



CONTRACT AMENDMENT COVER SHEET

Agency Tracking # 31865-00633	Edison ID	Contract # 77998	Amendment # 1		
Contractor Legal Entity Name Consumer Direct for Tennessee, LLC			Edison Vendor ID 0000268391		
Amendment Purpose & Effect(s) Changes to Scope					
Amendment Changes Contract End Date: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		End Date: June 30, 2026			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):			\$ 0.00		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2024	\$6,090,666.67	\$6,090,666.67	\$0.00	\$0.00	\$12,181,333.34
2025	\$6,090,666.66	\$6,090,666.67	\$0.00	\$0.00	\$12,181,333.33
2026	\$6,090,666.67	\$6,090,666.66	\$0.00	\$0.00	\$12,181,333.33
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL:	\$18,272,000.00	\$18,272,000.00	\$0.00	\$0.00	\$36,544,000.00
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. <div style="font-size: 2em; font-weight: bold; margin-left: 20px;">Crystal Allen</div> <div style="font-size: 0.8em; margin-left: 20px;"> Digitally signed by: Crystal Allen DN: CN = Crystal Allen email = crystal.g.allen@tn.gov C = US O = TennCare OU = Fiscal Date: 2025.02.20 12:53:31 -06'00' </div>			CPO USE		
Speed Chart (optional)		Account Code (optional)			

**AMENDMENT 1
OF CONTRACT 77998**

This Amendment is made and entered by and between the State of Tennessee, The Department of Finance and Administration, Division of TennCare, hereinafter referred to as the "State" and Consumer Direct for Tennessee, LLC, hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract Section A.6. is deleted in its entirety and replaced with the following:
 - A.6. In addition, the Contractor shall process referrals for persons specified by TennCare who are not yet enrolled in CHOICES, ECF CHOICES, or Katie Beckett Part A but who may qualify for CHOICES, ECF CHOICES, or Katie Beckett Part A only through receipt of Consumer-Directed services, and shall perform functions necessary to facilitate such participation should the person ultimately be enrolled in CHOICES, ECF CHOICES, or Katie Beckett Part A and in Consumer Direction of Eligible CHOICES, ECF CHOICES HCBS, Katie Beckett Part A.

2. Contract Section A.20. Subsection e.1. is deleted in its entirety and replaced with the following:
 - A.20.e.1. For CHOICES, ECF CHOICES, Katie Beckett, Comprehensive Aggregate Cap (CAC) Waiver and Statewide (SW) Waiver, this includes ensuring that a person who lives with the Member is not paid to provide any of the following services, as applicable: Personal Care, Personal Assistance, Supportive Home Care, In-Home Respite, or Community Transportation Services.

3. Contract Section A.30.b. is deleted in its entirety and replaced with the following:
 - A.30.b. Complete a background check, which includes a criminal background check (including fingerprinting), or, as an alternative, a background check from a licensed private investigation company, verification that the person's name does not appear on the State abuse registry, verification that the person's name does not appear on the national sexual offender registry, and verification that the person has not been excluded from participation in Medicare, Medicaid, SCHIP, or any federal health care programs (as defined in Section 1128B(f) of the Social Security Act as determined by appearance on the Health and Human Services Office of Inspector General (HHS-OIG) List of Excluded Individuals and Entities (LEIE), the General Services Administration (GSA) System for Award Management (SAM), the Social Security Death Master File, and other exclusion and/or other professional board databases, as applicable.). A background check is required prior to a Worker's initial employment, and not again thereafter, unless an individual ceases to be a Worker for a period of one (1) year or more, in which case such an individual would need to undergo a new criminal background check, including checks of the required registries above, before restarting as a Worker. A Member/Representative cannot waive a background check for a potential Worker. A background check may reveal a potential Worker's past criminal conduct that may pose an unacceptable risk to the Member. The following findings may place the Member at risk and may disqualify a person from serving as a Worker:
 1. Conviction of an offense involving: physical, sexual, or emotional abuse; neglect; financial exploitation or misuse of funds; misappropriation of property; theft from any person; violence against any person; or manufacture, sale, possession or distribution of any drug; and

2. Entering of a plea of nolo contendere or when a jury verdict of guilty is rendered but adjudication of guilt is withheld with respect to a crime reasonably related to the nature of the position sought or held.
4. Contract Section A.31. is deleted in its entirety and replaced with the following:
- A.31. A potential worker is prohibited from employment, and a member is prohibited from hiring a potential worker, in the following situations:
- a. The potential worker is on a State abuse registry;
 - b. The potential worker is on the national sexual offender registry; or
 - c. The potential worker is excluded from participation in Medicare, Medicaid, SCHIP, or any Federal health care program.
5. Contract Section A.32, is deleted in its entirety and replaced with the following:
- A.32. If a potential Worker for a Member has a background check that includes past criminal conduct, the Member/Representative shall review the past criminal conduct with the help of the Contractor. The Member/Representative, with the assistance of the FEA, shall consider the following factors:
- a. Whether or not the evidence shows that the criminal conduct is related to the job in such a way that could place the Member/Representative at-risk;
 - b. The nature and gravity of the offense or conduct, such as whether the offense is related to physical or sexual or emotional abuse of another person, if the offense involves violence against another person or the manufacture, sale or distribution of drugs;
 - c. The time that has passed since the offense or conduct and/or completion of the sentence.
- After considering the above factors and any other evidence submitted by the potential Worker, the Member/Representative shall decide whether to hire the potential Worker. If a Member/Representative decides to hire the potential Worker, the Contractor shall assist the Member/Representative in notifying the Member's MCO of this decision and shall collaborate with the MCO and amend the Member's PSCP to reflect that the Member voluntarily chose to take on the risk associated with hiring an individual with a criminal history and is solely responsible for any negative consequences stemming from that decision. The Contractor shall also collaborate with the member's MCO on a risk mitigation strategy.
6. Contract Section A.39. Subsection d. is deleted in its entirety and replaced with the following:
- 39.d. In-Person training on Cardiopulmonary Resuscitation (CPR) and first aid certification;
7. Contract Section A.40. is deleted in its entirety and replaced with the following:
- A.40. The Contractor shall collect documentation from the Workers that represent that they have successfully completed in-person CPR and first aid certification and all required training prior to service initiation and payment for services. The Contractor shall also collect documentation from the Workers that represent they maintain CPR and first aid certification and receive required refresher training as a condition of continued employment within CHOICES, ECF CHOICES, or Katie Beckett Part A, or Self-Direction in the 1915(c) Waiver Program, or Katie Beckett Part B, as applicable. The Contractor shall develop and maintain a process for notifying the Member/Representative, the Worker, and the Member's MCO or DDA, as applicable, of an expiring CPR and/or first aid certification a minimum of ninety (90) calendar days

prior to the expiration date and shall continue to track and notify the Member/Representative and Worker until the new certification is obtained.

8. Contract Section A.42. is deleted in its entirety and replaced with the following:

- A.42. The Contractor shall provide directly, or through a subcontractor, Supports Brokerage functions. The Contractor shall assign a Supports Broker to each Member, and ensure that each Supports Broker provides the following services to each Member in a 1915(c) waiver, CHOICES, ECF CHOICES, or Katie Beckett Part A or Member in Katie Beckett Part B:
- a. Collaborate with the Member's Care Coordinator, Support Coordinator, Nurse Care Manager, or DDA Case Manager as applicable;
 - b. Within ten (10) business days of being assigned to a Member, conduct a face-to-face visit with that Member, unless the Member/Representative requests a meeting outside of this timeframe. For Members receiving only reimbursement services including but not limited to reimbursement for Community Transportation, Vehicle Modification, or Premium Assistance, enrollment can be completed by phone, unless the Member/Representative requests a face-to-face visit. If the Member later elects to receive another service through consumer direction that is not reimbursement only, a face-to-face visit would be required at that time, in addition to all applicable processes, as outlined in A.42.
 - c. Submit a completed enrollment packet to the Contractor within one (1) business day of completing the face-to-face visit or phone call with the Member;
 - d. Participate in development of the Member's PCSP/Plan of Care, including the risk assessment process, as appropriate, and if requested by the Care Coordinator, Support Coordinator, Nurse Care Manager, DDA Case Manager, or Member/Representative;
 - e. Assist the Member/Representative, if requested, in developing (as part of the on boarding process for new Workers) a schedule for the Member's Workers that comports with the schedule at which services are needed by the Member as reflected in the PCSP;
 - f. Assist the Member in developing the initial Back-up Plan in accordance with the requirement in Section A.17 of this Contract;
 - g. Ensure all services and items outlined in the PCSP remain within the CHOICES, ECF CHOICES, Katie Beckett, or 1915(c) Waiver Program parameters, service maximums, and waiver limits established by TennCare or DDA, as applicable.
 - h. Assist the Member/Representative in managing and monitoring EVV check-in and outs and payments to Workers;
 - i. Assist the Member/Representative, if requested, in identification of new Workers through tasks including but not limited to helping drafting job descriptions and working with Members/Representatives to determine necessary Worker skills specific to Members;
 - j. Train new Workers pursuant to Contract Section A.39, and assist with training refreshers as needed;
 - k. Provide intensive, hands-on assistance to the Member/Representative and their Workers in completing all required Consumer Direction paperwork. Such assistance shall include but not be limited to making weekly phone calls to the

Member/Representative and/or Worker, as applicable, if completed paperwork is not received and is preventing the initiation of services. Such calls shall begin five (5) business days from the Contractor's submission of the paperwork to the Member/Representative and/or Worker, and shall continue until all required paperwork is completed or the Member or Worker are no longer involved in Consumer Direction;

- l. Assist the Member/Representative with training in a manner that meets the service authorization and initiation timelines specified in this Contract in Section A.20, and meets the requirements for training the Member/Representative provided in Section A.28 of this Contract;
 - m. When it is necessary for a Member to employ new or additional Workers, the Supports Broker shall assist with the completion of all required employment paperwork and provide all required training to the Worker in accordance with Section A.39 of this Contract;
 - n. If a Member transitions between the CHOICES, ECF CHOICES, Katie Beckett Part A, Katie Beckett Part B, or a 1915(c) Waiver Program, the Supports Broker shall track the Member across all applicable programs as necessary to assist the Member with the transition and ensure: 1) there are no interruptions or gaps in services for the Member; 2) Workers also transition efficiently across the programs (the one the Member is transitioning from and the one the Member is transitioning to); and 3) payment to Workers remains accurate and timely;
 - o. In programs where Support Broker services are provided, the Support Broker will work closely with the Contractor to communicate and resolve payroll issues;
 - p. Report any instances of abuse, neglect, or exploitation to DDA and review regulations with Member/Representative and Worker during an investigation;
 - q. Assist in all compliance with audit requests from TennCare, DDA, and other State entities until contract expiration;
 - r. Maintain knowledge of changes in Self-Direction and Consumer Direction, CHOICES, ECF CHOICES, Katie Beckett, 1915(c) Waiver Program, and the FEA-DDA Partnership Agreement;
 - s. Identify problem areas for those Members who are not successful at Self-Direction or Consumer Direction. Work with the Support Coordinator, Care Coordinator, Nurse Care Manager, or DDA Case Manager on how to support the Member's family or Representative to become successful; and
 - t. Assist Members with bilingual services/translation services, culturally diverse and hearing/sight impaired services.
9. Contract Section A.60. is deleted in its entirety and replaced with the following:
- A.60. The Contractor shall report all Reportable Events occurring to CHOICES, ECF CHOICES, and Katie Beckett Members, and 1915(c) Waiver Program Members to DDA within one (1) business day of witnessing or discovering such event, contact the DDA Abuse Hotline as soon as possible, but no later than within four (4) hours of any Tier 1 Reportable Events, and shall also contact Adult Protective Services (APS) or law enforcement in accordance with State law. A corresponding Reportable Event Form (REF) must be submitted by the Event Management Coordinator (EMC) or designee by utilizing the Formstack link within one (1) business day of witnessing or discovering such event. In HCBS programs, there are three (3) categories of Reportable Events: Tier 1, Tier 2, and Additional Reportable Events and Interventions. The type of Reportable Event dictates the

reporting requirements and process that must be followed by the provider, MCO, FEA, and DDA, as applicable. DDA shall triage all allegations reported via the Abuse Hotline with two (2) business days (unless pending results of medical assessment, laboratory test, expert opinion, etc.) to determine the need for an investigation. All allegations will be investigated by DDA.

10. Contract Section A.65. is deleted in its entirety and replaced with the following:

A.65. If Reportable Event allegations are substantiated against a Representative or Worker as a result of an investigation, and result in placement on any registry or exclusion list included in the Contractor Risk Agreement, the Representative or Worker shall no longer be allowed to participate in CHOICES, ECF CHOICES, Katie Beckett, or 1915(c) Waiver Program in any capacity. Further, the Contractor shall notify TennCare within forty-eight (48) hours of a person being found on any abuse registry, and collaborate with DDA or MCOs, as applicable, if placement on a State abuse registry is appropriate. If the investigation is unsubstantiated, the Member/Representative may elect to retain the Worker, or the Member may elect to retain the Representative. The Member's MCO or DDA, with appropriate assistance from the Contractor, shall make any updates to the PCSP, including assessed risks based on this decision, deemed necessary to help ensure the Member's health and safety.

11. Contract Section A.67. is deleted in its entirety and replaced with the following:

A.67. The Contractor shall follow reporting requirements outlined in the Reportable Event Management (REM) protocol located on the DDA website (<https://www.tn.gov/disability-and-aging/provider-information/reportable-event-management.html>), including but not limited to, the requirement to contact the DDA Abuse Hotline within four (4) hours of Tier 1 Reportable Events. The Contractor shall report all events outlined in the REM protocol within one (1) business day of the Contractor becoming aware of the event, of Worker identification of reportable events in accordance with DDA's reportable event reporting process, including the form to be used to report all reportable events and reporting timeframes.

12. Contract Section A.85. is deleted in its entirety and replaced with the following:

A.85. All Supports Brokers and other staff, including subcontractors, whose job functions include direct contact with or responsibility for Members shall complete a background check, which includes criminal background check (including fingerprinting), or, as an alternative, a background check from a licensed private investigation company. Additionally, the Contractor shall verify that the person's name does not appear on the State abuse registry, national sexual offender registry, the federal government's LEIE and SAM exclusion databases, TennCare's Terminated Provider List and verify licensure, as applicable.

13. Contract Section A.93. is deleted in its entirety and replaced with the following:

A.93. For Members in Katie Beckett Part B and Members receiving reimbursement only services, such as Community Transportation, the Contractor shall electronically submit claims in a format and frequency agreed upon by DDA, the MCOs, and the Contractor. Adjustment and corrections of claims shall occur in a timely manner, within no more than one hundred and twenty (120) calendar days of date of service. Any extension of this time frame shall be approved by DDA or the MCOs.

14. Contract Section A.95. is deleted in its entirety and replaced with the following:

- A.95. Administrative services shall include reimbursement for services authorized and reimbursed that do not require ongoing supports brokerage functions, to include but not limited to functions such as reimbursement for Vehicle Modification and premium assistance in the Katie Beckett Program or Community Transportation reimbursement for Members in the 1915(c) waivers, ECF CHOICES, and CHOICES when said Member is receiving no other Consumer Directed services. Supports brokerage reimbursements shall not be paid for participants receiving only a reimbursed service. For reimbursement for administrative services, the Contractor shall:
- a. Submit an administrative invoice monthly per TennCare prescribed requirements, which includes at a minimum: number of current Members and new Members; number of current Workers and new Workers; names, Member ID, and Worker Provider Number for each Member and Worker;
 - b. Have a comprehensive information system in place for submitting the administrative invoice billing to TennCare electronically; and
 - c. Provide an accurate report of current enrollment/Member activity.
15. Contract Section A.96. Subsection a. is deleted in its entirety and replaced with the following:
- A.96. The Contractor shall:
- a. Disclose to TennCare in a form and manner specified by TennCare, and the Comptroller General of the United States or Centers for Medicare and Medicaid full and complete information regarding ownership, financial transactions and persons convicted of criminal activity related to Medicare, Medicaid, or the federal Title XX programs in accordance with federal and state requirements, including Public Chapter 379 of the Acts of 1999. The Contractor shall screen its employees and any subcontractors initially and on an ongoing monthly basis to determine whether any of them has been excluded from participation in Medicare, Medicaid, SCHIP, or any Federal health care programs (as defined in Section 1128B (f) of the Social Security Act) and not employ or contract with an individual or entity that has been excluded, as listed in the LEIE database. The Contractor shall disclose the following information on the form located at <https://www.tn.gov/content/dam/tn/disability-and-aging/documents/provider-information/become-a-credentialed-provider/Disclosure%20Form%20for%20Provider%20-%20Entities.pdf>:
 1. The name and address of each person with an ownership or control interest in the disclosing entity or in any provider or subcontractor in which the disclosing entity has direct or indirect ownership of five percent (5%) or more and whether any of the persons named pursuant to this requirement is related to another as spouse, parent, child, or sibling. This disclosure shall include the name of any other disclosing entity in which a person with an ownership or control interest in the disclosing entity also has an ownership or control interest;
 2. The identity of any provider or subcontractor with whom the Contractor has had significant business transactions, defined as those totaling more than twenty-five thousand dollars (\$25,000) during the twelve (12) month period ending on the date of the disclosure, and any significant business transactions between the Contractor, any wholly owned supplier, or between the Contractor and any provider or subcontractor, during the five (5) year period ending on the date of the disclosure;
 3. The identity of any person who has an ownership or control interest in the Contractor, or is an agent or managing employee of the Contractor and who has been convicted of a criminal offense related to that person's involvement in any program under

Medicare, Medicaid, or the federal Title XX services program since the inception of those programs; and

4. Disclosure from officials in legislative and executive branches of government as to possible conflicts of interest.

16. Contract Section C.3. is deleted in its entirety and replaced with the following:

C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
- b. The period beginning May 1, 2023, through June 30, 2023, shall be an uncompensated transition period whereby payments for services begin on July 1, 2023.
- c. The Contractor shall be compensated based upon the following payment methodology:

July 1, 2023, through June 30, 2026	
Cost Item Description	Amount (per compensable increment)
* Financial Administration	\$75.88 Per Member/Per Month
* Supports Brokerage	\$96.12 Per Member/Per Month
Set-Up for New Consumer Direction Participant	\$95.00 Per Month
Set-Up for New Consumer Directed Worker	\$125.00 Per Worker
July 1, 2026, through June 30, 2028 (Option Years 1 and 2)	
Cost Item Description	Amount (per compensable increment)
* Financial Administration	\$75.88 Per Member/Per Month
* Supports Brokerage	\$96.12 Per Member/Per Month
Set-Up for New Consumer Direction Participant	\$95.00 Per Month
Set-Up for New Consumer Directed Worker	\$125.00 Per Worker

*The Per Member per Month (PMPM) payment shall be based only on Members enrolled in Consumer Direction of HCBS, defined as the number of CHOICES, ECF CHOICES, Comprehensive Aggregate Cap Waiver, Statewide Waiver, or Katie Beckett Part A Members with an active authorization for Consumer Direction services who are receiving Consumer-Directed services, or the number of Self-Determination Waiver, or Katie Beckett Part B Members with an active authorization for Self-Direction services who are receiving Self-Directed services.

