumstances, continue to provide services that maintain continuity of care to the service recipient in accordance with his/her Individual Support Plan until the service recipient is provided with other services, as mandated below, that are of acceptable and appropriate quality.

(a) Prior to discontinuing service to the eligible service recipient, the Provider must:

(i) Provide a written notification of the planned service discontinuation to the service recipient, his/her conservator or guardian, his/her support coordinator, and DIDD no less than sixty (60) days prior to the proposed date of service termination.

(ii) Obtain State approval, in the form of a signed service plan, to discontinue the service and cooperate with any subsequent, authorized service Provider as is necessary.

(iii) Consult and cooperate with the State in the preparation of a discharge plan for those service recipients receiving care and services from the Provider in the event of a proposed termination of service. Also, when appropriate, as part of the discharge plan, the terminating Provider will meet, consult and cooperate with any new Providers to ensure continuity of care and as smooth a transition as is possible.

(iv) Provide copies (or original documents as required) of the service recipient's records to the service recipient's new Provider as directed by DIDD, as required by the DIDD Provider Manual. This records transfer shall be accomplished whether the Provider continues as a Provider for DIDD or ceases to offer services under this agreement and/or determines to go out of business. If the Provider fails to comply with the terms of this paragraph, the Provider will remain fully responsible for making the records available and liable to the State for all costs of making copies of the records for the new service Provider.

(b) If a provider of clinical services, the Provider shall follow procedures established in the DIDD Provider Manual for discharging (terminating) a service recipient from clinical services. Circumstances for discharge may include but are not limited to: the recipient having met established goals, recipient reaching maximum improvement, and/or discontinuation of order by physician or other clinician, *etc.*

(c) If the Provider is an individual (*e.g.,* a (n) Occupational Therapist, Physical Therapist, Personal Assistant, or nurse), the Provider shall make arrangements for a temporary or substitute DIDD approved service provider of required service in instances where the Provider is temporarily not available to deliver service (as a result of illness, vacation, family emergency, *etc.*)

A.20. Sanctions and Licensure Action. For failures to comply with this Agreement or the standards and requirements referenced herein, DIDD, Bureau of TennCare, and applicable state licensure or certification

authorities may invoke sanctions and licensure actions pursuant to *Tennessee Code Annotated*, Section 33-2-408, as well as the DIDD Provider Manual and any other applicable state licensure or certification laws and/or other applicable state and federal rules or regulations. It is hereby agreed and acknowledged between the parties that any sanctions and/or licensure actions imposed represent the damages and injuries sustained by the State in losing the benefit of the bargain with Provider and do not include any injury or damage incurred by a third party.

(a) Sanctions— The State may impose sanctions including, but not limited to, the following:

(i) require the Provider to secure training or technical assistance at the Provider's expense from a source identified by the Provider and approved by DIDD;

(ii) invoke a moratorium on admissions, new services or expansion of the Provider's services;

(iii) lodge complaints with applicable licensure or certification authorities;

(iv) terminate this Agreement for cause; or

(v) assume management responsibility and control of the Provider's services (refer to section A.22. below) or

(vi) monetary sanctions.

(b) Licensure Action— The State may initiate revocation of the Provider's license.

(c) In accordance with *Tennessee Code Annotated* Section 33-2-408, the following procedures and appeals process shall apply with regard to the imposition of any sanctions.

(i) DIDD will provide notice of each sanction in writing. The Provider may appeal the sanction within ten (10) working days from the date of the written notice from the DIDD Regional Director. The appeal must be submitted to the Deputy Commissioner of DIDD through the Office of General Counsel by certified mail or by facsimile transmission. The notice of appeal must state the reason(s) for any objection to the sanction.

(ii) If notice of appeal is timely filed, the imposition of monetary sanctions will be stayed pending resolution of the appeal. A hearing will be scheduled in accordance with Uniform Administrative Procedures Act requirements. If the sanction is a daily monetary sanction, and is upheld after a hearing, it will be calculated from the date of original imposition.

(iii) Notwithstanding a sanction appeal, the DIDD Regional Director may invoke non-monetary sanctions immediately and no stay shall apply.

(d) If sanctions are imposed, DIDD will inform the Bureau of TennCare in writing regarding the reasons therefore and amount.

A.21. Recoupment. As stated at *Tennessee Code Annotated* 33-2-408(c), a recoupment is **not** a sanction. It is the return of unearned amounts paid to a Provider resulting from non-compliance with the Provider agreement. Recoupment of funds paid to the Provider may be imposed by the Department as a result of survey, audit, or review processes conducted by the State, the Office of the Comptroller, utilization reviews by CMS, other federally designated agencies, or TennCare, or other evidence. Since by law a recoupment is not classified as a sanction the appeal procedures/process found at *Tennessee Code Annotated* 33-2-408 do not apply to these actions.

(a) The State or its designated fiscal agent may recoup funds for reasons including, but not limited to, the following:

(i) no PAE or Transfer Form (for ISC Agencies, if applicable) for individuals served;

(ii) no 2362 (for ISC Agencies, if applicable) for individuals served;

(iii) no current Medicaid Waiver Re-evaluation;

(iv) billing for services for which no or inadequate supporting documentation is found;

(v) billing for services, which were not provided;

(vi) billing for multiple services concurrently except where specifically authorized by DIDD;

(vii) not meeting defined requirements of service category (consistent lack of adherence to fundamental requirements of each service category);

(viii) license lapsed or expired;

(ix) services provided at locations other than those specifically approved for an individual;

(x) amounts or types of service approved by DIDD, which were billed but were not provided;

(xi) required and approved staffing or caseload ratios not being met; and

(xii) services performed by staff who have not completed background or registry checks, or who have not completed all applicable training requirements.

(b) Although the appeal provisions of *Tennessee Code Annotated* 33-2-408 do not apply to recoupments, the following informal administrative review will be permitted. This Opportunity for Recoupment Review (ORR) will be in addition to any other administrative/audit analysis offered to the Provider by the respective auditing/surveying entity, as applicable.

(i) When a recoupment is determined to be appropriate, the DIDD Regional Director/designee or Director of Internal Audit (as applicable) will notify the Provider as soon as possible with a written description of the amount to be recouped, an explanation of the basis for the recoupment and, when appropriate, a list of documentation which has not been supplied or found to be missing. DIDD will give the Provider an opportunity to produce, but not recreate, missing information.

(ii) The Provider shall have fifteen (15) business days from the date of the mailing/delivery of the above notice to advise the DIDD Regional Director/designee or Director of Internal Audit (as applicable) in writing that the Provider requests such informal administrative review. This notification may be accomplished by written correspondence, facsimile transmission or email. If a request is not received by the DIDD Regional Director/designee or Director of Internal Audit in the time prescribed, the Provider has waived his ORR and the Department will proceed to collect the recoupment amount.

(iii) If however, the Provider does submit a written request for informal administrative review, then the DIDD Regional Director/designee or Director of Internal Audit will arrange for an interview with the Provider or its designee as soon as practicable. The provider may raise questions and/or present or produce documentation or other information/explanations to address identified deficiencies in order to reduce or eliminate the recoupment, when appropriate.

(iv) The DIDD Regional Director/designee or Director of Internal Audit (as applicable) shall review relevant information and allow the Provider to ask questions/and or present its position concerning the recoupment. DIDD can not independently overturn recoupment actions initiated by CMS, or another federal or State agency, including TennCare. DIDD shall render its determination, along with the rationale supporting its decision, in writing no later than ten (10) business days thereafter, which in the case of recoupment actions initiated by CMS, or another federal or State agency, including TennCare, shall be subject to final determination by the initiating entity. It is agreed that the process described in this subsection is an informal, contractual review, which affords the Provider subject to a possible recoupment a chance to submit its views and any contrary or additional information relevant to a final conclusion of a proposed recoupment. The Provider is limited to the ORR, described herein, as its sole remedy regarding any recoupments to which it may be subject.