*The Per Member per Month (PMPM) supports brokerage payments shall not be paid for Members receiving only reimbursed services that do not require ongoing supports brokerage functions, such as Vehicle Modification or Premium Assistance reimbursements for Katie Beckett members and Community Transportation reimbursements for 1915(c) Waiver, ECF CHOICES, and CHOICES with no other consumer-directed services. Reimbursement only services shall be billed as PMPM Financial Administration rates for each month a reimbursement service is utilized.

The set-up fee covers all applicable costs for processing paperwork, completing training, etc., for new CHOICES Members (including persons specified by TennCare who are not enrolled in CHOICES, but who may qualify for CHOICES only through receipt of Consumer-Directed services), ECF CHOICES Members, Katie Beckett Part A Members, 1915(c) Waiver Program and Katie Beckett Part B Members, Representatives and their identified Workers, including background checks. These fees may be billed only upon completion of all tasks associated with Member or Worker enrollment, and shall not be billed when a Member withdraws from Consumer Direction or Self Direction prior to completion of these tasks, and/or when a Worker decides not to proceed with employment prior to completion of these tasks, or is determined to not qualify for employment. Except for lapses in employment of a Worker, which warrant a new background check as specified in Section A.30 above, the fee shall be applicable only once per lifetime for each Member/Representative, and/or Worker, even if the Worker is employed by multiple Members/Representatives and regardless of any lapses in the Member's participation in Consumer Direction or Self Direction. Set-up fees for New Consumer Direction or Self-Direction Referral and for New Workers shall not be paid to the Contractor for Members already enrolled in Consumer Direction or Self-Direction and transitioned to the Contractor at implementation of this Contract, or for the Workers already employed to provide services.

17. The following is added a Contract section E.29.:

E.29. Referenced/Cited State Agency Name. All references to the Department of Intellectual and Developmental Disabilities (DIDD)" shall be deleted and replaced with "Department of Disability and Aging (DDA)."

18. Attachment A is deleted in its entirety and replaced with the new Attachment A attached hereto.

19. Attachment B is deleted in its entirety and replaced with the new Attachment B attached hereto.

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

Amendment Effective Date. The revisions set forth herein shall be effective once all required approvals are obtained. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

CONSUMER DIRECT FOR TENNESSEE, LLC:



SIGNATURE

February, 19, 2025

DATE

Beth Peterson, Chief Operating Officer

PRINTED NAME AND TITLE OF SIGNATORY (above)

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

Jim Bryson / JB

2/20/2025

JIM BRYSON, COMMISSIONER

DATE

ATTACHMENT A

DEFINITIONS

Abuse - Provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes recipient practices that result in unnecessary cost to the Medicaid program (see 42 C.F.R. 455.2).

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

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

Budget Authority – An HCBS self-directed model that allows participants to hire, fire, and supervise personal support workers (e.g., personal care attendants, homemakers), as well as use their funds to purchase other goods and services designed to meet disability-related needs and, in the case of people with psychiatric disabilities, recovery-related supports.

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

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

Caregiver - For purposes of CHOICES and ECF CHOICES, a person who is (a) a family member or is unrelated to the member but has a close, personal relationship with the member and (b) routinely involved in providing unpaid support and assistance to the member. A caregiver may be also designated by the member as a representative for CHOICES or ECF CHOICES or for consumer direction of eligible CHOICES HCBS or eligible ECF CHOICES. For purposes of Part A of the Katie Beckett Program, the "caregiver" is generally the child's parent(s) or other legal guardian except when someone other than the

child's parent(s) or other legal guardian are routinely involved in providing unpaid support and assistance to the child.

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

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

Comprehensive Aggregate Cap Waiver (CAC) — A HCBS Waiver (Control Number TN 0357) approved by the Centers for Medicare and Medicaid Services pursuant to Section 1915(c) of the Social Security Act which serves individuals with intellectual disabilities who are former members of the certified class in the United States vs. the State of Tennessee, et al. (Arlington Developmental Center), former members of the certified class in the United States vs. the State of Tennessee, et al. (Clover Bottom Developmental Center), persons discharged from the Harold Jordan Center following a stay of at least 90 days, and individuals transitioned from the Statewide Waiver (#0128) upon its renewal on January 1, 2015, because they were identified by the state as receiving services in excess of the individual cost neutrality cap established for the Statewide Waiver. These are individuals who have been institutionalized in a public institution, were part of a certified class because they were determined to be at risk of placement in a public institution, or have significant services/support needs consistent with that of the population served in a public ICF/IID and who qualify for and, absent the provision of services provided under the CAC waiver, would require placement in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID). The CAC Waiver offers a continuum of services that are designed to support each person's independence and integration into the community, including opportunities for employment and work in competitive integrated settings and engage in community life. A person-centered planning process is used to identify services to be included in each waiver member's Person-Centered Support Plan, based on the person's individually identified goals and need for specific services to advance toward, achieve or sustain those goals.

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

Consumer-Directed or Self-Directed Worker (Worker) – An individual who has been hired by a Member/Representative, or by a parent or other legal guardian of a Katie Beckett member to provide one or more Eligible CHOICES HCBS, Eligible ECF CHOICES HCBS, Eligible Katie Beckett HCBS, or Eligible 1915(c) Waiver Program HCBS to the Member. Worker does not include an employee of an agency that is being paid by an MCO or DDA to provide HCBS to the Member.

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

Consumer Direction of Eligible Katie Beckett HCBS - The opportunity for the parent or other legal guardian of a child enrolled in Katie Beckett Part A assessed to need specified types of Katie Beckett HCBS as set forth in TennCare rules and regulations as available for consumer direction to elect to direct

and manage (or in limited circumstances to have a representative direct and manage) certain aspects of the provision of such services – primarily, the hiring, firing, and day-to-day supervision of consumer-directed workers delivering the needed service(s) and the delivery of each eligible Katie Beckett HCBS within the authorized budget for that service. Eligible Katie Beckett HCBS do not include home health or private duty nursing services.

Consumer-Direction of Eligible 1915(c) Comprehensive Aggregate Cap/Statewide Waiver HCBS—

The opportunity for a CAC or SWW Member assessed to need specified types of HCBS, limited to personal assistance, respite, and individual/community transportation; or any other service approved by CMS and specified in TennCare Rules as available for Consumer to elect to direct and manage (or to have a Representative direct and manage) certain aspects of the provision of such services—primarily, the hiring, firing, and day-to-day supervision of Consumer-Directed workers delivering the needed service(s), including, the delivery of each eligible CAC Waiver or SWW HCBS within the authorized budget for that service.

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

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

Credible Allegation of Fraud – An allegation of fraud which has been evaluated by the State, using information from any source, including:

- Fraud hotline complaints,
- Claims data mining, and/or
- Patterns identified through provider audits, civil false claims cases, and law enforcement investigations.

Allegations are considered to be credible when they have indicia of reliability and the State Medicaid agency has reviewed all allegations, facts, and evidence carefully and acts judicially on a case-by-case basis. (42 CFR 455.2) TCR 1200-13-18-.02(11).

Department of Disability and Aging Case Manager (Case Manager) - A qualified individual employed by DDA who provides support coordination services to members in the Self-Determination Waiver and is responsible for the assessment, planning, implementation, coordination, and monitoring of services and supports that assist individuals with intellectual and developmental disabilities enrolled in the program to identify and achieve individualized goals related to work (in competitive, integrated employment), personal relationships, community involvement, understanding and exercising personal rights and responsibilities, financial management, increased independence and control over their own lives, and personal health and wellness as specified in the Person-Centered Support Plan (PCSP), and the tracking and measurement of progress and outcomes related to such individualized goals, as well as the provider’s performance in supporting the person’s achievement of these goals.

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

Eligible ECF CHOICES HCBS - For purposes of Consumer Direction, ECF CHOICES HCBS that may be Consumer-Directed are limited to personal assistance, supportive home care, hourly respite, community transportation, and/or any other ECF CHOICES HCBS specified in TennCare Rules as eligible for Consumer Direction which an ECF CHOICES Member is determined to need and elects to direct and manage (or have a Representative direct and manage) certain aspects of the provision of such services – primarily the hiring, firing and day-to-day supervision of Consumer-Directed workers delivering the

needed service(s) and the delivery of each eligible ECF CHOICES HCBS within the authorized budget for that service. Eligible ECF CHOICES HCBS do not include home health or private duty nursing services.

Eligible Katie Beckett HCBS - Respite, Supportive Home Care, Community Transportation and any other Katie Beckett HCBS specified in TennCare rules and regulations as eligible for consumer direction for which a Katie Beckett member is determined to need and which the member's parent or other legal guardian elects to direct and manage (or in limited circumstances to have a representative direct and manage) certain aspects of the provision of such services – primarily the hiring, firing and day-to-day supervision of consumer-directed workers delivering the needed service(s) and, as applicable, the delivery of each eligible Katie Beckett HCBS within the authorized budget for that service. Eligible Katie Beckett HCBS do not include home health or private duty nursing services.

Eligible 1915(c) Comprehensive Aggregate Cap/Statewide Waiver Program HCBS - For purposes of Consumer-Direction, Eligible 1915(c) CAC or SWW Program HCBS that may be Consumer-Directed are limited to respite services, personal assistance, and individual/community transportation services.

Eligible 1915(c) Self-Determination Waiver Program HCBS - For purposes of Self-Direction, Eligible 1915(c) Waiver Program HCBS that may be Self-Directed are limited to respite services (when provided by an approved respite provider who serves only one (1) Member), personal assistance; and individual/community transportation services.

Employer Authority – An HCBS self-directed model that allows participants to hire, fire, and supervise personal support workers (e.g., personal care attendants, homemakers), but does not allow the participant to use their funds for any other goods or services.

Employer of Record – The Member or a Representative designated by the Member to assume the Consumer Direction or Self-Direction functions on the Member's behalf or the parent or other legal guardian of a Katie Beckett member participating in consumer direction of eligible Katie Beckett HCBS. In limited circumstances, the parent or legal guardian of a child in Katie Beckett may delegate a representative for consumer direction.

Electronic Visit Verification (EVV) Compliance – The consistent use of an electronic visit verification method when checking in and out of visits.

Event Management Coordinator (EMC) – The individual employed by a provider agency who is responsible for ensuring compliance with and fulfilling event management responsibilities related to REM.

False Claims Act - A federal law that creates civil liability for any person or organization that knowingly files a false claim (1902(a)(68) of the social security act) or makes a false record seeking payment from the U.S. government services or supplies. The State of Tennessee has a similar statute, the Tennessee Medicaid False Claims Act that only applies to false claims submitted under the state's Medicaid program. 31 U.S.C. 2739; T.C.A. 71-5-181 through 71-5-184.

FICA - Federal Insurance Contributions Act.

Fiscal Employer Agent (Contractor) – An entity contracting with the State, MCOs, and/or DDA that helps Members in Consumer Direction and Self-Direction. The Contractor provides both Financial Administration and Supports Brokerage functions for Members. This term is used by the IRS to designate an entity operating under Section 3504 of the IRS code, Revenue Procedure 70-6 and Revenue Procedure 2013-39 as the agent to Members for the purpose of filing certain federal tax forms and paying federal income tax withholding, FICA and FUTA taxes. The Contractor also files state income tax withholding and unemployment insurance tax forms and pays the associated taxes and processes payroll based on the Eligible CHOICES HCBS, Eligible ECF CHOICES HCBS, Eligible Katie Beckett HCBS, or Eligible 1915(c) Waiver Program HCBS, as applicable, authorized and provided.

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

Fraud - An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law (see 42 C.F.R. 455.2).

FUTA - Federal Unemployment Tax Act.

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

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

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

Home and Community-Based Services (HCBS) for Katie Beckett - Specified wraparound services that are available only to eligible children enrolled in Katie Beckett Part A. Only certain Katie Beckett Part A HCBS are eligible for Consumer Direction. Katie Beckett Part A HCBS do not include home health or private duty nursing services or any other HCBS that are covered by Tennessee's Title XIX State Plan or under the TennCare demonstration for all eligible children, although such services shall be counted for purposes of determining whether the cost of providing a Katie Beckett Part A member's needs at home will exceed the estimated Medicaid cost of institutional care.

Individual Support Plan (ISP) – An individualized written plan that identifies a Member's preferences, capacities, needs and resources and that identifies supports and services to meet such needs; and by which Members and their family are assisted to access the 1915(c) Waiver Program, Katie Beckett Part B and other necessary services. Effective September 1, 2021, these plans will be called Person Centered Plans (PCSPs).

Investigation - A review of a provider's services and/or claims submissions in response to a tip or allegation of potential or suspected fraud or abuse. Investigations shall include a retrospective review of claims and may be supplemented by provider and member interviews and provider research.

Katie Beckett Part A - One of two components of Tennessee's Katie Beckett Program that serves a limited number of children with the most significant disabilities or complex medical needs who meet institutional level of care, as established by TennCare, and who qualify for Medicaid only by waiving the deeming of parents' income and/or assets to the child. Children enrolled by TennCare into Katie Beckett Part A are eligible to receive all covered, medically necessary Medicaid benefits, including benefits provided under the Early Periodic Screening, Diagnosis and Treatment (EPSDT) program as well as case management and specified wraparound home- and community-based services not otherwise covered by the Medicaid program, including respite. Part A will consist of children who are under age 18 who (1) have medical needs that are likely to last at least twelve months or result in death; and result in severe functional limitations based on medical eligibility criteria developed by TennCare specifically for children; (2) qualify for care in a medical institution; and (3) qualify for supplemental security income (SSI) due to the child's disability – except for the parent's income and/or assets. To qualify for (initial and continued) enrollment in Katie Beckett Part A, a licensed physician must agree and certify that in-home care will meet the child's needs, the cost of providing the child's care at home (including traditional Medicaid benefits and wraparound HCBS) cannot exceed the estimated Medicaid cost of institutional care, and the child cannot be Medicaid-eligible or receiving long-term services and supports in another Medicaid program. Katie Beckett Part A is administered by TennCare through its contracted MCO.

Katie Beckett Part A Member- A member who has been enrolled by TennCare into Part A of the Katie Beckett Program.

Katie Beckett Program Part B- One of two components of Tennessee's Katie Beckett Program that functions as a Medicaid diversion program and offers a capped package of wraparound services and

supports as well as premium assistance on a sliding fee scale to a broader group of children with disabilities, including those “at risk” of institutionalization. Part B is an innovative, new approach that helps divert children from becoming Medicaid eligible by helping their families purchase private insurance and providing wraparound services and supports to meet the child’s needs. Part B will consist of children who are under age 18 who (1) have medical needs that are likely to last at least twelve months or result in death and result in severe functional limitations based on medical eligibility criteria developed specifically for children; (2) qualify for care in a medical institution or be “at-risk” of institutional placement; and (3) the child cannot be Medicaid eligible or receiving other long-term services and supports in another TennCare Medicaid program. Katie Beckett Part B is administered by DDA.

Katie Beckett Part B Member – A person who has been enrolled by TennCare into Part B of the Katie Beckett Program.

Legal Guardian – For purposes of the Katie Beckett Program, the individual with physical custody of the child and the legal authority to make decisions concerning the child’s protection, education, care, medical treatment, etc., including the child’s PCSP for Katie Beckett. Generally, the child’s parent(s) is the legal guardian except when guardianship has been otherwise established through court proceedings.

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

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

Member – Member shall mean an individual who is enrolled in CHOICES, ECF CHOICES, 1915(c) Waiver, or Katie Beckett and is Consumer-Directing/Self-Directing services under this Contract. The term collectively refers to CHOICES, ECF CHOICES, 1915(c) Waiver, and Katie Beckett Members when used in this Contract, unless a specific program is referenced (i.e., CHOICES Member, ECF CHOICES Member, 1915(c) Waiver Member, or Katie Beckett Member). As it relates to responsibilities pertaining to Consumer Direction in Katie Beckett, the term shall refer to the parent or other legal guardian of the child enrolled in Katie Beckett who has primary physical custody of the child and legal authority to make decisions on the child’s behalf.

Modified Budget Authority – An HCBS self-directed model that allows participants to hire, fire, and supervise personal support workers (e.g., personal care attendants, homemakers), as well as use their funds, in a limited capacity, to purchase other goods and services designed to meet disability-related needs.

Nurse Care Manager – For purposes of the Katie Beckett Program Part A, a person who is employed and contracted by an MCO to perform responsibilities related to the continuous engagement and management of:

- (a) Assessing a child’s strengths, physical and behavioral health and long-term services and supports needs, goals and challenges;
- (b) Identifying the services and supports (including unpaid supports voluntarily provided by family members and other caregivers, and paid services provided by private insurance, the MCO, and other payor sources) that will be provided to the child to meet the child’s physical and behavioral health and long-term services and supports needs, and support the child in achieving his or her individualized goals;
- (c) Working closely with providers in implementing the Integrated Plan of Care. Long-term services and supports identified through nurse care management and provided by the MCO shall build upon and not supplant a member’s existing support system, including but not limited to informal supports provided by family and other caregivers, service that may be available at no cost to the member through other entities, and services that are reimbursable through other public or private funding sources, such as Medicare or private insurance;

(d) Developing and maintaining for each member, through a person and family centered planning process, an individualized, plan of care. The child should be involved in helping define his or her individualized goals and develop the plan of care the maximum extent possible and appropriate. This planning process, and the resulting person and family centered plan of care shall: 1) ensure the delivery of services in a manner that reflects the family's strengths, needs, preferences and choices; 2) assists the child in achieving personally defined outcomes in the most integrated community setting, which shall include planning and preparation for the child's transition to employment and community living with as much independence as possible upon becoming an adult; and 3) help to engage, strengthen, support and build the capacity and confidence of the family in order to ensure the child's safety, well-being and permanency;

(e) ensuring timely access to and provision, coordination and monitoring of covered physical and behavioral health services and wraparound HCBS; and

(f) collaboration between providers and payors of the member's physical and behavioral health services and wraparound HCBS, including physicians, other physical and behavioral health care providers, HCBS providers, TennCare, DDA, the local education authority, Vocational Rehabilitation, and the MCO to facilitate seamless access to care and maximize health and quality of life outcomes, and to plan and prepare for the child's transition to employment and community living with as much independence as possible upon becoming an adult.

Office of Attorney General Medicaid Fraud and Integrity Division (AG/MFID) - The division of the State of Tennessee that is responsible for civil prosecution of violations of the Tennessee Medicaid False Claims Act.

Office of Inspector General (OIG) – The State of Tennessee agency that investigates and may prosecute civil and criminal fraud, waste, and abuse of the TennCare program or any other violations of state law related to the operation of the TennCare program administratively, civilly or criminally.

Office of Program Integrity (OPI) - The State Medicaid Agency unit responsible for the prevention, detection and investigation of alleged provider fraud, waste, and abuse of the TennCare program.

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

- (a) Ensuring that the Contractor allows people chosen by the Member/Representative to be present for discussion about Consumer Direction or Self-Direction, as applicable;
- (b) Provides the Member/Representative with necessary information and support to ensure the Member/Representative directs the process to the maximum extent possible, and is enabled to make informed choices and decisions;
- (c) Required meetings with Members/Representatives are timely and occur at times and locations of convenience for the Member/Representative;
- (d) Reflects cultural considerations of the Member/Representative and is conducted by providing information in plain language and in a manner accessible for individuals with disabilities and individuals who are limited English proficient; and
- (e) The Contractor and its staff have strategies for solving conflict or disagreement.

Person-Centered Support Plan (PCSP) - As it pertains to CHOICES, ECF CHOICES, and the 1915(c) Waiver Program, the PCSP is a written plan developed by the Support Coordinator, Care Coordinator, or DDA Case Manager in accordance with person-centered planning requirements set forth in federal regulation, and in TennCare policies and protocols, using a person-centered planning process that accurately documents the member's strengths, needs, goals, lifestyle preferences and other preferences and outlines the services and supports that will be provided to the member to help them achieve their preferred lifestyle and goals, and to meet their identified unmet needs (after considering the availability and role of unpaid supports provided by family members and other natural supports) through paid services provided by the member's MCO and other payor sources. The person-centered planning process is directed by the member with long-term support needs and may include a representative whom the member has freely chosen to assist the member with decision-making, and others chosen by the member to contribute

to the process. If the member has a guardian or conservator, the member shall lead the planning process to the maximum extent possible, and the guardian or conservator shall have a participatory role as needed and defined by the individual, except as explicitly defined under State law and the order of guardianship or conservatorship. Any decisions made on the member's behalf should be made using principles of substituted judgment and supported decision-making. This planning process, and the resulting PCSP, will assist the member in achieving a personally defined lifestyle and outcomes in the most integrated community setting appropriate, ensure delivery of services in a manner that reflects personal preferences and choices, and contribute to the assurance of health, welfare, and personal growth. Services in CHOICES, and ECF CHOICES shall be authorized, provided, and reimbursed only as specified in the PCSP.

As it pertains to Part A of the Katie Beckett Program, the plan of care is a written document developed by the Nurse Care Manager in accordance with this Contract and in a manner consistent with federal regulation, and in TennCare policies and protocols, through a person- and family-centered planning process that assesses the child's strengths, needs, goals and challenges; and outlines the services and supports (including unpaid supports voluntarily provided by family members and other caregivers, and paid services provided by private insurance, the MCO, and other payor sources) that will be provided to the child to meet the child's physical and behavioral health and long-term services and supports needs and support the child in achieving his or her individualized goals. The child should be involved in helping to define his or her individualized goals and develop the plan of care to the maximum extent possible and appropriate. This planning process, and the resulting person- and family-centered plan of care shall: 1) ensure the delivery of services in a manner that reflects the child and family's strengths, needs, preferences and choices; 2) assist the child in achieving personally defined outcomes in the most integrated community setting, which shall include planning and preparation for the child's transition to employment and community living with as much independence as possible upon becoming an adult, and 3) help to engage, strengthen, support, and build the capacity and confidence of the family in order to ensure the child's safety, well-being and permanency. Services in the Katie Beckett Program shall be authorized, provided, and reimbursed only as specified in the plan of care.

For purposes of CHOICES and Part A of the Katie Beckett Program, "plan of care" shall be used interchangeably with "person-centered support plan" or "PCSP."

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

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

Definitions of each of these terms are contained in TennCare Rule 1200-13-13-.01. Provider does not include Consumer-Directed Workers (See Consumer-Directed Worker); nor does provider include the Contractor (Fiscal Employer Agent).

Reportable Event - For purposes of CHOICES, ECF CHOICES, Katie Beckett, and the 1915(c) Waiver Programs, a Reportable Event is an event that is classified as Tier 1, Tier 2, or Additional Reportable Events, as defined by TennCare, that the contracted provider, MCO, or Contractor shall be responsible for reporting to the Member's MCO, DDA, law enforcement, and/or APS or CPS, as appropriate, within the timeframes and in the manner as specified by TennCare .

Representative – As it relates to Consumer Direction in the 1915(c) Comprehensive Aggregate Cap and Statewide Waivers, CHOICES and ECF CHOICES, and Self-Direction in the 1915(c) Self-Determination Waiver Program, a person who is authorized by the Member to serve as the Employer of Record, and to direct and manage the Member's Worker(s), and signs a Representative agreement. As it relates to Katie Beckett, the parent or other legal guardian of a Katie Beckett member will generally serve as the Employer of Record, but may authorize a representative for consumer direction in limited circumstances. The child cannot assume Consumer Direction or Self-Direction functions or authorize a Representative to

perform such functions. The Representative for Consumer Direction or Self-Direction must also: be at least eighteen (18) years of age; have a personal relationship with the Member and understand his/her support needs; know the Member's daily schedule and routine, medical and functional status, medication regimen, likes and dislikes, and strengths and weaknesses; and be physically present in the Member's residence on a regular basis or at least at a frequency necessary to supervise and evaluate Workers.

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

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

Self-Direction of Health Care Tasks – A decision by a Member or the parent or other legal guardian of a Katie Beckett member in Consumer Direction or Self-Direction to direct and supervise a paid Worker delivering Eligible CHOICES HCBS, Eligible ECF CHOICES, Eligible Katie Beckett HCBS, or Eligible 1915(c) Waiver Program HCBS in the performance of health care tasks that would otherwise be performed by a licensed nurse. Self-Direction of health care tasks is not a service, but rather, health care-related duties and functions (such as administration of medications) that a Member in Consumer Direction or Self-Direction or the parent or other legal guardian of a child enrolled in Katie Beckett may elect to have performed by a Consumer-Directed or Self-Directed Worker as part of the delivery of Eligible CHOICES HCBS, Eligible ECF CHOICES HCBS, Eligible Katie Beckett HCBS, or Eligible 1915(c) Waiver Program HCBS s/he is authorized to receive.

Self-Determination Waiver Program - A Home and Community Based Services (HCBS) Waiver (Control Number TN 0427) approved by the Centers for Medicare and Medicaid Services pursuant to Section 1915(c) of the Social Security Act which serves children and adults with intellectual disabilities and children under age six with developmental delay who qualify for and, absent the provision of services provided under the Self-Determination waiver, would require placement in a private Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID). The Self-Determination Waiver Program affords Members the opportunity to directly manage selected services, including the recruitment and management of service providers. Members and families (as appropriate) electing self-direction are empowered and have the responsibility for managing, in accordance with waiver service definitions and limitations, a self-determination budget affording flexibility in service design and delivery. The Self-Determination Waiver Program serves persons who have an established non-institutional place of residence where they live with their family, a non-related caregiver or in their own home and whose needs can be met effectively by the combination of waiver services through this program and natural and other supports available to them. The Self-Determination Waiver does not include residential services such as supported living. The Self-Determination Waiver offers a continuum of services that are designed to support each person's independence and integration into the community, including opportunities for employment and work in competitive integrated settings and engage in community life. A person-centered planning process is used to identify services to be included in each waiver participant's Person-Centered Support Plan, based on the person's individually identified goals and need for specific services to advance toward, achieve or sustain those goals.

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

Statewide Waiver – A HCBS Waiver (Control Number TN 0128) approved by the Centers for Medicare and Medicaid Services pursuant to Section 1915(c) of the Social Security Act serves children and adults with intellectual disabilities and children under age six with a developmental disability who qualify for and, absent the provision of services provided under the Statewide Waiver, would require placement in a

private Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID). The Statewide Waiver offers a continuum of services that are designed to support each person's independence and integration into the community, including opportunities for employment and work in competitive integrated settings and engage in community life. A person-centered planning process is used to identify services to be included in each waiver participant's Person-Centered Support Plan, based on the waiver person's individually identified goals, and need for specific services to advance toward, achieve or sustain those goals.

Support Coordinator (CAC & Statewide Waiver) – For purposes of CAC & Statewide Waiver members, a qualified individual employed by an Independent Support Coordination provider agency contracted with one or more MCOs to provide support coordination services to members in the Statewide or CAC Waivers and is responsible for the assessment, planning, implementation, coordination, and monitoring of services and supports that assist individuals with intellectual and developmental disabilities enrolled in the program to identify and achieve individualized goals related to work (in competitive, integrated employment), personal relationships, community involvement, understanding and exercising personal rights and responsibilities, financial management, increased independence and control over their own lives, and personal health and wellness as specified in the Person-Centered Support Plan (PCSP), and the tracking and measurement of progress and outcomes related to such individualized goals, as well as the provider's performance in supporting the person's achievement of these goals.

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

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

Supports Broker - An individual assigned by the Contractor to each Member who assists the Member/Representative as requested by the Member/Representative in performing certain Employer of Record functions as follows: developing job descriptions; recruiting, interviewing, and hiring Workers; Member and Worker enrollment in Consumer Direction and Consumer Direction training or Self-Direction and Self-Direction training, as applicable; and developing (as part of the onboarding process for new Workers) a schedule for the Member's Workers that comports with the schedule at which services are needed by the Member as reflected in the Member's or Person's Supported PCSP, as applicable. The Supports Broker shall also assist the Member as needed with developing and verifying the initial Back-up Plan. The Supports Broker collaborates with the Member's Care Coordinator, Support Coordinator, Nurse Care Manager, or DDA Case Manager, as applicable and appropriate. The Supports Broker does not have authority or responsibility for Consumer Direction or Self-Direction. The Member/Representative must retain authority and responsibility for Consumer Direction or Self-Direction, as applicable.

SUTA - State Unemployment Tax Act.

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

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

TennCare Employment and Community First CHOICES (ECF CHOICES) - A managed long-term services and supports program that offers HCBS 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.

TennCare Katie Beckett Program (Katie Beckett) – A program which offers Medicaid-reimbursed assistance to a specified number of eligible children under age 18 1) who have complex medical needs and/or disabilities; 2) would qualify for SSI and for Medicaid if institutionalized; 3) do not otherwise qualify for Medicaid because of the parents’ income or assets; and 4) for whom the cost of services in the home is less than or equal to the cost of services in an institutional setting.

Tennessee Bureau of Investigation, Medicaid Fraud Control Division (TBI MFCD) – The Tennessee Bureau of Investigation’s Medicaid Fraud Control Division has the authority to investigate and prosecute (or refer for prosecution) violations of all applicable state and federal laws pertaining to fraud in the administration of the Medicaid program, the provision of medical assistance, the activities of providers of medical assistance in the state Medicaid program (TennCare), allegations of abuse or neglect of patients in health care facilities receiving payments under the state Medicaid program, misappropriation of patients’ private funds in such facilities, and allegations of fraud, waste, and abuse in board and care facilities.

Timekeeping System - A system developed, implemented, and maintained by the Contractor to capture time submitted for the delivery of Consumer-Directed and Self-Directed services. The system is used to monitor Member receipt of Eligible CHOICES HCBS, Eligible ECF CHOICES HCBS, and Eligible 1915(c) Waiver Program HCBS to ensure provided HCBS is authorized by the MCO or DDA, as applicable, generate payment to Workers for hours worked, as appropriate, and also generate claims for submission by the provider. The system will not allow payment to Workers for services not authorized by the MCO or DDA, as applicable.

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

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

Waste - Is the overutilization of services, or other practices that, directly or indirectly, result in unnecessary costs to the Medicaid program. Waste is generally not considered to be caused by criminally negligent actions but rather the misuse of resources.

1915(c) Waiver Program – One of the three waivers (Statewide, Comprehensive Aggregate Cap, and Self-Determination) approved by the Centers for Medicare and Medicaid Services pursuant to Section 1915(c) of the Social Security Act to which provide HCBS not otherwise available under the State Plan to eligible persons with I/DD enrolled in such waivers.

ATTACHMENT B**LIQUIDATED DAMAGES**

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

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

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

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

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

	PROGRAM ISSUES	DAMAGE
1.	Failure by the Contractor to meet the standards for privacy, security, and confidentiality of individual data as evidenced by a breach of the security per Sections D.34, E.17, and E.18.	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.
2.	Failure by the Contractor to execute the appropriate agreements to effectuate transfer and exchange of enrollee PHI or TennCare confidential information including, but not limited to, a data use agreement, trading partner agreement, business associate agreement or qualified protective order prior to the use or disclosure of PHI to a third party. (See E.16. and Business Associate Agreement between the parties)	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.
3.	Failure by the Contractor to seek express written approval from TennCare prior to the use or disclosure of enrollee data or TennCare confidential information in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States. (See E.11 and Business Associate Agreement between the parties)	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.
4.	Failure by the Contractor to timely report violations in the access, use and disclosure of PHI or timely report a security incident or timely make a notification of breach or notification of suspected breach per Sections (See E.17 and Business Associate Agreement between the parties)	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.
5.	Failure to obtain written approval of any written Member materials including educational materials prior to using such materials.	\$250 per Member or educational material (i.e., per document, regardless of the number of persons to whom such document may have been disseminated) for which prior approval was not obtained.
6.	Failure to complete and process all required employer paperwork, including but not limited to IRS Forms SS-4 LB-0927, LB-00441, and 2678 for the Member/Representative, as applicable, prior to initiating Consumer Direction or Self-Direction, as applicable, for the Member.	\$500 per Member for which all required employer paperwork is not completed and processed prior to initiating Consumer Direction or Self-Direction.

7.	Failure to ensure that each Worker completes all required employee paperwork, including an abbreviated Medicaid agreement, and to the extent applicable, obtains a Medicaid provider ID number prior to authorizing the Worker to deliver Consumer-Directed or Self-Direct services, as applicable, for a Member.	\$500 per Worker for which all required employee paperwork was not completed prior to authorizing the Worker to deliver Consumer-Directed or Self-Directed services, as applicable, for a Member.
8.	Failure to collect and maintain documentation that represents that each Worker completed all training requirements prior to authorizing the Worker to deliver Consumer-Directed or Self-Directed services, as applicable.	\$500 per Worker for which documentation was not collected, that represented that all training requirements were completed, prior to authorizing the Worker to deliver Consumer-Directed or Self-Directed services, as applicable, for a Member.
9.	Failure to be responsible for validating, based solely on the documentation and information that the Worker provides the Contractor, that each Worker meets all qualifications specified in this Contract (with the exception to those that apply to the Form I-9, and in TennCare or DDA Rules, as applicable, and completes a background check (including all applicable registry and database checks)); failure to maintain documentation of such qualifications and background (including registry and database) checks; or failure to allow a Worker who has failed his/her background check to provide Consumer-Directed or Self-Directed services, as applicable, only as permitted pursuant to this Contract.	\$1,000 per Worker for which qualifications were not verified, or a background check was not completed prior to authorizing the Worker to deliver Consumer-Directed or Self-Directed services, as applicable; for which documentation of such qualifications and background check was not maintained; or for each Worker whose background check returned results that prohibited the Worker from providing Consumer-Directed or Self-Directed services, but this Worker that was permitted to provide Consumer-Directed or Self-Directed services and the Member/Representative did not otherwise voluntarily and affirmatively choose to take on the risk associated with hiring an individual with a criminal history.
10.	Failure to obtain a signed Service Agreement for each Worker prior to such Worker being authorized to deliver Consumer-Directed or Self-Directed services, as applicable, and any time there is a change in the terms or conditions of a Worker's employment or a change in the Member's Representative, as applicable.	\$1,000 per Worker for which a Service Agreement was not signed prior to authorizing the Worker to deliver Consumer-Directed or Self-Directed services, as applicable, for a Member, or for which a new Service Agreement is not signed when there is a change in the terms or conditions of a Worker's employment or a change in the Member's Representative, if applicable.
11.	Failure to confirm each back-up person and organization's willingness and availability to provide back-up care when needed prior to initiation of Consumer Direction or Self-Direction, as applicable.	\$500 per Member for whom the Contractor failed to confirm each back-up person and organization's willingness and availability to provide back-up care when needed prior to initiation of Consumer Direction or Self-Direction, as applicable.
12.	Failure to report a Reportable Event within the timeframes specified in this Contract.	\$250 per Reportable Event not timely reported.

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

19.	Failure to provide 1) an Electronic Visit Verification system that is compliant with Federal and State requirements. This includes access and ability to provide real time compliance information to the State and Contracted partners; 2) standard and ad hoc reporting related to each visit; or 3) education, training, and retraining to Consumer Directed or Self-Directed Members and Workers.	<p>\$500 per instance when the system provided does not perform or provide the Federal and State required functions.</p> <p>\$500 per instance when the Contractor fails to provide data and access to data for all visits.</p> <p>\$500 per instance when appropriate training, education, and retraining is not provided resulting in non-compliance with the 21st Century Cures Act.</p>
20.	Failure to provide timely customer service and/or Support Brokerage Functions for Members in CHOICES, ECF CHOICES, 1915(c) Waiver or Katie Beckett Program Members as specified in this Contract.	Failure to provide required assistance, training, and support to participants during the enrollment process and ongoing service delivery shall result in \$500 per Member at issue.
21.	RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: 1-Hour.	<p>Five thousand dollars (\$5,000) for each loss of data.</p> <p>An additional five hundred dollars (\$500) per hour past the initial one (1) hour to recover the data.</p>
22.	RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: 4-Hours.	<p>Five thousand dollars (\$5,000) for each failure to restore essential services within four (4) hours, irrespective of the time the incident occurred.</p> <p>An additional five hundred dollars (\$500) per hour that the essential services are not re-stored after the initial four (4) hours.</p>



CONTRACT

(fee-for-goods or services contract with an individual, business, non-profit, or governmental entity of another state)

Begin Date May 1, 2023	End Date June 30, 2026	Agency Tracking # 31865-00633	Edison Record ID 77998
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Contractor Legal Entity Name Consumer Direct for Tennessee, LLC	Edison Vendor ID 0000268391
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Goods or Services Caption (one line only)
Fiscal Employer Agent Services

Contractor <input checked="" type="checkbox"/> Contractor	Assistance Listing Numbers # 93.778 Dept of Health & Human Services Title XIX
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Funding ---					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2024	\$6,090,666.67	\$6,090,666.67	\$0.00	\$0.00	\$12,181,333.34
2025	\$6,090,666.67	\$6,090,666.67	\$0.00	\$0.00	\$12,181,333.33
2026	\$6,090,666.67	\$6,090,666.67	\$0.00	\$0.00	\$12,181,333.33
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL:	\$18,272,000.00	\$18,272,000.00	\$0.00	\$0.00	\$36,544,000.00

Contractor Ownership Characteristics:

Minority Business Enterprise (MBE):
 African American Asian American Hispanic American Native American

Woman Business Enterprise (WBE)

Tennessee Service Disabled Veteran Enterprise (SDVBE)

Disabled Owned Business (DSBE)

Tennessee Small Business Enterprise (S \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.

Government Non-Minority/Disadvantaged Other

Selection Method & Process Summary (mark the correct response to confirm the associated summary)

Competitive Selection Request for Proposal 31865-00633

Other

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.	<i>CPO Use - FA</i>
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Speed Code (optional)	Account Code (optional)

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF TENNCARE
AND
CONSUMER DIRECT FOR TENNESSEE, LLC**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division TennCare, (“State” or “TennCare”) and Consumer Direct for Tennessee, LLC (“Contractor”), is for the provision of Financial Administration and Supports Brokerage functions for Consumer Direction of Home and Community Based Services (HCBS) relevant to TennCare home and community based services provided across Medicaid programs and authorities, including the TennCare CHOICES in Long-Term Services and Supports Program (CHOICES), the Employment and Community First CHOICES Program (ECF CHOICES), the Katie Beckett Program (Katie Beckett), and the Section 1915(c) HCBS Waiver Programs , as further defined in the "SCOPE." State and Contractor may be referred to individually as a “Party” or collectively as the “Parties” to this Contract.

The Contractor is a Limited Liability Company.
Contractor Place of Incorporation or Organization: Missoula, MT
Contractor Edison Registration ID # # 0000268391

A. SCOPE:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. For purposes of this Contract, definitions shall be as set forth in Contract Attachment A.
- A.3. For purposes of this Contract, the term “Member” shall apply as follows:
 - a. When the term Member is used, the provision applies to all individuals who Consumer Direct or Self-Direct, as applicable, in CHOICES, ECF CHOICES, Katie Beckett, and a 1915(c) Waiver Program.
 - b. When the term CHOICES Member, ECF CHOICES Member, 1915(c) Waiver Program Member, or Katie Beckett Member is used, the provision only applies to individuals in that particular program who Self Direct/Consumer Direct, as applicable. In the absence of one of the preceding terms associated with a provision, the provision shall by default apply to all Members, unless otherwise specified in writing by TennCare or the Tennessee Department of Intellectual and Developmental Disabilities (DIDD), as applicable.
 - c. Whenever any of these terms are used in this Contract, as it relates to responsibilities pertaining to Consumer Direction in Katie Beckett, the term shall refer to the parent or other legal guardian of the child enrolled in Katie Beckett who has primary physical custody of the child and legal authority to make decisions on the child’s behalf.
 - d. Whenever any of these terms are used in this Contract it shall have the meaning as defined in Attachment A to this Contract.
- A.4. DIDD is the operating entity for the 1915(c) Waiver Programs and Katie Beckett Part B, and shall also exercise operational oversight of ECF CHOICES pursuant to the interdepartmental agreement between TennCare and DIDD.
- A.5. The Contractor shall perform the Financial Administration and Supports Brokerage functions for Consumer Direction and Self-Direction, as applicable, for Members assessed by a Managed Care Organization (MCO) or DIDD, as applicable, who need eligible CHOICES, ECF CHOICES, Katie Beckett, or 1915(c) Waiver Program HCBS, as applicable, and who choose to participate

in Consumer Direction or Self-Direction, as applicable, for some or all needed eligible HCBS. Such functions for Members shall include, but are not limited to:

- a. Member/Representative education on Consumer Direction or Self Direction;
- b. Training and enrollment into Consumer Direction or Self Direction;
- c. Providing assistance in developing initial Back-up Plans;
- d. Assistance in executing Service Agreements;
- e. Assistance with Worker enrollment;
- f. Assistance with Worker background checks; and
- g. Assistance training Workers.

The Contractor shall not initiate Consumer Direction or Self-Direction, as applicable, until the Member is enrolled in CHOICES, ECF CHOICES, Katie Beckett, or the 1915(c) Waiver Program, and in accordance with the terms set forth in this Contract and the TennCare Rules.

- A.6. In addition, the Contractor shall process referrals for persons specified by TennCare who are not yet enrolled in CHOICES or ECF CHOICES, but who may qualify for CHOICES or ECF CHOICES only through receipt of Consumer-Directed services, and shall perform functions necessary to facilitate such participation should the person ultimately be enrolled in CHOICES or ECF CHOICES and in Consumer Direction of Eligible CHOICES or ECF CHOICES HCBS.
- A.7. The Contractor shall provide the Financial Administration and Supports Brokerage functions for and on behalf of Members who Consumer Direct or Self-Direct their HCBS.
- a. Financial Administration functions are functions related to the performance of payroll, employer taxes, and related tasks, which, for Members , include procedures for approving payment for services and obtaining necessary payroll and employment information-
 - b. Supports Brokerage functions are certain functions that assist a Member/Representative with non-payroll-related employer tasks such as Consumer Direction or Self-Direction enrollment, hiring paperwork, and recruiting and training Workers.
 - c. Except as provided in Section A.6 pertaining to persons specified by TennCare who are not yet enrolled in CHOICES, ECF CHOICES, or Katie Beckett Part A, but who may qualify for CHOICES, ECF CHOICES, or Katie Beckett Part A only through receipt of Consumer-Directed services, the Contractor's Financial Administration and Supports Brokerage functions are available only to Members who qualify for receipt of Consumer Directed or Self-Directed services. The use of the Contractor's Financial Administration and Supports Brokerage functions shall be mandatory for all Members.
 - d. All staff (employed or subcontracted) providing Supports Brokerage functions, including the Account Manager, a 1915(c) Waiver Program Project Lead, a CHOICES Project Lead, an ECF CHOICES Project Lead, a Katie Beckett Project Lead, and Support Brokerage Lead, shall be physically located within the State of Tennessee and be solely dedicated to the CHOICES, ECF CHOICES, Katie Beckett, and/or 1915(c) Waiver Program. While a single staff member may simultaneously perform the CHOICES, ECF CHOICES, Katie Beckett, and 1915(c) Waiver Program Project Lead functions (collectively referred to as the "Project Lead Functions"), the Contractor shall provide a separate staff member for each of the following positions: (1) Support Brokerage Lead, (2) Account Manager, and (3) Project Lead Functions. Staff (employed or subcontracted) providing customer service and Financial Administration functions are permitted to be located outside of the State of Tennessee, as long as the Contractor remains compliant with all contractual timelines and requirements, including payment. Customer service staff shall be solely dedicated to the CHOICES, ECF CHOICES, Katie Beckett, and/or

1915(c) Waiver Programs. In addition to the Supports Brokerage staff identified above, the Contractor shall also employ at least one (1) Financial Administration Lead, whose responsibilities are specific to Financial Administration functions performed under this Contract, and who does not perform any Supports Brokerage duties.

- A.8. The Contractor's operating systems shall have the ability to implement the model of Consumer Direction or Self-Direction currently employed in CHOICES, ECF CHOICES, Katie Beckett, and the 1915(c) Waiver Program (including employer authority, budget authority, and modified budget authority), and the flexibility to transition from an employer authority model to a budget authority or modified budget authority model if necessary to meet programmatic change requirements within timeframes specified by the State.

Federal and State Approval to be a Fiscal Employer Agent

- A.9. Before the Contractor may begin performing Financial Administration and Supports Brokerage functions as specified in this Contract, the Contractor shall have received federal and State approval to be the Fiscal Employer Agent (FEA) for that Member . This shall include the following tasks and any others required by federal or State law or policy:
- a. File a Form SS-4 in order to obtain a separate Federal Employer Identification Number (FEIN) from the Internal Revenue Service (IRS) for the sole purpose of withholding, filing, and depositing certain federal employment tax forms and making federal tax payments. This FEIN should only be used for processing wages and federal forms and taxes for the individual employers (Members or their Representatives, if applicable) it represents as the agent. The FEIN shall not be used for processing wages and related federal forms and taxes for Workers of a parent organization or sub-entity. A reporting agent uses this separate FEIN when performing FEA services on behalf of an Member;
 - b. Have a system in place for obtaining and retiring a separate FEIN for each Member it represents. The Contractor shall maintain the Member's FEIN in the Member's file;
 - c. Have a system in place for preparing and submitting a signed IRS Form 2678: Employer Appointment of Agent for each Member it represents and maintaining all relevant documentation (copy of IRS Form 2678, Request for Approval Letter and IRS Notification of FEA Approval) for each Member it represents on file ;
 - d. Have a system in place for revoking IRS Form 2678 for each Member it no longer represents in accordance with IRS requirements and for maintaining the relevant documentation in each Member's file;
 - e. Have a system in place for obtaining and revoking State power of attorney (Form LB-0927, for State income tax, unemployment tax or both, as required by the State) from each Member it -represents, and for maintaining the relevant documentation in each Member's file; and
 - f. Have a system in place for preparing and submitting Form LB-00441 concerning the report to determine status application for employer number.

Educational and Outreach Materials

- A.10. The Contractor shall, upon request or approval from TennCare or an MCO for Members, and upon request or approval from DIDD for Members, coordinate with TennCare, the MCO, or DIDD, as applicable, to conduct outreach activities for Members, as specified herein. The outreach activities shall be targeted to Members for whom an MCO has determined eligibility for Consumer

Direction, but the individuals have not yet chosen to participate in Consumer Direction, and to Members who have been identified as interested in Self-Direction/Consumer-Direction in the 1915(c) Waiver Program, but have not yet chosen to participate in Self-Direction/Consumer-Direction. The Contractor's outreach activities shall focus on providing information about the Consumer Direction or Self-Direction, as applicable (e.g., how the service delivery model works, including using a Representative, roles and responsibilities, program requirements, how to enroll, assistance provided to a Member/Representative by the Contractor, coordination between the Contractor and the MCO or DIDD, as applicable, etc.).

- a. All educational and outreach materials relating to CHOICES, ECF CHOICES, and Katie Beckett Part A Members shall be submitted to TennCare in a manner communicated in writing to the Contractor by TennCare. All educational and outreach materials relating to Members in the 1915(c) Waiver Program and in Katie Beckett Part B shall be submitted to DIDD and TennCare in a manner communicated in writing to the Contractor by DIDD or TennCare. TennCare and DIDD, as applicable, shall review the submitted educational and outreach materials and either approve or deny them within fifteen (15) calendar days from the date of submission. In the event TennCare (and DIDD, as applicable) does not approve the materials, TennCare and DIDD, as applicable, may provide written comments, and the Contractor shall resubmit the materials. No educational or outreach materials shall be utilized until receipt of written approval from TennCare and DIDD, as applicable.
 - b. Prior to modifying any approved educational or outreach materials, the Contractor shall submit for written approval by TennCare (and DIDD, as applicable) a detailed description of the proposed modification. TennCare (and DIDD, as applicable) reserve the right to notify the Contractor to discontinue or modify educational or outreach materials after approval.
- A.11. The Contractor shall ensure that all Member materials, including educational and outreach materials, meet the following specifications:
- a. All Member educational or outreach materials shall be in Plain Language in a manner and format that may be easily understood and is readily accessible by Members and potential Members, unless the State approves a different standard. Articles and/or informational material included in written materials such as newsletters, brochures, etc. shall be limited to approximately two hundred (200) words for purposes of readability unless otherwise approved in writing by TennCare;
 - b. All written materials shall be clearly legible and unless otherwise directed by TennCare must be written with an easily readable font size. with the exception of member I.D. cards and certain taglines that require a minimum font size of 18 pt. Any request from the Contractor for an exception to the written materials font size requirements shall be approved in writing by TennCare prior to use;
 - c. All written materials shall be printed with the notice of non-discrimination and taglines as required by TennCare and set forth in TennCare's tagline template. In addition to any other requirements specified in this section, the Contractor may also provide required Member materials/information electronically or on its website pursuant to the specifications set forth in this Contract and TennCare's tagline template, and the following requirements: (1) the material/information must be placed on the Contractor's website in a location that is prominent and readily accessible for Members and potential Members to link to from Contractor's home page; (2) the material/information must be provided in a format that can be electronically saved and printed; and (3) if an individual requests that the Contractor mail them a copy of the material/information, the Contractor must mail free of charge the material/information to them within five (5) days of that

request. To the extent that the Contractor and its providers and/or subcontractors are using electronic and information technology to fulfill its obligations under this Contract, the entities shall comply with Section E.25 Nondiscrimination Compliance Requirements;

- d. All Member materials shall be translated and available in Spanish within ninety (90) calendar days of notification by TennCare or DIDD, as applicable. All Contractor's Vital Documents shall be translated and available to each Limited English Proficiency group identified by TennCare, that constitutes five percent (5%) of the TennCare population, or one thousand (1,000) enrollees, whichever is less;
 - e. All written Member materials shall inform enrollees and potential enrollees of how to obtain materials in alternative formats and how to access oral interpretation services and that both alternative formats and interpretation services are available at no expense to the individual. This information shall be considered a Vital Document and shall be available at a minimum in the English and Spanish languages;
 - f. All written Member materials shall ensure effective communication and be made available in alternative formats at the request of the Member, potential Member, or their representatives in an appropriate manner that takes into consideration the special needs of Members or potential Members with disabilities or limited English proficiency. These alternative formats shall be free of charge to the individual. Alternative formats may include but are not limited to: Auxiliary aids or services, such as, Braille, large print, and audio; American Sign Language interpretation, written translations, and language assistance services and shall be based on the needs of the individual. The Contractor shall have processes in place to ensure that the individual requesting an alternative format is immediately assessed by its Nondiscrimination Compliance Coordinator for the need for an alternative format material. Should the assessment determine that the provision of the alternative format is reasonable the alternative format will be made available to the individual in a timely manner, (i.e., as-soon-as practicable). The Contractor and its providers and direct service subcontractors shall be required to comply with the applicable civil rights laws in the provision of free language and communication assistance services to enrollees, potential enrollees, or their representatives;
 - g. All written Member material shall include notice of the right to file a discrimination complaint as set forth in Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Titles II and III of the Americans with Disabilities Act of 1990, 42 U.S.C. § 18116 (codified at 45 C.F.R. pt. 92), and the Age Discrimination Act of 1975. This notice shall be considered a Vital Document and shall be available at a minimum in the English and Spanish languages; and
 - h. All written Member material shall include information on fraud, waste, and abuse and how to report suspected fraud, waste, and abuse.
- A.12. Distribution of Member Materials. The Contractor shall distribute Member materials as required by this Contract. The Member material information shall be considered to be provided to individuals if the Contractor:
- a. Mails a printed copy of the information to the Member's or potential Member's mailing address;
 - b. Provides the information by email after obtaining the Member's or potential Member's agreement to receive the information by email;
 - c. Posts the information on its website and advises the Member or potential Member in paper or electronic form that the information is available on the Internet and includes the

- applicable Internet address, provided that individuals with disabilities who cannot access this information online are provided auxiliary aids and services upon request at no cost; or
- d. Provides the information by any other method that can reasonably be expected to result in the Member or potential Member receiving that information.
- A.13. The Contractor shall not include the following on any written materials, including but not limited to educational materials, without the written approval of TennCare and DIDD, as applicable:
- a. The Seal of the State of Tennessee;
 - b. The DIDD or TennCare name, unless the initial "SM" denoting a service mark is superscripted to the right of the name (e.g., Department of Intellectual and Developmental DisabilitiesSM);
 - c. The word "free" unless the service is at no cost to all Members. If Members have cost sharing or patient liability responsibilities, the service is not free. Any conditions of payments shall be clearly and conspicuously disclosed in close proximity to the "free" good or service offer.
 - d. The use of phrases to encourage enrollment such as "keep your provider or benefits" implying that Members can keep all of their providers or must enroll in order to keep or not lose benefits. Enrollees in TennCare shall not be led to think that they can continue to go to their current provider, unless that particular provider is a contract provider with the Contractor;
 - e. The Contractor's Member materials shall not mislead, confuse, or defraud Members or the State;
 - f. The Contractor shall provide written notice to Members of any changes in policies or procedures described in written materials previously sent to Members. The Contractor shall provide written notice at least thirty (30) days before the effective date of the change; and
 - g. The Contractor shall notify Members when it adopts a policy to discontinue coverage of a counseling or referral service based on moral/ethical or religious objections at least thirty (30) days prior to the effective date of the policy for any particular service.

Referrals for Consumer Direction and Self-Direction

- A.14. The Contractor shall exchange program referral transmissions daily with the MCOs related to Members in a manner determined by the Contractor and MCO in the State required business agreement, and shall exchange this information with DIDD for Members in a manner prescribed by DIDD.
- A.15. The Contractor shall, within two (2) business days of receipt of a referral from an MCO, TennCare, or DIDD, assign a Supports Broker to the Member, notify the Member's Care Coordinator, Support Coordinator, Nurse Care Manager, or DIDD Case Manager, as applicable, of the assignment, and provide the name and contact information of the Supports Broker. Within five (5) calendar days of receipt of the referral, the Contractor shall contact the Member to inform the Member of his/her assigned Supports Broker, provide contact information for the Supports Broker, and begin the process of initiating Consumer Direction or Self-Direction, as applicable. The Contractor shall offer Members and Providers the use of electronic signatures, to authenticate and authorize their enrollment forms electronically unless doing so is determined to

- be unlawful. The Contractor shall facilitate obtaining physical signatures when required by TennCare.
- A.16. The Contractor shall, upon request, assist the MCO or DIDD, as applicable, in identifying and addressing any additional risk associated with each Member's decision to Consumer Direct or Self-Direct, as applicable, in the risk assessment and person-centered planning processes.
- A.17. The Contractor shall provide support to the Member/Representative as needed in developing the initial Back-up Plan that adequately identifies how the Member/Representative shall address situations when a scheduled Worker is not available or fails to show up as scheduled. The Member/Representative shall have primary responsibility for the development of the Back-up Plan. The Member/Representative shall not elect, as part of a Back-up Plan, to go without services.
- a. The Back-up Plan shall be integrated into the Member's back-up plan for services provided by contracted providers, as applicable, and the Member's Person-Centered Support Plan (PCSP) or Member's Individual Support Plan (ISP), as applicable.
 - b. The Back-up Plan shall include the names and telephone numbers of contacts (Workers, agency staff, organizations, natural supports) for alternate care, the order in which each shall be notified, and the services to be provided by each contact. Back-up Plan contacts may include paid and unpaid supports; however, it is the responsibility of the Member/Representative to secure paid (as well as unpaid) Back-up Plan contacts who are willing and available to serve in this capacity. MCOs and DIDD shall not be expected or required to maintain Contract Providers "on standby" to serve in a back-up capacity for services a Member has elected to receive through Consumer Direction or Self-Direction, as applicable.
 - c. All persons and/or organizations noted in the Back-up Plan shall be contacted by the Member/Representative to determine their willingness and availability to serve as back-up contacts. For the initial Back-up Plan, the Contractor shall confirm with these persons and/or organizations their willingness and availability to provide care when needed, document confirmation in the Member's file and forward a copy of the documentation to the MCO or DIDD, as applicable. The Care Coordinator, Support Coordinator, Nurse Care Manager, or DIDD Case Manager, as applicable, shall be responsible for assistance as needed with implementing the Back-up Plan and for updating and verifying the Back-up Plan on an ongoing basis.
 - d. The Contractor, MCO, and DIDD, as applicable, shall each file a copy of the Back-up Plan in the Member's file.
- A.18. The Member's Care Coordinator, Support Coordinator, Nurse Care Manager, or DIDD Case Manager, as applicable, shall develop within the PCSP or ISP and/or update the PCSP or ISP to include a separate plan to help ensure the Member's health and safety which takes into account the Member's decision to participate in Consumer Direction or Self-Direction, and which identifies any additional risks associated with the Member's decision to direct his/her services, the potential consequences of such risk, as well as strategies to mitigate these risks. The Member/Representative shall participate in the risk assessment process. Once a referral has been made to the Contractor for Consumer Direction or Self-Direction, the Member's Supports Broker shall be involved in risk assessment and risk planning activities, as appropriate. The new or updated PCSP or ISP shall be signed by the Care Coordinator, Support Coordinator, Nurse Care Manager, or DIDD Case Manager, as applicable, and the Member/Representative. The MCO or DIDD, as applicable, and Member/Representative, and Contractor shall receive a copy of the updated PCSP or ISP.

- A.19. The Contractor shall notify the Member's Care Coordinator, Support Coordinator, Nurse Care Manager, or DIDD Case Manager, as applicable, immediately if the Contractor becomes aware of changes in the Member's needs and/or circumstances which warrant a reassessment of needs and/or risk, or changes to the PCSP or ISP, as applicable.

Service Authorization and Initiation

- A.20. To facilitate service authorization and initiation, the State shall, through DIDD Case Managers and MCOs, provide the Contractor valid Electronic Authorizations and Eligibility files. Using these documents, the Contractor shall:
- a. For all Members, ensure that Consumer-Directed or Self-Directed services begin as soon as possible, but no later than sixty (60) calendar days from the date of the referral to the Contractor by the MCO or DIDD, except due to circumstances beyond the Contractor's control, which shall be documented in writing and maintained in the web portal, as required in section A.46.f of this Contract. At a minimum, the documentation shall include: 1) the cause of the delay; and 2) efforts made to meet the timeframe. Such documentation shall be provided to the Member's MCO or to DIDD, as applicable, in a manner agreed upon between the Contractor and the Member's MCO or DIDD, as applicable.
 - b. If requested by the Member/Representative, provide the required level of assistance needed to recruit, interview, and hire Workers;
 - c. If requested by the Member/Representative, provide the required level of assistance needed, in developing job descriptions;
 - d. Provide updates to the Member's MCO or to DIDD, as applicable, in the format agreed upon with the MCO or DIDD, regarding the status of completing required functions necessary to initiate Consumer Direction or Self-Direction, as applicable, including, but not limited to, obtaining completed paperwork from the Member/Representative, selecting Workers for each identified Consumer Directed or Self-Directed service, as applicable, completing Worker paperwork and training, and any anticipated timeframes by which qualified Workers will be secured and Consumer Directed or Self-Directed services, as applicable, may begin;
 - e. Once potential Workers are identified, verify that a potential Worker meets all applicable qualifications, including any program or service specific requirements as specified in TennCare rule or policy, provided that such verification does not apply to verifying any information submitted or required on the Form I-9 and is otherwise and generally limited to the information that the potential Worker voluntarily provides on any applicable Worker paperwork and does not require the Contractor to perform any further investigation or inquiry;
 1. For CHOICES, ECF CHOICES, and Katie Beckett this includes ensuring that a person who lives with the Member is not paid to provide any of the following services, as applicable: Personal Care Visits, Attendant Care, Personal Assistance, Supportive Home Care, In-Home Respite, or Community Transportation Services.
 2. For CHOICES Members receiving Companion Care, this shall include ensuring that an immediate family member as defined in Rule 12-13-01-.02, any person with whom the Member currently resides, or any person with whom the Member has resided in the last five (5) years is not paid to provide Companion Care.

- i. The Contractor shall verify the Worker(s) relationship to the Member to ensure that the relationship is not considered an immediate family member or otherwise impermissible, when applicable, and as defined in Tenn. Comp. R. & Regs 1200-13-01-.02.
 - ii. The Contractor shall cross-reference the reported Worker(s)' addresses for the past five (5) years with the Member's reported address for the past five (5) years to ensure that at no point in time did the Worker and Member live together.
- f. Ensure that a Service Agreement, using the template approved by TennCare, is signed between the Member/Representative and his/her Worker within five (5) business days following the Contractor's verification that a Worker meets all qualifications, except due to circumstances beyond the Contractor's control, which shall be documented in writing and maintained in the Contractor's files;
- g. Be responsible for updating a Service Agreement within five (5) business days anytime there is a change in any of the terms or conditions specified in the Service Agreement, including but not limited to, a change in the applicable services to be provided by a Worker, Worker pay rates, etc., except due to circumstances beyond the Contractor's control causing a delay, which shall be documented in writing and maintained in the Contractor's files;
- h. Be responsible for coordinating with new Representatives, if applicable, to sign all Service Agreements within five (5) business days of the Contractor's notification that a Member has a new Representative, except due to circumstances beyond the Contractor's control causing a delay in obtaining the signature, which shall be documented in writing and maintained in the Contractor's files;
- i. Provide a copy of each Service Agreement to the Member/Representative, Worker, and Member's MCO or DIDD, as applicable, and maintain a copy in the Contractor's files;
- j. Notify the Member's MCO or notify DIDD, as applicable, within one (1) business day when all requirements have been fulfilled, including the date that the Member is ready to begin Consumer Direction or Self-Direction, as applicable;
- k. Input the Member/Representative's assignment of individual Workers into the Timekeeping System in accordance with the Member's PCSP and MCO's service authorization or Member's ISP, as applicable. The Contractor shall ensure ongoing maintenance of daily operations of the Timekeeping System management for Workers including: 1) authorization changes; and 2) verification of time. Additionally, the Contractor shall maintain adequate staff for management of the Timekeeping System to ensure timesheets are consistent with current authorizations, timesheets are verified for each pay period and payroll is provided accurately and on time;
- l. Ensure that services provided via Consumer Direction or Self-Direction, as applicable, are not initiated until the following activities, at a minimum, are completed:
 - 1. The Contractor verifies that the Member's enrollment (including employer) paperwork and related documentation is complete;
 - 2. The Contractor verifies that Worker(s) meet all qualifications, except that such verification does not apply to verifying any information submitted or required on the Form I-9 qualifications including completion of background/registry checks, participation in required training and completion of required paperwork including (if needed) assisting the Worker in obtaining the needed license or requesting an

exception through a process established by DIDD if providing services to more than three (3) persons receiving HCBS across all Medicaid HCBS programs and authorities, including CHOICES, ECF CHOICES, Katie Beckett and the 1915(c) Waiver Program.

- i. If the worker is providing services to more than three (3) persons receiving HCBS, the Contractor shall send a monthly report to TennCare in a manner prescribed by TennCare in writing;
 - 3. The Contractor secures a signed Service Agreement, specific to each Worker as applicable;
 - 4. The Contractor secures a Medicaid ID for each Worker with the exception of Katie Beckett Part B members who shall be assigned a unique identifier by the Contractor;
 - i. The Contractor has an ongoing responsibility to complete OIG/SAM registry checks monthly, as referenced in Contract Section A.30. The Contractor shall notify TennCare in a manner prescribed by TennCare within two (2) business days of a worker's name being identified on a registry. TennCare shall initiate a termination within its system and notify the Contractor of completion; and
 - 5. For ECF CHOICES, CHOICES, and Katie Beckett Part A Members, the MCO issues to the Contractor an authorization for each service to be delivered through Consumer Direction, and for Members in the 1915(c) waivers and Katie Beckett Part B programs, DIDD issues to the Contractor an approved ISP for services to be delivered through Self-Direction or Consumer Direction.
 - m. If initiation of Consumer-Directed or Self-Directed services, as applicable does not begin within sixty (60) calendar days from the date of the referral to the Contractor by the MCO or DIDD, as applicable, the Contractor shall contact the MCO or DIDD, as applicable, regarding the cause of the delay and provide appropriate documentation to demonstrate efforts to meet the timeframe.
- A.21. The Contractor shall have a system in place for receiving and maintaining Member-specific information received from an MCO or DIDD, as applicable, including a Member's PCSP for the authorized Consumer-Directed services or a Member's ISP for authorized Self-Directed services, as applicable, via the format mutually agreed to by Contractor with the MO or DIDD, as applicable. Additionally, the Contractor shall maintain a system and process for receiving authorization changes from the MCO and shall update the Timekeeping System to reflect such changes within the timeframe necessary to ensure Members are receiving the appropriate services, timesheets can be verified, and Workers shall be paid for authorized services provided per the established payroll schedule.
- A.22. The Contractor shall have a comprehensive information system in place to receive and disburse Consumer-Direct and Self-Directed funds and track funds disbursed. The Contractor shall only submit claims to the MCO or DIDD, as applicable, and pay Workers for those services that have been authorized by the MCO or DIDD and satisfactorily performed by Workers, as applicable.
- A.23. The Contractor shall provide a web-based interface for MCOs and DIDD and Members/Representatives to review information on the Consumer-Directed or Self-Directed services, as applicable, authorized, performed and reimbursed.

- A.24. The Contractor, in conjunction with the MCOs and DIDD, as applicable, shall facilitate a seamless transition for Members transitioning between: (1) MCOs; (2) Consumer Direction or Self-Direction and Contract Providers, or vice versa, as applicable; (3) Workers; (4) CHOICES, ECF CHOICES, or the 1915(c) waivers; or (5) Katie Beckett, Parts A and B, to ensure that there are no interruptions or gaps in services for the Member and payment to Workers remains accurate and timely.

Member Enrollment Packet

- A.25. The Contractor shall develop and distribute an enrollment packet to each Member. The enrollment packet shall be pre-populated with required data and made available for the MCO and DIDD, as applicable, and Members/Representatives to access on-line; however, it shall also be available in hard copy format. The enrollment packet shall contain, at a minimum, the following:
- a. An introductory letter;
 - b. Information about the Contractor's services and operations (e.g., roles and responsibilities of the Contractor, hours of operation, contact information, customer service toll-free number, and Complaint System);
 - c. Information regarding the role of the Supports Broker;
 - d. Federal forms that the Member/Representative must complete, sign and return (e.g., IRS Forms SS-4, 2678, LB-00441, etc.)
 - e. Any applicable State forms the Member/Representative must complete, sign and return;
 - f. Instructions regarding the process for completing and submitting the required forms to the Contractor;
 - g. State power of attorney form(s) as applicable; and
 - h. Information regarding the use of EVV and approved time entry and tracking, including the requirements for compliance and consequences for not maintaining compliance.
- A.26. The Contractor shall assist the Member/Representative, as appropriate, in completing the enrollment packet. The Contractor shall have a system in place for collecting and processing all required forms and information contained in the enrollment packet and for maintaining copies in each Member's file. Once the Contractor has received a complete enrollment packet from the Member/Representative, the Contractor shall process all required forms and other information required for a Member/Representative to begin Consumer-Directing or Self-Directing services, as applicable, within three (3) business days of receipt. Sufficient copies of enrollment packet materials shall be available and provided to the State upon request.

Member Education and Training

- A.27. The Contractor shall provide education and training activities, as specified herein, to Members and persons specified by TennCare who are not yet enrolled in CHOICES, ECF CHOICES or Katie Beckett Part A, but who may qualify for CHOICES, ECF CHOICES, or Katie Beckett Part A only through receipt of Consumer-Directed services. All Member education and training materials shall meet TennCare specifications and be prior approved by TennCare.
- A.28. The Contractor shall be responsible for providing or arranging for initial and ongoing training of Members/Representatives. Ongoing training shall be provided upon request of the Member/Representative, or if a Care Coordinator, Support Coordinator, Nurse Care Manager or

DIDD Case Manager, as applicable, determines that additional training is warranted. When training is not directly provided by the Contractor, the Contractor shall document completion of training. Records of initial and ongoing training and documentation of such training shall be maintained by the Contractor and made available to TennCare, upon request. Initial training shall be completed prior to initiation of Consumer-Directed or Self-Directed services, as applicable. At a minimum, training for Members/Representatives shall address the following issues:

- a. Understanding the role of Members/Representatives in Consumer Direction or Self-Direction, as applicable;
- b. Understanding the role of the FEA as an Agent of the Employer, including as it relates to the Care Coordinator, Support Coordinator, Nurse Care Manager, or DIDD Case Manager, as applicable;
- c. Selecting and Hiring Workers;
- d. Training, including abuse, neglect and exploitation prevention and reporting, on Reportable Events for CHOICES, ECF CHOICES, 1915(c) Waiver Program, and Katie Beckett Members;
- e. Being an employer, evaluating Worker performance, setting Worker's working conditions, setting Worker schedules, managing Workers and the employer's responsibility for ensuring Workers comply with EVV requirements including but not limited to electronically checking in and out of each visit;
- f. Medicaid fraud, waste, and abuse prevention and reporting, which shall be ongoing and occur at least annually;
- g. Training Members on the Contractor's Timekeeping System and the role of the Member/Representative in ensuring Workers' proper use of the Timekeeping System. This training shall cover 21st Century Cures Act, the necessity of EVV Compliance and any remediation steps and/or consequences as a result of failure to maintain EVV compliance;
- h. Training the Member/Representative on appropriate worker documentation of assistance during shifts;
- i. Training the Member/Representative on the responsibility of verifying Worker's time for accurate and timely payroll;
- j. Training the Member/Representative on the Contractor's web portal;
- k. Scheduling Workers and Back-up Planning;
- l. For ECF CHOICES, and Katie Beckett Members, training on how to manage the delivery of each eligible ECF CHOICES HCBS and Katie Beckett HCBS within the authorized budget for that service; and
- m. For CHOICES and 1915 (c) Members, training on how to manage the delivery of each eligible CHOICES and 1915 (c) HCBS within the authorized budget of hours for that service and to ensure that no Worker is working more than forty (40) hours total for the same Employer of Record, including Workers that serve more than one (1) Member.

- A.29. The Contractor shall assist the Member/Representative in determining to what extent the Member/Representative shall be involved in training referenced in Section A.39 of this Contract. The Member/Representative shall provide additional training to the Worker regarding the Member's individualized service needs and preferences, and shall be responsible for providing additional training to Workers regarding the Self-Direction of Health Care Tasks, as applicable.

Worker Qualifications and Enrollment

- A.30. The Contractor shall ensure that Workers meet all of the requirements specified herein and in TennCare Rules and policies and DIDD Rules and policies prior to delivering Consumer-Directed or Self-Directed services, as applicable. The Contractor shall ensure, on behalf of the Member/Representative, that the Worker(s):
- a. Be at least eighteen (18) years of age or older;
 - b. Complete a background check, which includes a criminal background check (including fingerprinting), or, as an alternative, a background check from a licensed private investigation company, verification that the person's name does not appear on the State abuse registry, verification that the person's name does not appear on the State and national sexual offender registries, and verification that the person has not been excluded from participation in Medicare, Medicaid, SCHIP, or any federal health care programs (as defined in Section 1128B(f) of the Social Security Act as determined by appearance on the Health and Human Services Office of Inspector General (HHS-OIG) List of Excluded Individuals and Entities (LEIE), the General Services Administration (GSA) System for Award Management (SAM), the Social Security Death Master File, and other exclusion and/or other professional board databases, as applicable.). A background check is required prior to a Worker's initial employment, and not again thereafter, unless an individual ceases to be a Worker for a period of one (1) year or more, in which case such an individual would need to undergo a new criminal background check, including checks of the required registries above, before restarting as a Worker. A Member/Representative cannot waive a background check for a potential Worker. A background check may reveal a potential Worker's past criminal conduct that may pose an unacceptable risk to the Member. The following findings may place the Member at risk and may disqualify a person from serving as a Worker:
 1. Conviction of an offense involving: physical, sexual, or emotional abuse; neglect; financial exploitation or misuse of funds; misappropriation of property; theft from any person; violence against any person; or manufacture, sale, possession or distribution of any drug; and
 2. Entering of a plea of nolo contendere or when a jury verdict of guilty is rendered but adjudication of guilt is withheld with respect to a crime reasonably related to the nature of the position sought or held.
 - c. Complete all required training (refer to Section A.39 of this Contract);
 - d. Complete all applicable required applications to become a TennCare or DIDD provider, as applicable;
 - e. Sign an abbreviated Medicaid provider agreement;
 - f. Make application for and be assigned a Medicaid provider ID number;
 - g. Sign a Service Agreement, using the TennCare and DIDD, as applicable, approved template; and

- h. If the Worker will be transporting the Member, a valid driver's license and proof of insurance shall also be provided.
- A.31. If a potential Worker for a Member has a criminal background, and the Member/Representative wishes to hire this potential Worker, the Contractor shall submit the criminal background information to TennCare and/or DIDD for consideration of an exemption pursuant to TennCare/DIDD policy. Any such potential Worker submitted to TennCare/DIDD for exemption consideration shall only begin providing services if TennCare and/or DIDD provides prior approval of the exemption request.
- A.32. If a potential Worker for a Member has a background check that includes past criminal conduct, the Member/Representative shall review the past criminal conduct with the help of the Contractor. The Member/Representative, with the assistance of the FEA, shall consider the following factors:
- a. Whether or not the evidence gathered during the potential Worker's individualized assessment shows that the criminal conduct is related to the job in such a way that could place the Member/Representative at-risk;
 - b. The nature and gravity of the offense or conduct, such as whether the offense is related to physical or sexual or emotional abuse of another person, if the offense involves violence against another person or the manufacture, sale or distribution of drugs;
 - c. Conviction of an offense involving financial exploitation or theft of more than five hundred dollars (\$500) (Class E Felony);
 - d. Entering a plea of guilty or nolo contendere or when a jury verdict of guilty is rendered but adjudication of guilt is withheld with respect to a crime reasonably related to the nature of the position sought or held; and
 - e. The time that has passed since the offense or conduct and/or completion of the sentence.

After considering the above factors and any other evidence submitted by the potential Worker, the Member/Representative shall decide whether to hire the potential Worker. If a Member/Representative decides to hire the potential Worker, the Contractor shall assist the Member/Representative in notifying the Member's MCO of this decision and shall collaborate with the MCO and amend the Member's PSCP to reflect that the Member voluntarily chose to take on the risk associated with hiring an individual with a criminal history and is solely responsible for any negative consequences stemming from that decision.

- A.33. The MCO or DIDD, may, pursuant to Section A.66, with appropriate assistance from the Contractor, initiate action to involuntarily disenroll the Member from Consumer Direction or Self-Direction if the MCO or DIDD, as applicable, determines that the Member/Representative's decisions or actions constitute unreasonable risk such that the Member's needs can no longer be safely and effectively met in the community while participating in Consumer Direction or Self-Direction, as applicable, including instances in which it is determined that a Worker with a criminal background poses an unacceptable risk to the Member's health and safety.
- A.34. The Contractor shall have a system in place to process criminal background checks on prospective Workers, and for maintaining copies of the documentation in the Worker's file.

- A.35. The Contractor shall provide a copy of the Service Agreement to the Member/Representative and Worker, and maintain a copy in the Contractor's files consistent with A.95.c record keeping requirements.
- A.36. The Contractor shall develop and produce for Workers an employment packet that shall be partially populated in advance, where appropriate, in order to assist in accurate completion, and for obtaining signatures on all relevant forms and documents (including required IRS forms). The Contractor shall assist Workers in completing the forms (as appropriate), collect and process all required information contained in the Worker employment packet, and maintain copies in each Worker's file. The Contractor shall maintain at a minimum weekly contact with the Member/Representative and Worker until such time that the Worker's employment packet is complete. The Contractor shall notify the Member/Representative when the Worker has completed the enrollment packet. The employment packet should include at a minimum:
- a. Form that collects Worker information (e.g. name, social security number, physical and mailing address, etc.);
 - b. U.S. Citizenship and Immigration and Naturalization Services (USCIS) Form I-9: Employment Eligibility Verification Form;
 - c. IRS Form W-4: Employee's Withholding Allowance Certificate;
 - d. Worker payroll schedule;
 - e. Notice about option for direct deposit and instructions for how to request direct deposit;
 - f. Change of address/contact form;
 - g. Information about how to receive assistance, including the Contractor's toll-free number; and
 - h. Information about the customer service and Complaint Systems.
- A.37. For Members, the Contractor shall develop a process to request and receive from Worker Medicaid provider ID numbers from TennCare, using the TennCare prescribed format, and shall include Medicaid provider ID numbers on all submitted claims.
- A.38. The Contractor shall conduct monthly screenings of the U.S. Department of Health and Human Services-Office of Inspector General List of Excluded Individuals and Entities and General Services Administration System for Award Management databases, the Social Security Death Master File, and other exclusion and professional board databases as applicable, to determine if Workers have been excluded from participation in Medicare, Medicaid, SCHIP, or any Federal health care programs (as defined in Section 1128B(f) of the Social Security Act) and not employ or contract with an individual or entity that has been excluded. If a Worker has been excluded, the Contractor shall notify the Member/Representative regarding the Worker's status and work with the Member/Representative to find a replacement Worker. The Contractor shall also notify the MCO or DIDD, as applicable, regarding the Worker status.
- A.39. The Contractor's Supports Brokers shall be responsible for providing or arranging for initial and ongoing training of all Workers, except that Members shall be responsible for training the Worker(s) regarding individualized service needs and preferences of the Member, and shall be responsible for providing additional training to Workers regarding the Self-Direction of Health Care Tasks, as applicable. The Contractor shall verify to TennCare, the MCO, or DIDD, as applicable, that Workers have successfully completed training prior to service initiation and payment. When training is not directly provided by the Contractor, the Contractor shall validate

completion of training. Initial training shall be completed prior to initiation of services and payment for services. The Contractor shall maintain records of such initial training, ongoing training, and validation of training not directly provided by the Contractor and make the records available upon request of TennCare, the MCOs, or DIDD in accordance with this Contract. At a minimum, training provided by the Contractor, on behalf of the Member, shall consist of the following required elements:

- a. Overview of Consumer Direction in CHOICES, ECF CHOICES, or Katie Beckett Part A, or Self-Direction in the 1915(c) Waiver Program or Katie Beckett Part B, as applicable, including additional training on Self-Direction of Health Care Tasks and the Member/Representative's responsibility for training and oversight of Workers performing Self-Direction of Health Care Tasks;
 - b. Providing services and supports to older adults and people with disabilities, including individuals with intellectual and developmental disabilities and children with complex medical needs, as applicable;
 - c. Training, including abuse, neglect and exploitation prevention and reporting, on identifying and reporting Reportable Events for CHOICES, ECF CHOICES, 1915(c) Waiver Program, and Katie Beckett Members;
 - d. Training on Cardiopulmonary Resuscitation (CPR) and first aid certification;
 - e. Training on universal precautions, blood borne pathogens, infection control, medication, and chronic diseases;
 - f. Training on Medicaid fraud, waste, and abuse identification and reporting, which shall be ongoing and occur at least annually;
 - g. Training on submission of required documentation and withholdings;
 - h. Use of Timekeeping System, including but not limited to the use of the Time4Care -app, EVV compliance, and the potential consequences of EVV noncompliance;
 - i. Training on how to use the Contractor's EVV solution and EVV Compliance requirements to include but not limited to the requirement to electronically check-in and check-out of each visit;
 - j. Use of the Contractor's web portal for payment;
 - k. Person-Centered Practices; and
 - l. Employment and community integration.
- A.40. The Contractor shall collect documentation from the Workers that represent that they have successfully completed CPR and first aid certification and all required training prior to service initiation and payment for services. The Contractor shall also collect documentation from the Workers that represent they maintain CPR and first aid certification and receive required refresher training as a condition of continued employment within CHOICES, ECF CHOICES, or Katie Beckett Part A, or Self-Direction in the 1915(c) Waiver Program, or Katie Beckett Part B, as applicable. The Contractor shall develop and maintain a process for notifying the Member/Representative, the Worker, and the Member's MCO or DIDD, as applicable, of an expiring CPR and/or first aid certification a minimum of ninety (90) calendar days prior to the expiration date and shall continue to track and notify the Member/Representative and Worker until the new certification is obtained.

- A.41. Additional training components shall be provided by the Supports Broker to a Worker to address issues identified by the Care Coordinator, Support Coordinator, Nurse Care Manager, or DIDD Case Manager, as applicable, or by the Member/Representative, or at the request of the Worker. Such additional training shall pertain to program and Medicaid rules in general and shall exclude training for which the Members are responsible for training such as individualized service needs and preferences of the Member, and the Self-Direction of Health Care Tasks, as applicable. Refresher training shall be provided more frequently if determined necessary by the Contractor, Care Coordinator, Support Coordinator, Nurse Care Manager, or DIDD Case Manager, as applicable, or by the Member/Representative or at the request of the Worker.

Supports Brokerage Functions

- A.42. The Contractor shall provide directly, or through a subcontractor, Supports Brokerage functions. The Contractor shall assign a Supports Broker to each Member, and ensure that each Supports Broker provides the following services to each Member in CHOICES, ECF CHOICES, or Katie Beckett Part A or Member in Katie Beckett Part B:
- a. Collaborate with the Member's Care Coordinator, Support Coordinator, Nurse Care Manager, or DIDD Case Manager as applicable;
 - b. Within ten (10) business days of being assigned to a Member, conduct a face-to-face visit with that Member, unless the Member/Representative requests a meeting outside of this timeframe;
 - c. Submit a completed enrollment packet to the Contractor within one (1) business day of completing the face-to-face visit with the Member;
 - d. Participate in development of the Member's PCSP/Plan of Care, including the risk assessment process, as appropriate, and if requested by the Care Coordinator, Support Coordinator, Nurse Care Manager, DIDD Case Manager, or Member/Representative;
 - e. Assist the Member/Representative, if requested, in developing (as part of the onboarding process for new Workers) a schedule for the Member's Workers that comports with the schedule at which services are needed by the Member as reflected in the PCSP;
 - f. Assist the Member in developing the initial Back-up Plan in accordance with the requirement in Section A.17 of this Contract;
 - g. Ensure all services and items outlined in the PCSP remain within the CHOICES, ECF CHOICES, Katie Beckett, or 1915(c) Waiver Program parameters, service maximums, and waiver limits established by TennCare or DIDD, as applicable.
 - h. Assist the Member/Representative in managing and monitoring EVV check-in and outs and payments to Workers;
 - i. Assist the Member/Representative, if requested, in identification of new Workers through tasks including but not limited to helping drafting job descriptions and working with Members/Representatives to determine necessary Worker skills specific to Members;
 - j. Train new Workers pursuant to Contract Section A.39, and assist with training refreshers as needed;

- k. Provide intensive, hands-on assistance to the Member/Representative and their Workers in completing all required Consumer Direction paperwork. Such assistance shall include but not be limited to making weekly phone calls to the Member/Representative and/or Worker, as applicable, if completed paperwork is not received and is preventing the initiation of services. Such calls shall begin five (5) business days from the Contractor's submission of the paperwork to the Member/Representative and/or Worker, and shall continue until all required paperwork is completed or the Member or Worker are no longer involved in Consumer Direction;
 - l. Assist the Member/Representative with training in a manner that meets the service authorization and initiation timelines specified in this Contract in Section A.20, and meets the requirements for training the Member/Representative provided in Section A.28 of this Contract;
 - m. When it is necessary for a Member to employ new or additional Workers, the Supports Broker shall assist with the completion of all required employment paperwork and provide all required training to the Worker in accordance with Section A.39 of this Contract;
 - n. If a Member transitions between the CHOICES, ECF CHOICES, Katie Beckett Part A, Katie Beckett Part B, or a 1915(c) Waiver Program, the Supports Broker shall track the Member across all applicable programs as necessary to assist the Member with the transition and ensure: 1) there are no interruptions or gaps in services for the Member; 2) Workers also transition efficiently across the programs (the one the Member is transitioning from and the one the Member is transitioning to); and 3) payment to Workers remains accurate and timely;
 - o. In programs where Support Broker services are provided, the Support Broker will work closely with the Contractor to communicate and resolve payroll issues;
 - p. Report any instances of abuse, neglect, or exploitation to DIDD and review regulations with Member/Representative and Worker during an investigation;
 - q. Assist in all compliance with audit requests from TennCare, DIDD, and other State entities until contract expiration;
 - r. Maintain knowledge of changes in Self-Direction and Consumer Direction, CHOICES, ECF CHOICES, Katie Beckett, 1915(c) Waiver Program, and the FEA-DIDD Partnership Agreement;
 - s. Identify problem areas for those Members who are not successful at Self-Direction or Consumer Direction. Work with the Support Coordinator, Care Coordinator, Nurse Care Manager, or DIDD Case Manager on how to support the Member's family or Representative to become successful; and
 - t. Assist Members with bilingual services/translation services, culturally diverse and hearing/sight impaired services.
- A.43. The Contractor shall provide access for Supports Brokers to the Contractor's financial management system for review of Member transactions, ensure that an adequate number of Supports Brokers are available and that sufficient Supports Broker-to-Member ratios are maintained to complete the enrollment process of Members and Workers in a timely manner, and to meet all requirements specified in this Contract. The Contractor shall monitor and adjust Support Broker ratios as necessary to ensure that Supports Brokers are able to meet the requirements of this Contract.

- A.44. The Contractor shall provide access for Supports Brokers to the Contractor's financial management system for review of Member transactions; ensure that an adequate number of Supports Brokers are available and that sufficient Supports Broker-to-Member ratios are maintained to address the needs of Members and to meet all requirements specified in this Contract. Support Broker ratios shall be monitored and ratios adjusted as necessary to ensure that Supports Brokers are able to meet the requirements of this Contract and address Members needs.
- A.45. Supports Broker caseloads for Members shall not exceed a 90:1 ratio.

Monitoring and Oversight

- A.46. The Contractor shall,
- a. Develop, maintain as per CMS mandated EVV requirements, and monitor a web-based Timekeeping System that is capable of tracking service utilization for each individual Member. The web-based Timekeeping System shall allow each Member/Representative to access their usage and remaining hours or dollars as applicable. The service utilization and remaining hours or dollars, as applicable, shall reflect the status of the Member's utilization at the point in time it is accessed by the Member/Representative;
 - b. Monitor assignment of Workers by the Member/Representative, including the Contractor's entry of such assignment into the Timekeeping System, to ensure service utilization in accordance with the units or monthly or annual budget, as applicable, of Consumer-Directed or Self-Directed services specified in the PCSP, as applicable, and in the service authorization, and notify the Member's Care Coordinator, Nurse Care Manager, or Support Coordinator, or Case Manager, as applicable, when a Member's needs have changed;
 - c. Monitor service utilization and Worker payments and ensure that the web portal, outlined in Contract Section A.46.f. below, actively reflects the service utilization for a Member;
 - d. Monitor EVV compliance and ensure that all Workers and Members are trained annually in proper EVV procedures. Additional training shall be provided as determined necessary by the Contractor, Care Coordinator, Support Coordinator, Nurse Care Manager, or DIDD Case Manager, as applicable, or by the Member/Representative or at the request of the Worker. The Contractor shall notify the MCO and DIDD of the actions taken to support the Worker-and Member to come into compliance.
 - e. Monitor to ensure compliance with the Fair Labor Standards Act and all other applicable federal and state laws and regulations, as well as TennCare and DIDD policies and/or protocols, regarding Worker compensation, overtime, and overtime pay, including services delivered in a back-up capacity. The Contractor shall work with the Member/Representative, as appropriate to support the Member/Representative in developing an adequate supply of reliable Workers;
 - f. Provide a web portal for MCOs and DIDD to review and monitor Member status at any time;
 - g. Establish and maintain a system for tracking and monitoring information, including, but not limited to:
 1. Adherence to timeframes for initiation of services;
 2. Name of Care Coordinator, Support Coordinator, Nurse Care Manager or DIDD Case Manager, as applicable, and their contact information;

3. Authorizations for Consumer Direction and Self-Direction, as applicable;
 4. Supports Broker visits and outcomes;
 5. Results of monitoring activities;
 6. Service Agreements;
 7. Supports Broker assignments;
 8. Notification to the MCO or DIDD, as applicable of Supports Broker assignment;
 9. Information received from and transmitted to an MCO or DIDD, as applicable;
 10. EVV utilization; and
 11. Service utilization;
- h. As requested by the Care Coordinator, Support Coordinator, Nurse Care Manager, or DIDD Case Manager, as applicable, or the Member/Representative, assist the Member/Representative -in monitoring and evaluating the performance of Workers;
- i. Assist the Member/Representative in managing and monitoring EVV utilization, and payments to Workers;
- j. Be responsible for obtaining new Representatives signed Service Agreements within five (5) business days of the Contractor's notification that a Member has a new Representative, except due to circumstances beyond the Contractor's control causing a delay in obtaining the signature, which shall be documented in writing and maintained in the Contractor's files;
- k. Communicate with the MCOs or DIDD, as applicable, any concerns regarding Member health, safety, and welfare, and/or change in condition, and concerns regarding Workers;
- l. Within three (3) business days of becoming aware, notify the MCO or DIDD, as applicable, of changes to Representative contact information; and
- m. Report visit information to each MCO and DIDD on a monthly basis in accordance with Contract Section A.74.d. and provide necessary information and communicate with MCOs and DIDD in any investigations or actions required to resolve overlapping visits.
- A.47. For Members, the Contractor shall conduct semi-annual face-to-face visits, one of which must be in the Member's place of residence, and shall conduct at least monthly phone contacts. These visits and contacts shall supplement and not supplant the minimum DIDD Case Manager contacts. The Contractor shall document the dates of each visit, the purpose and outcome in the Member's files and the Contractor shall use these visits to monitor the quality of service delivery including, at a minimum: Identifying any service delivery issues regarding services being Self-Directed; and determining the adequacy and appropriateness of documentation of service delivery.
- A.48. For Members , the Contractor shall track the number of hours each Worker works for Members in CHOICES, ECF CHOICES, and Katie Beckett per work week , as the term *work week* is defined in the Service Agreement. In CHOICES, the Contractor shall ensure that no Worker is working more than forty (40) hours total for the Member . If the Contractor determines that a Worker has exceeded such hours, the Contractor shall, on behalf of the Member/Representative , process payment to the Worker for any overtime pay owed at time and a half by the Member , and the Contractor shall notify the Member/Representative to discuss hours with the Worker. If a Worker repeatedly exceeds forty (40) hours per work week, the Contractor shall assess the appropriateness of that Member's continued participation in Consumer Direction. In ECF CHOICES and Katie Beckett, a Member's Worker(s) may provide services in excess of forty (40) hours per work week , if such services are provided in accordance with the Member's PCSP and Consumer Direction budget and conditions specified in the Contractor Risk Agreement regarding

the authorization of these Consumer-Directed services are met. If services meeting these criteria are provided in excess of forty (40) hours per work week, the Contractor shall process any hours worked in excess of forty (40) hours per work week and ensure such hours are paid at time and a half, and deducted from the available funds in the Member's budget.

- A.49. For Members with family members serving as Workers, the Contractor shall track the number of hours per week such Workers provide services, and shall ensure that no such Worker is working more than forty (40) hours total per week. If a Worker for a Member works more than forty (40) hours total per week, the Contractor shall be responsible for ensuring that the Worker is paid any overtime pay owed at time and a half, by the Member, or if necessary, by the Contractor, and shall notify the Member/Representative to discuss hours with the Worker.
- A.50. The Contractor shall, at a minimum, review quarterly reports of expenditures for each Member and monthly reviews and reports of hours billed for services across all Members, by each Worker.
- A.51. The Contractor shall monitor and maintain a Complaint System for responding to and tracking complaints from Members/Representatives and Workers regarding the Contractor. For the purpose of this Section, complaint shall mean any verbal or written notice to the Contractor regarding dissatisfaction with any action taken by the Contractor or the Contractor's staff. In response to a complaint, the Contractor shall:
- a. Within five (5) business days of receipt of the complaint, provide written notice to the Member that the complaint has been received and the expected date of resolution. However, if the Contractor resolved the complaint and verbally informed the Member of the resolution within five (5) business days of receipt of the complaint, the Contractor shall not be required to provide written acknowledgement of the complaint. All responses to complaints, both verbal and written shall be documented in the Complaint System, regardless of whether written notice acknowledging receipt of the complaint to the Member was required;
 - b. Resolve and notify the Member/Representative in writing of the resolution of each complaint as expeditiously as possible, but no later than thirty (30) days from the date the complaint is received by the Contractor. The notice shall include the resolution and the basis for the resolution. However, if the Contractor resolved the complaint and verbally informed the Member/Representative of the resolution within five (5) business days of receipt of the complaint, the Contractor shall not be required to provide written notice of resolution. All responses to complaints, both verbal and written shall be documented in the Complaint System, regardless of whether written notice acknowledging receipt of the complaint to the Member was required;
 - c. Assist Members with the complaint process, including but not limited to completing forms; and
 - d. Track any trends and patterns in verbal or written complaints received by the Contractor, which shall be reported to TennCare and DIDD quarterly as specified in Section A.74(f) of this Contract.
- A.52. The Contractor shall identify and report, as appropriate, instances of Medicaid fraud, waste, and abuse. The Contractor shall report all tips of confirmed or suspected fraud, waste, and abuse, by the Contractor's Staff, including Supports Brokers, whether employed or contracted, Member/Representative or the Workers, to the TennCare Office of Program Integrity (OPI) and the MCO in a manner outlined in the TennCare Program Integrity Manual which is incorporated by reference and will be utilized. The report shall be submitted via the TennCare tracking system by the 5th of each month.

- A.53. On a monthly basis, the CONTRACTOR shall sample a minimum of one hundred (100) claims to ensure EVV compliance. The results shall be submitted via TennCare's tracking system on a quarterly basis by the 5th of each month.
- A.54. The Contractor shall develop and implement a fraud, waste, and abuse compliance plan for ensuring protections against actual or potential fraud, waste, and abuse. The detailed fraud, waste, and abuse compliance plan shall define how the Contractor will adequately identify and report suspected fraud, waste, and abuse by Members/Representatives, Workers, and employees. An electronic copy of the plan shall be provided to TennCare OPI within ninety (90) calendar days of Contract execution and annually thereafter. TennCare OPI shall provide notice of approval, denial, or modification of the fraud, waste, and abuse compliance plan to the Contractor within thirty (30) calendar days of receipt. The Contractor's fraud, waste, and abuse compliance plan shall address, at a minimum, the following requirements:
- a. **Written Policies and Procedures.** The Contractor shall develop written policies, procedures, and standards of conduct that articulate the Contractor's commitment to comply with all applicable federal and state standards for the identification and reporting of incidents of potential fraud, waste, and abuse by Members/Representatives, Workers, and the Contractor and its employees. Including policies and procedures that ensure Workers are eligible to provide services and Members are eligible to receive them on a regular basis.
 - b. **Training and Education .** The Contractor shall establish effective program integrity, and fraud, waste, and abuse (FWA) training and education for Members/Representatives, Workers, and employees. The FWA training should include what FWA is, scenarios of fraud, information on the State agencies that monitor fraud, and how to report it. Additionally, the program integrity training should be tailored to each audience and should be provided when first hired, and/or before the start of services. Training should be administered annually thereafter.
 1. The training for employees should include at a minimum:
 - i. The rules and regulations surrounding a Worker;
 - ii. Fraud, waste, and abuse training;
 - iii. False Claims Act (31 U.S.C. §§ 3729-3733); and
 - iv. Section 1902(a)(68) of the Act.
 2. The training for Members/Representatives should include at a minimum:
 - i. The rules and regulations surrounding a Worker;
 - ii. Notification of changes in relationship to Member;
 - iii. Fraud, waste, and abuse training; and
 - iv. False Claims Act (31 U.S.C. §§ 3729-3733).
 3. The training for Workers should include at a minimum:
 - i. The rules and regulations surround a Worker;
 - ii. Self-reporting if Member is in the hospital or unavailable for services;
 - iii. Notification of changes in relationship to Member, or address;
 - iv. Cloning of Member records;
 - v. Fraud, waste, and abuse training; and
 - vi. False Claims Act (31 U.S.C. §§ 3729-3733).
 - c. **Effective Lines of Communication.** The Contractor shall establish effective lines of communication with its Members/Representatives, Workers, and employees to ensure compliance with program integrity standards.
 - d. **Well-Publicized Disciplinary Guidelines.** The Contractor shall enforce program integrity standards through well-publicized disciplinary guidelines.

- e. Process for Reporting Potential or Actual Fraud, Waste, and Abuse. The Contractor shall provide information and a procedure for Members/Representatives, Workers, and employees to report incidents of potential or actual fraud, waste, and abuse to the Contractor and to TennCare OPI, in a manner and format required by TennCare.
 - f. Development of Corrective Action Initiatives. The Contractor's fraud, waste, and abuse compliance plan shall include provisions for corrective action initiatives.
 - g. Cooperation with Fraud, Waste, and Abuse Investigations. The Contractor's fraud, waste, and abuse compliance plan shall include provisions for cooperating with all fraud, waste, and abuse investigation efforts by the MCOs, TennCare, and/or other state and federal offices. These provisions shall include specific documentation which shall be made available to TennCare, MCOs, and/or state and federal offices, upon request, and in accordance with applicable TennCare guidance and MCO//FEA partnership agreements.
 - h. Include Written policies regarding the False Claims Act (FCA) including whistleblower protections under the FCA and/or Tennessee Medicaid False Claims Act.
- A.55. The Contractor shall report any concerns regarding health, safety and welfare and the Member's ability to participate in Consumer Direction or Self-Direction, as applicable, to the MCO or DIDD, as applicable, as well as concerns regarding Representatives.
- A.56. On an annual basis, the Contractor shall conduct a survey of Members/ Representatives to determine satisfaction with the Contractor and participation in Consumer Direction or Self-Direction, as applicable. These survey responses shall represent a statistically valid sample size as specified by TennCare of the existing Members enrolled in Consumer Direction or Self-Direction, as applicable. The survey instrument shall be prior approved by TennCare. A comprehensive report of results shall be provided to TennCare, Members' MCOs, and DIDD using the TennCare-specified process and format approved by TennCare. Copies of survey results shall be provided to DIDD, Members' MCOs, and TennCare.
- A.57. The Contractor shall make available to TennCare or its representative and other authorized State and federal personnel, all records, books documents, and other evidence pertaining to this Contract at no cost to the requesting entity, as well as appropriate administrative and/or management personnel who administer the services provided by the Contractor. The monitoring shall occur periodically during the Contract period and may include announced or unannounced visits, or both.
- A.58. The Contractor shall prepare and maintain a policies and procedures manual that describes the policies, procedures, and internal controls for all tasks related to the requirements of this Contract. The policies and procedures manual should also address how the Contractor shall stay current with federal and State tax, labor, Workers compensation insurance and program rules and regulations. The manual shall be updated at least annually and made available to TennCare upon request.
- A.59. The Contractor shall maintain internal auditing processes to demonstrate compliance with requirements of this Contract and keep current with all federal and State laws and regulations related to fiscal employer agents. The Contractor shall be subject to scheduled audits by the State.

Responding to Reportable Events to Members

- A.60. The Contractor shall report all Reportable Events occurring to CHOICES, ECF CHOICES, and Katie Beckett Part A Members, Katie Beckett Part B Members, and 1915(c) Waiver Program Members to the Member's MCO and DIDD within one (1) business day of witnessing or

discovering such event, notify DIDD within four (4) hours of any Tier 1 Reportable Events, and shall also contact Adult Protective Services (APS) or law enforcement in accordance with State law. In HCBS programs, there are three (3) categories of Reportable Events: Tier 1, Tier 2, and Additional Reportable Events and Interventions. The type of Reportable Event dictates the reporting requirements and process that must be followed by the provider, MCO, FEA, and DIDD, as applicable. DIDD shall triage all allegations reported via the Abuse Hotline with two (2) business days (unless pending results of medical assessment, laboratory test, expert opinion, etc.) to determine the need for an investigation. All allegations will be investigated by DIDD.

- A.61. The Contractor shall report all Reportable Events, as those events are specified in the Contractor Risk Agreement, occurring to CHOICES, ECF CHOICES, Katie Beckett, and 1915(c) Waiver Program Members to DIDD and/or the Member's MCO within the timeframes specified within the Contractor Risk Agreement upon witnessing or discovering such events, and shall also report such events to APS, Child Protective Services (CPS), or law enforcement in accordance with State law.
- A.62. The notification of a Reportable Event to a Member's MCO and DIDD, as applicable, shall be completed in accordance with TennCare protocol.
- A.63. The Contractor shall respond to allegations of Reportable Events after reporting as follows:
- a. If the allegation is in reference to a Worker, the Contractor shall contact the Member/Representative to determine whether the Member/Representative chooses to remove the Worker during the course of the investigation. The Contractor shall notify the Member's MCO regarding the Member/Representative's decision. If the Member needs a new Worker, the Care Coordinator, Support Coordinator, DIDD Case Manager, or Nurse Care Manager as applicable, shall support the Member/Representative, if requested in helping the Member/Representative find a suitable replacement Worker.
 - b. If the allegation is in reference to a Member's Representative, the Contractor shall contact the Member to determine whether the Member chooses to remove the Representative from his/her duties during the investigation. The Contractor shall notify the MCO and DIDD regarding the Member's decision. If the Member needs a new Representative, the Care Coordinator, Support Coordinator, DIDD Case Manager, or Nurse Care Manager, as applicable, shall support the Member in identifying a new Representative.
 - c. In the event a Representative (Employer of Record/EOR) of a Member is alleged to have committed abuse, neglect, or exploitation against the Member, the Contractor shall immediately remove the Representative from his or her Representative capacity during the investigation. During such removal, the Member's participation in Consumer Direction or Self-Direction shall be suspended. If the investigation concludes the allegations against the Representative are unsubstantiated, both the Member's and the Representative's participation in Consumer Direction or Self-Direction shall be reinstated. However, if the allegations against the Representative are substantiated, the Member's MCO, with assistance from the Contractor, as needed, shall work with the Member to identify a replacement Representative. If a replacement Representative cannot be identified within ten (10) business days from completion of the investigation, the Member shall be disenrolled from Consumer Direction or Self-Direction.
- A.64. As the Employer of Record, the Member/Representative shall ultimately determine the appropriate corrective action(s) for the Worker, including when such actions relate to a Worker who is responsible for a Reportable Event against the Member. However, the Contractor or TennCare may offer recommendations and/or assistance to the Member/Representative in making the determination for corrective action, if requested by the Member/Representative. The

Contractor shall report corrective actions determined by the Member/Representative to the Member's MCO and DIDD.

- A.65. If Reportable Event allegations are substantiated against a Representative or Worker as a result of an investigation, the Representative or Worker shall no longer be allowed to participate in CHOICES, ECF CHOICES, Katie Beckett, or 1915(c) Waiver Program in any capacity. Further, the Contractor shall notify TennCare within forty-eight (48) hours of a person being found on any abuse registry, and collaborate with DIDD or MCOs, as applicable, if placement on a State abuse registry is appropriate. If the investigation is unsubstantiated, the Member/Representative may elect to retain the Worker or the Member may elect to retain the Representative. The Member's MCO or DIDD, with appropriate assistance from the Contractor, shall make any updates to the PCSP, including assessed risks based on this decision, deemed necessary to help ensure the Member's health and safety.
- A.66. The Member's MCO, DIDD, or TennCare, with appropriate assistance from the Contractor, may initiate action to involuntarily disenroll the Member from Consumer Direction or Self-Direction at any time the MCO, DIDD, or TennCare, determines that the Member/Representative's decisions or actions contributed to fraud or an event that constitutes unreasonable risk such that the Member's needs can no longer be safely and effectively met in the community while participating in Consumer Direction or Self-Direction, including a Member/Representative's decision to retain a Worker either during or after an investigation when such Worker is alleged to have committed a Reportable Event, as applicable, and retaining such a Worker poses a risk to the Member's health and safety.
- A.67. The Contractor shall follow reporting requirements outlined in the Reportable Event Management (REM) protocol located on the DIDD website (<https://www.tn.gov/didd/providers/r-e-m/rem-resources.html>), including but not limited to, the requirement to contact the DIDD Abuse Hotline within four (4) hours of Tier 1 Reportable Events. The Contractor shall report all events outlined in the REM protocol within one (1) business day of the Contractor becoming aware of the event, of Worker identification of reportable events in accordance with DIDD's reportable event reporting process, including the form to be used to report all reportable events and reporting timeframes.
- A.68. The notification of a reportable event shall include at a minimum:
- a. The Member's name;
 - b. The date the allegation was reported and/or identified;
 - c. A description of the issue;
 - d. Measures taken to mitigate risk to the Member; and
 - e. Whether the event was reported to APS, CPS, or law enforcement, as appropriate.
- A.69. If the allegation is physical or sexual abuse in reference to a Worker or Representative, at the time that the Contractor reports the event to DIDD, DIDD shall inform the DIDD Case Manager, Care Coordinator, Support Coordinator, or Nurse Care Manager and Support Broker to place the Worker or Representative, as applicable, on administrative leave until the investigation is complete, and shall also inform the Worker or Representative, as applicable, and Member/Representative of the process to ask for an exception from placing the person on administrative leave. The Contractor shall assist the Member to identify a new Representative, if applicable, or the Contractor shall assist the Member/Representative, if requested, to find a suitable replacement Worker, if applicable.

- A.70. The Contractor shall refer all instances of suspected abuse, neglect, or exploitation as defined in Tenn. Code Ann. § 71-6-103 to APS for investigation.
- A.71. The Supports Broker shall report to DIDD all reportable events identified in the REM protocol, including events referred to APS, corrective actions determined by the Member/Representative, and any concerns regarding the Member's health and safety, including updates to the PCSP.
- A.72. If the allegations are substantiated as a result of the investigation, the Representative shall no longer be allowed to participate in the CHOICES, ECF CHOICES, 1915(c) Waiver Program, or Katie Beckett program in any capacity. If the investigation is inconclusive, the Member may elect to retain the Worker or Representative. A Worker shall not continue providing services for a Member if the Worker is placed on any abuse registry listed in A.30. The Contractor shall notify TennCare, in a manner prescribed by TennCare, within forty-eight (48) hours of a person being found on any abuse registry.
- A.73. The Contractor shall submit a monthly Reportable Events Report. The report shall provide information, by month regarding specified measures, which shall include but not be limited to the following:
- a. A list of all Reportable Events reported during the applicable reporting period, including the member name, Program, type of Reportable Event, date of Reportable Event, and setting,;
 - b. A narrative describing the CONTRACTOR's analysis of Reportable Events for the reporting period, including trends and patterns; opportunities for improvement; and strategies implemented by the CONTRACTOR to reduce the occurrence of Reportable Events and improve the quality of HCBS.

Reporting

Reports Due to TennCare

- A.74. The Contractor shall develop and submit the following reports in the manner instructed by TennCare. The Contractor shall develop reports that are capable of sorting by selected date ranges as specified by the requestor at TennCare. Unless otherwise indicated, all reports shall include data for Members in all programs (i.e., CHOICES, ECF CHOICES, Katie Beckett, and 1915(c) Waiver Program). Data shall be stratified by program for all reports, and shall be further stratified in individual reports as specified below.
- a. *A weekly Pre-Enrollment Referral and Enrollment Report.* For individuals not yet enrolled in CHOICES or ECF CHOICES who, without the receipt of Consumer-Directed services, may not enroll in CHOICES or ECF CHOICES, the Contractor shall work with TennCare enrollment to ensure timely and seamless transition to Consumer-Directed services. On a weekly basis, the Contractor shall submit to TennCare a report tracking the enrollment process for each prospective Member. At a minimum, the report shall include, but is not limited to:
 1. The Member's name;
 2. Date of referral;
 3. Supports Broker's name;
 4. Status of required paperwork, home visit, Back-up Plan, and training; and
 5. Status of Worker identification and readiness.

- b. A monthly *Consumer Direction and Self-Direction Count Report*, due on the 1st of the month. At a minimum, the report shall include the following information, separated by program, geographic region, and MCO (if applicable):
1. The total number of active referrals for Consumer Direction and Self-Direction (i.e., anyone currently in CHOICES, ECF CHOICES, Katie Beckett Part A, Katie Beckett Part B, or 1915(c) Waiver Program referred to the Contractor for the initiation of Consumer-Directed or Self-Directed services, who is actively working toward, but is not yet receiving, Consumer-Directed or Self-Directed services);
 2. The total number of Members with active authorizations for Consumer-Directed or Self-Directed services;
 3. The total number of Members with active authorizations for companion care;
 4. The total number of Members who noted on their Service Agreement that they will be engaging in the Self-Direction of Healthcare Tasks, including the type of healthcare tasks being self-directed;
 5. The total number of Members with eligible family members hired as Worker(s); and
 6. The total number of ECF CHOICES Members who are participating in Consumer-Directed transportation benefits, as applicable, by program.
- c. A quarterly *Supports Broker Report* (electronic copy), due on the 30th of the month following the end of each quarter (e.g., due April 30th for the March data) or the next immediate business day if the 30th is a weekend or State holiday. At a minimum, the report shall include:
1. The tenure for Supports Brokers;
 2. The Supports Broker-to-Member ratio;
 3. The number of Members reassigned to a different Supports Broker (broken down by those changes requested by the Member, and those initiated by the Contractor/subcontractor); and
 4. For Members, the current status of the Member's case (i.e., new enrollment, on-going support, or turnover/transition assistance as those terms are defined immediately below).
 - i. New enrollment – those Members who are enrolling in Consumer Direction for the first time or re-enrolling after more than three hundred sixty-five (365) days out of Consumer Direction.
 - ii. On-going support – those Members who have been enrolled in Consumer Direction and have an Employer of Record and all the necessary Workers in place.
 - iii. Turnover/transition assistance – those Members who are enrolled in Consumer Direction and are experiencing a change in one or more of their Workers and/or their Employer of Record.
- d. A monthly *Electronic Visit Verification (EVV) Compliance Report* of ECF CHOICES, CHOICES, Katie Beckett Part A, Katie Beckett Part B, and 1915(c) Waiver Program Consumer Direction members due on the 20th of the following month (e.g., February 20th for the month of January) or the next immediate business day if the 20th is a weekend or State holiday, in a manner prescribed by TennCare. Additionally, the Contractor shall provide the data elements for this report to the MCOs at the same frequency as prescribed in the FEA/MCO Partnership Agreement. The report shall contain information on specified measures including, but not limited to, the following:
1. Total number of Members in each program receiving CD services in the reporting period:

2. The number of visits each Member received and the method in which each visit was checked in and checked out with;
 3. The compliance score by program and by MCO; and
 4. Raw data for each visit should be available upon request.
- e. A monthly *Fraud, Waste, and Abuse Report* on the issues identified and tracked through the Contractor's fraud, waste, and abuse system and the resolution and timeframes for resolution of identified issues by program, including whether the Contractor took any action on fraud, waste, and abuse tips or provided any education on the incidents relating to the tips. The report shall be submitted through the TennCare tracking system by the 5th of each month.
- f. The following quarterly reports, due on the 30th of the month following the end of each quarter (e.g., due April 30th for January - March data), or the next immediate business day if the 30th is a weekend or State holiday, using a format prescribed by TennCare:
1. *Complaint Report* by month and cumulative for the quarter, on the complaints received from Members/Representatives, Workers, DIDD Case Managers, Care Coordinators, Support Coordinators, and Nurse Care Managers regarding the Contractor, and the resolution and timeframe for resolution of reported complaints. For Members, the Contractor shall stratify this data by program (i.e., CHOICES, ECF CHOICES, or Katie Beckett, Part A, by MCO, and by type of issue. For Members, the Contractor shall stratify this data by program (i.e., 1915(c) Waiver Program or Katie Beckett Part B) and by type of issue.
 2. *Referral and Enrollment Report* by program that provides the following information, at a minimum, by MCO and/or TennCare or DIDD referral, as applicable, by month and cumulative for the quarter:
 - a. Cumulative list of referrals and enrollments received during the last four (4) quarters;
 - b. Cumulative list of withdrawals from Consumer Direction or Self-Direction for the quarter with an indication if withdrawal occurred prior or subsequent to service initiation, and the reason of withdrawal; and
 - c. How many days transpired from Consumer Direction or Self-Direction referral by the MCO or DIDD (date of referral upload, or as otherwise defined by TennCare) to initiation of services (date of service authorization, or as otherwise defined by TennCare) for Consumer-Directed or Self-Directed Members:
 - i. Number of calendar days from referral to initiation of services;
 - ii. Number of days between referral and authorization;
 - iii. Summary of the foregoing for the last four (4) quarters on every quarterly submission;
 - iv. Listing of each Member for whom services have not been initiated including explanation as to why these services have not been initiated; and
 - v. Additional information as prescribed on the reporting template provided by TennCare.
 3. *Customer Service Report* that provides, by program, month, and cumulative for the quarter, the following information:

- a. Number of calls received;
 - b. Percentage of abandoned calls;
 - c. Average time to answer calls;
 - d. Percentage of calls answered within thirty (30) seconds;
 - e. Average length of time on hold;
 - f. Average length of time on each call;
 - g. Number of voice messages received;
 - h. Number and percent of voice messages returned within one (1) business day;
 - i. Number of dropped calls; and
 - j. List of reasons for each call and number of calls per reason, which shall be categorized by program (i.e., CHOICES, ECF CHOICES, Katie Beckett Part A or Part B, or 1915(c) Waiver Program, and if CHOICES, ECF CHOICES, by MCO).
4. *Member Utilization Report* by month and cumulative for each quarter, as well as annually (cumulative for each calendar year due ninety (90) calendar days after the last day of each calendar year) that provides the following information, at a minimum:
- a. Name and identification number of each Member during the reporting period and indicating, if applicable, the date of withdrawal from Consumer Direction or Self-Direction;
 - b. Services authorized and rate per service for each Worker and if Worker is a family member;
 - c. Total units of each service provided and amount of payments made on each Member's behalf;
 - d. For Katie Beckett members, the date the request for reimbursement was received, the date the payment was mailed and the reason for any payment issues or delays, if applicable;
 - e. Total authorized units or budget amount, as applicable, of each service remaining for each Member; and
 - f. Identification of Members enrolled in Consumer Direction or Self-Direction who incur no utilization of Consumer-Directed or Self-Directed services for a period of at least thirty (30) consecutive calendar days.
5. *Worker Report* by month and cumulative for the quarter that provides the following information to TennCare, the MCOs and DIDD, at a minimum:

- a. The names and identifying information of all Workers who provided services to more than three (3) people who consumer direct or self-direct their services in any HCBS waiver program; and
 - b. Information stratified by MCO or DIDD and program.
6. *Tennessee Tax Liabilities Report* cumulative for the quarter that provides the following information, at a minimum:
- a. Name and identification number of each Member having a tax liability to the State of Tennessee Department of Labor; and
 - b. Accounting for any payments made by the Contractor on behalf of these Members during the reporting period, including the amount(s) owed, the amount(s) paid, the due date for said payment(s), and the actual date of said payment(s).
7. *Member Advocacy Group Report* quarterly that provides the following:
- a. Names of each person participating in the Contractor's Member Advocacy Group and their respective roles (i.e., Members currently receiving Consumer-Directed or Self-Directed services, Representative of Member currently receiving Consumer-Directed or Self-Directed services, family member of Member currently receiving Consumer-Directed or Self-Directed services, Worker currently providing Consumer-Directed or Self-Directed services, or advocate);
 - b. Description of date, time, and location of the most recent quarterly meeting that occurred; and
 - c. Brief narrative description of the items discussed at the meeting, including all questions and concerns discussed, including recommendations for improvement to TennCare regarding either the Consumer Direction or Self-Direction programs, who was responsible for responding to each respective inquiry or concern, how each item will be addressed, and timeframes for addressing all items raised at the meeting.
8. *A Reportable Event Report* by month and cumulative for the quarter that provides the following information, at a minimum and as prescribed by TennCare or DIDD:
- a. For CHOICES Members:
 - 1. The number of Members in Group 2 and Group 3 Consumer-Directing services; and
 - 2. The number of Reportable Events, overall and by Tier and type of event.
 - b. For ECF CHOICES Members:
 - 1. The number of Members in Group 4, 5, and 6, Consumer-Directing services; and

2. The number of Reportable Events, overall and by Tier and type of event.
- c. For Members:
 1. The number of Members Self-Directing services; and
 2. The number of Reportable Events, overall and by Tier and type of event.
- d. For Katie Beckett Members:
 1. The number of Katie Beckett members, stratified by Part A or Part B, Consumer-Directing Services; and
 2. The number of Reportable Events, overall and by Tier and type of event, stratified by Part A or Part B.
9. An *Accounts Receivable Report* by month and cumulative for the quarter, that provides the following information, at a minimum:
 - a. The total number and amount of denied claims by MCO, both those that the Contractor determined were appropriately and inappropriately denied (these shall be identified separately);
 - b. Inappropriately denied claims and amounts, date of submission, reason(s) for denial with corresponding code; and the status and/or date of resolution;
 - c. Reason(s) for denial of appropriately denied claims with corresponding code, including the number of claims appropriately denied for each reason;
 - d. Actions taken toward addressing appropriately denied claims (i.e., to minimize denied claims going forward); and
 - e. Additional ad hoc reports shall be prepared and submitted as directed by TennCare at a frequency mutually agreed upon by the Contractor and TennCare.
10. The following annual reports are due by March 31st each year via the TennCare tracking tool and using a format outlined in the Program Integrity Manual:
 - a. Annual Fraud, Waste, and Abuse Compliance Plan (Plan) as outlined in A.54.; and
 - b. Annual Recoveries Report which details all administrative and non-administrative recovery activities conducted by the FEA during the reporting period (January 1st through December 31st).

Withdrawal from Consumer Direction or Self-Direction

- A.75. In the event that the Contractor learns that a Worker is unable to deliver appropriate services and supports as prescribed in the Service Agreement and the PCSP for Members, or the Service Agreement and ISP for Members, or that a Member is not an appropriate candidate for Consumer

Direction or Self-Direction, the Contractor shall notify the Care Coordinator, Support Coordinator, Nurse Care Manager, or DIDD Case Manager, as applicable, regarding those concerns within one (1) business day of identifying the issue(s) as well as inform the Member/Representative of any potential risks associated with continuing to use the Worker, and in conjunction with the MCO or DIDD, as applicable, shall:

- a. Collaborate to develop strategies to address identified issues and concerns. Such strategies shall include, but not be limited to: Member/Representative retraining, Worker retraining, and focused training and oversight specific to individual Member issues identified;
 - b. If no strategies can be successfully developed and implemented to maintain a Member's enrollment in Consumer Direction or Self-Direction, initiate involuntary disenrollment proceedings;
 - c. Abide by TennCare's decision, as applicable, regarding disenrollment of a Member from Consumer Direction or Self-Direction, as applicable. TennCare shall conduct the disenrollment process in accordance with TennCare Rules, including providing the Member with advance notice of involuntary disenrollment or withdrawal. The notice shall include a statement of the Member's right to request a fair hearing within thirty (30) days from receipt of the written notice regarding valid factual disputes pertaining to the decision. In the case of involuntary withdrawal from participation in Consumer Direction or Self-Direction, if the request for a fair hearing is received prior to the date of action, continuation of participation in Consumer Direction or Self-Direction, as applicable, shall be provided, unless such continuation would pose a serious risk to the Member's health, safety and welfare, in which case, services specified in the PCSP shall be made available through Contract Providers pending resolution of the hearing;
 - d. Facilitate a seamless transition from Workers to Contract Providers and ensure there are no interruptions or gaps in services; and
 - e. For Members who have been involuntarily withdrawn and choose to be reinstated in Consumer Direction or Self-Direction, as applicable, ensure that the issues previously identified as reasons for withdrawal have been adequately addressed prior to reinstatement. All Members shall be required to participate in Consumer Direction or Self-Direction training programs, as applicable, prior to re-instatement.
- A.76. When TennCare disenrolls a Member from Consumer Direction or Self-Direction, either voluntarily or involuntarily, the Contractor shall retire the Member's IRS Form 2678 FEIN, and adhere to State processes including final filings of state income and unemployment taxes and retirement of Member's state income and unemployment registration numbers.

Data Exchange and Sharing of Information

- A.77. The Contractor shall have the capability to accept all relevant MCO and DIDD data files in accordance with agreed upon standards, have a comprehensive information system in place to receive and disburse funds and track funds authorized and disbursed for each Member, by Worker, individually, and in the aggregate. Such comprehensive system shall include backup provisions for providing these services should the primary system become unavailable.
- A.78. The Contractor shall have a system in place for collecting and processing all required forms and information contained in Member enrollment packets and Worker employment packets for each Member and Worker and for maintaining copies in each Member's file, and shall adhere to all applicable HIPAA and HITECH requirements for transmission, protection and identification of health information.

- A.79. The Contractor shall establish with the MCOs and DIDD a process that allows for the efficient exchange of all relevant Member information between entities (e.g. information is submitted timely and using appropriate format). This information includes but is not limited to Member information, Worker Information, service authorizations, billing, claim, or encounter data.

Customer Service

- A.80. The Contractor shall comply with requests and timeframes for data sharing from TennCare, and as directed by TennCare, from DIDD, and the MCOs. This includes but is not limited to Member information, Worker information, EVV data, visit information, service authorization, billing, claim, or encounter data, SFTP access, Medicaid Worker IDs, items requested for state or federal reporting, items requested for legislative inquires, items related to contract amendments and updates, and change requests where new processes are not required.
- A.81. The Contractor shall operate a toll free telephone line for Members/Representatives and Workers to use to contact the Contractor for questions on administrative and Support Brokerage functions. The toll free telephone line shall handle calls from callers with Limited English Proficiency as well as calls from callers who have speech and hearing impairments. The Contractor shall:
- a. Ensure that the toll free telephone line is staffed adequately to respond to Member/Representative questions during normal business hours, defined as 8 a.m. to 5 p.m. in the Central and Eastern Time Zones within the State of Tennessee being served by the MCO or DIDD, as applicable, Monday through Friday, except State of Tennessee holidays. All staff answering calls during normal business hours shall be familiar with the Contractor's services and program materials, and with each program for which Consumer-Directed or Self-Directed services, as applicable, are provided, including the requirements and processes thereto. The Contractor may also provide an automated system, which, if offered, shall be optional to the caller during and after normal business hours (a person can choose to speak with a live operator). The Contractor shall adequately staff the customer service line to ensure that the following performance standards are met: less than five percent (5%) call abandonment rate; eighty-five percent (85%) of calls are answered by a live voice within thirty (30) seconds (or the prevailing benchmark established by National Committee for Quality Assurance), unless the caller opts for an automated system; and average wait time for assistance (excluding callers selecting the automated system that may be offered by the Contractor) does not exceed ten (10) minutes. At times outside of normal business hours, the Contractor shall have an answering service available, which shall obtain and record the best time and number to contact the caller. Calls received by the answering service shall be returned within one (1) business day from the time the message is recorded;
 - b. Provide a toll free facsimile number for Members/Representatives to use as needed for communication and sharing relevant information and documentation, and that the receipt and storing of any such communications is HIPAA compliant;
 - c. Have a secured HIPAA and HITECH compliant e-mail address to use as needed for communication and sharing of relevant information and documentation with Members/Representatives. The Parties acknowledge that Contractor cannot be responsible for the HIPAA compliance of messages prior to their receipt at the HIPAA-compliant e-mail address;
 - d. Establish and maintain a system for receiving, returning, and tracking calls from individuals during and after regular business hours. This system must capture, at a minimum:

1. The number of the caller;
2. The name of the caller;
3. The date and time the call was received;
4. The purpose of the call;
5. The name of the person who received the call;
6. If after business hours, when the call was returned (date and time) and by whom; and
7. If the call required additional time to resolve, when the caller was contacted with the additional information (date and time) and by whom.

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

- e. Provide assistance to Members/Representatives over the phone, via e-mail, facsimile, or in-person, as necessary to complete required forms;
 - f. Communicate effectively with all Members/Representatives including those who are culturally diverse and have a variety of disabilities. The Contractor shall use telecommunication devices for Members/Representatives who are hearing and speech impaired and shall have Spanish speaking bilingual customer service representatives available during normal business hours. Members/Representatives and customer service representatives shall have the ability to access interpreter services when needed. The Contractor shall have the capacity to access translation services when needed; and
 - g. Respond to telephone inquiries and requests for general program information regarding Consumer Direction and Self-Direction that is outside of the Contractor's scope of service and transfer calls as appropriate, using a Warm Transfer whenever possible, to the Member's MCO or DIDD, as applicable.
- A.82. Information regarding the Contractor's customer service system (as noted above in Section A.79 of this Contract), including the hours of operation, the response time for returning messages and responding to mail inquiries shall be provided to Members/Representatives as part of the enrollment packet and Workers as part of the employment packet.
- A.83. The Contractor shall work with the MCOs and DIDD to develop a protocol for interfaces and transfers of customer service inquiries that ensures that all calls are transferred and referred appropriately and in a timely manner.

Staffing Requirements

- A.84. The Contractor shall have sufficient staff with relevant experience and qualifications to fulfill all specified requirements per the terms of this Contract, and shall implement a policy to ensure service coverage for all Members during the absence of staff and vacated positions. The Contractor shall be responsible for ensuring applicants meet the required qualifications in Contract Sections A.85 and A.86 prior to hire.
- A.85. All Supports Brokers and other staff, including subcontractors, whose job functions include direct contact with or responsibility for Members shall complete a background check, which includes criminal background check (including fingerprinting), or, as an alternative, a background check from a licensed private investigation company. Additionally, the Contractor shall verify that the person's name does not appear on the State abuse registry, State and national sexual offender

registries, the federal government's LEIE and SAM exclusion databases, and verify licensure, as applicable.

- A.86. The Contractor shall possess and maintain applicable State of Tennessee business license(s), be approved by the IRS to be an FEA and carry out Financial Administration activities under the supervision of a certified public accountant licensed by the State of Tennessee . Additionally, the Contractor shall ensure that staff providing Support Brokerage functions meet the following minimum qualifications:
- a. A four (4) year degree in Human Services (psychology, sociology, social work, recreational therapy, education, nursing, physical therapy, occupational therapy, speech, etc.) and at least one (1) year professional experience working with one (1) of the following populations: elderly, adults with physical disabilities, individuals with intellectual disabilities, and persons with developmental disabilities; or
 - b. A four (4) year degree in any other subject and two (2) years' experience working with one (1) of the following populations: elderly, adults with physical disabilities, individuals with intellectual disabilities, and persons with developmental disabilities; or
 - c. A two (2) year degree in Human Services (psychology, sociology, social work, recreational therapy, education, nursing, physical therapy, occupational therapy, speech, etc.) and at least five (5) years professional experience working with one (1) of the following populations: elderly, adults with physical disabilities, individuals with intellectual disabilities, and persons with developmental disabilities; or
 - d. For ECF CHOICES and 1915(c) Waiver Members, five (5) years professional experience working with persons who have an intellectual disability, without the preceding education requirements meets the minimum qualification. Supports Brokers with this experience only, and not the above educational experience, shall only be allowed to perform Support Brokerage functions for ECF CHOICES and 1915(c) waiver members and
 - e. Satisfactorily complete a TennCare (and DIDD, as applicable)-approved orientation and training program, as applicable, on Member-managed services and the role of the Supports Broker. The program shall be prior approved by TennCare (and DIDD, as applicable) before staff can participate.

Contractor Training Requirements

Requirements for Training Contractor Staff

- A.87. The Contractor shall provide staff training that includes;
- a. Customer service training for Contractor staff, including Person-Centered Practices and appropriate documentation of service delivery;
 - b. As appropriate, train staff on how to use the Timekeeping System;
 - c. Requirements for Reportable Event identification and reporting Reportable Event Management;
 - d. As appropriate, train Contractor's staff on how to use the EVV solution and requirements for Electronic Visit Verification Compliance and monitoring;
 - e. Identification and reporting of potential or suspected fraud, waste, and abuse, initially upon hire and annually thereafter;

- f. The False Claims Act, including whistleblower protections, administrative remedies for false claims, any state laws pertaining to civil or criminal penalties for false claims or statements, and whistleblower protections under such laws with respect to such laws in preventing and detecting fraud, waste, and abuse in federal health care programs, initially upon hire and annually thereafter;
- g. The Contractor's complaint system; and
- h. All Supports Brokers shall be trained in a manner prior approved by TennCare on Consumer Direction in CHOICES, ECF CHOICES, and Katie Beckett and Self-Direction in the 1915(c) Waiver Program and supporting older adults, adults with physical disabilities, and individuals with intellectual or other developmental disabilities.

Requirements for Training MCO and DIDD Staff

- A.88. Prior to the implementation of this Contract, and at least annually or upon request by the MCO or DIDD, the Contractor shall provide standardized training to Care Coordinators, Support Coordinators, Nurse Care Managers, and Case Managers, as applicable, employed by each MCO or DIDD regarding Consumer Direction or Self-Direction, as applicable, for Members and the role and responsibilities of the Contractor, including Financial Administration and Supports Brokerage functions as required for each program.

Record Management and Retention

- A.89. The Contractor shall have in place the following record management and retention processes:
- a. Establish and maintain a recordkeeping system for managing Member/Representative and Worker files in a secure and confidential manner as required by federal and State