(v) If following the ORR process set forth above the State determines recoupment of funds is warranted, the DIDD Regional Director designee or Director of Internal Audit (as applicable) will prepare a Report/Summary of Findings, which provides details of the recoupment issues. This document will specify the amount of recoupment and direct the Provider to contact the DIDD Regional Office or Office of Internal Audit (as applicable) by a specified date regarding the schedule for recoupment, which shall be finally determined at the sole discretion of the State. The State shall send the Report/Summary of Findings to the Provider by either electronic or certified mail within fifteen (15) working days of its final determination.

(vi) The provider shall not bill or accept any payment from the service recipient, his/her parent, guardian, spouse or any other legally responsible party for any recoupment amounts.

A.22. Partial or Complete Assumption of Management Responsibilities. If the State determines that an emergency or exigent situation for whatever cause substantially impairs the Provider's capacity to provide authorized service to its service recipients, and said impairment(s) jeopardizes the health, safety or well being of its service recipients, then the State may assume partial or complete, temporary operating responsibility for the Provider to assure continuity of care and the health and safety of the service recipients. An action of this nature is only for management purposes, and the State assumes no responsibility or obligations associated with or arising out of the ownership of the Provider's business or concern.

(a) Any action taken by the State under this section shall not alter in any way the Provider's other obligations under this Agreement. Furthermore, to the extent necessary to accomplish the obligations of the Provider under this agreement, the Provider agrees to extend its full cooperation and assistance to the State while it exercises management authority under this section.

(b) Effective as of the date the State assumes management authority, the Provider shall be liable for all

associated costs to the State. Said costs shall be deemed to equal the amounts to be paid to the Provider by the State, during the period, for service referenced in and subject to the provisions of this Agreement. The State may, in its sole discretion, withhold or offset payments due to the Provider for any expenses incurred or associated with the actions taken under this section.

(c) Upon an assumption of management authority by the State under this section, the Provider shall have no right to recover from the State any actual, general, special, incidental, consequential or any other damages whatsoever of any description or amount.

B. Agreement Period

This Agreement shall be effective beginning March 29, 2012 and ending December 31, 2014.

C. Payment Terms and Conditions

There shall be no cost to the State for the Provider's compliance with the terms and conditions of this Agreement.

D. General Terms and Conditions

D.1. Modification and Amendment. This Agreement may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.

D.2. Termination for Convenience. The State may terminate this Agreement without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Provider at least thirty (30) days written notice before the effective termination date. The Provider shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Provider for compensation for any service, which has not been rendered. Upon such termination, the Provider shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.3. Termination for Cause. If the Provider fails to perform any material obligations under this Agreement in accordance with the terms herein, the State shall have the right to terminate the Agreement for default following the Provider's failure to cure any such material breach within twenty (20) days of the Provider's receipt from the State of a notice specifying the nature of such breach. Provided, however, the foregoing notwithstanding, if the State determines, in its sole discretion, that the breach poses an imminent, material threat to the health, safety, or welfare of service recipients, citizens, or employees, the State shall have the right to immediately terminate the Agreement for cause. Furthermore, the Provider shall not be relieved of liability to the State for damages sustained by virtue of a breach that results in the State's termination of this Agreement for cause.

In the event that Provider Management has violations substantiated as abuse, neglect, mistreatment or exploitation, as defined in federal or state law, regulation and/or in the DIDD Provider Manual, or any issue jeopardizing a person's health or safety, then this Agreement may be immediately terminated for cause.

If the State fails to perform any material obligation under this Agreement in accordance with the requirements herein, the Provider shall be entitled to terminate the Agreement for default following the State's failure to cure any such material breach within twenty (20) days of the State's receipt from the Provider of a notice specifying the nature of such breach.

D.4. Subcontracting and Assignment. It is understood and acknowledged by the parties that this agreement, including the payments and consideration arising from it, is exclusively between the State and the Provider. Therefore, the Provider shall not convey, transfer, allocate, delegate or assign its duties, responsibilities or obligations under this Agreement to any third party, person or entity.

(a) The Provider will not enter into a subcontract for any approved service referenced in and subject to this Agreement without first obtaining the prior written approval of the State. Implementation shall not begin until a copy of the approved sub-contract has been submitted to the State.

(b) Notwithstanding the use of approved subcontractors, the Provider is solely responsible for carrying out the duties and delivering the services under this agreement and is therefore liable for all work performed hereunder.

(c) The Provider shall not under any circumstances convey, transfer, assign, pledge, mortgage or encumber any payment(s), amounts or proceeds that are due or may become due from the State as a result of this agreement to any third party without the express, prior written approval of the State.

D.5. Nondiscrimination. The Provider hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of

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

D.6. Monitoring. The Provider's activities conducted and records maintained exclusively ensuing from or pursuant to this Agreement shall be subject to unfettered monitoring and evaluation by the State, which includes, but is not limited to DIDD, the Bureau of TennCare, the Comptroller of the Treasury and/or duly appointed representatives.

D.7. Strict Performance. Failure by any party to this Agreement to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Agreement shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.

D.8. Independent Contractor. The parties hereto, in the performance of any approved service referenced in and subject to this Agreement, shall not act as employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement shall be construed to create a employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Provider, being an independent contractor and not an employee of the State, agrees to pay all applicable taxes incident to the performance of any approved service referenced in and subject to this Agreement. The Provider further agrees to carry adequate liability and other appropriate forms of insurance, which shall include, but is not limited to, the following.

(a) Workers' Compensation/ Employers' Liability (including all States' coverage) with a limit not less than seven hundred fifty thousand dollars ($750,000.00) per occurrence for employers' liability.

(b) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent Provider, contractual liability and completed operations/products) with bodily injury/property damage combined single limit not less than seven hundred fifty thousand dollars ($750,000.00) per occurrence and one million, five hundred thousand dollars ($1,500,000.00) aggregate.

(c) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limits not less than one million, five hundred thousand dollars ($1,500,000.00).

(d) Professional Malpractice Liability, as may be required by DIDD, with a limit of not less than seven hundred fifty thousand dollars ($750,000.00) and one million, five hundred thousand dollars ($1,500,000.00) aggregate.

At any time, the State may require the Provider to submit a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Agreement

D.9. State Liability. The State shall have no liability pursuant to this Agreement except as specifically provided herein or by any applicable state law or regulation.

D.10. Force Majeure. The obligations of the parties to this Agreement are subject to prevention by causes, excluding labor disputes, which are beyond the parties' control and could not be avoided by the exercise of due care including, but not limited to, acts of God, acts of nature, acts of terrorism, riots, wars, epidemics or any other similar cause, provided that, upon discovery, the party affected by such immediately notifies the other party.

D.11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Provider agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Agreement. The Provider acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising there from, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.

D.12. Completeness. This Agreement is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Agreement supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

D.13. Severability. If any terms and conditions of this 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 Agreement are declared severable.

D.14. Prohibited Advertising. The Provider shall not refer to this Agreement or the Provider's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Provider or the Provider's services are endorsed. It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Agreement.

D.15. Debarment and Suspension. The Provider certifies, to the best of its knowledge and belief, that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

(b) have not within a three (3) year period preceding this Agreement been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and

(d) have not within a three (3) year period preceding this Agreement had one or more public transactions (federal, state, or local) terminated for cause or default.

D.16. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained as required by and in accordance with applicable state and federal law and regulations, including but not limited to *Tennessee Code Annotated*, Sections 33-3-103 *et seq.* and the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(a) All material and information, regardless of form, medium or method of communication, provided to the Provider by the State or acquired by the Provider on behalf of the State shall be subject to confidentiality requirements and protection from disclosure pursuant to and in accordance with all provisions of applicable state and federal law and regulations. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Provider, to safeguard the confidentiality of such material or information in conformance with applicable state and federal law and regulations and any other pertinent provisions or policy as may be detailed and required by this Provider.

(b) The Provider's obligations under this "Confidentiality of Records" section do not apply to:

(i) information in the public domain; information entering the public domain but not from a breach by the Provider;

(ii) information previously possessed by the Provider and not subject to confidentiality pursuant to applicable state and federal law or regulations;

(iii) information acquired by the Provider without written restrictions against disclosure from a third party which, to the Provider's knowledge, is free to disclose the information; or,

(iv) information independently developed by the Provider without the use of the State's information.

(c) Nothing in this "Confidentiality of Records" section shall permit the Provider 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 Provider due to intentional or negligent actions or inactions of agents of the State or third parties.

(d) It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Agreement.

D.17. HIPAA Compliance. The State and the Provider shall comply with obligations under the *Health Insurance Portability and Accountability Act of 1996* (HIPAA) and its accompanying regulations.

(a) The Provider warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Agreement.

(b) The Provider warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Agreement so that both parties will be in compliance with HIPAA.

(c) The State and the Provider will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and the Provider in compliance with HIPAA. This provision shall not apply if information received by the State under this Agreement is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.

D.18. Limited English Proficient Persons. With regard to Limited English Proficient persons, the Provider shall comply with:

(a) Presidential Executive Order 13166 of August 11, 2000, (65 FR 50121); and

(b) Department of Health and Human Services "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons" (68 FR 47311 - August 8, 2003).

D.19. Lobbying. The Provider certifies, to the best of its knowledge and belief, that:

No federally appropriated funds have been paid or will be paid, by or on behalf of the Provider, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Provider shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Provider shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

D.20. Public Accountability. Since this Agreement involves the provision of services to citizens by the Provider on behalf of the State, the Provider agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Provider agrees to display a sign stating:

NOTICE: This Provider is a recipient of taxpayer funding. If you observe an employee engaging in any activity, which you consider to be illegal or improper, please call the State Comptroller's toll free hotline: 1-800-232-5454

Said sign shall be displayed in a prominent place, located near the passageway(s) through which the public passes to receive State funded services.

D.21. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

(a) The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document as Attachment C, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the contractor and made available to state officials upon request.

(b) Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of

any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the contractor and made available to state officials upon request.

(c) The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.

(d) The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this contract.

(e) For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

IN WITNESS WHEREOF:

[PROVIDER'S NAME]:

_____

(Provider's Signature Authority) **Date**

DEPARTMENT OF FINANCE AND ADMINISTRATION, BUREAU OF TENNCARE:

_____

Mark Emkes, Commissioner **Date**

DEPARTMENT OF INTELLECTUAL AND DEVELOPMENTAL DISABILITIES:

03/29/2012

_____

James M. Henry, Commissioner **Date**

AUTHORIZATION TO VENDOR

STATE		VENDOR	
STATE AGENCY:	Department of Intellectual and Developmental Disabilities	**VENDOR:**	[PROVIDER'S NAME]
		FEIN/SSN:	
		ADDRESS:	
ALLOTMENT:	344.02	**PHONE:**	
COST CENTER:	Multiple	**FAX:**	

SERVICE

REFER TO INDIVIDUAL SUPPORT PLAN FOR: SERVICE AUTHORIZED, SERVICE DATES, SERVICE COST

TERMS OF AUTHORIZATION

1. The Vendor agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of the authorized service or in the employment practices of the Vendor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law.
2. The State may terminate this purchase without cause for any reason, and such termination shall not be deemed a breach of contract by the State.
3. Activities and records pursuant to this Authorization shall be subject to monitoring and evaluation by the State or duly appointed representatives.
4. The State is not responsible for the payment of services rendered without specific, written authorization.
5. The Vendor will submit an invoice in form and substance acceptable to the State to effect payment. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. The Provider's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this agreement, not to constitute proper remuneration for compensable services. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this Contract any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
6. The Vendor shall not be compensated or reimbursed for Travel, meals, or lodging.
7. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
8. The Vendor shall ensure compliance with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
9. This Authorization to Vendor and the Vendor shall be subject to the terms and conditions of the Vendor's "Provider Agreement" with the State of Tennessee.

This Authorization To Vendor shall be effective upon acceptance.

AUTHORIZATION		ACCEPTANCE	
SIGNATURE:		**SIGNATURE:**	
TITLE:	Commissioner	**TITLE:**	
DATE:	03/29/12	**DATE:**	

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

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

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION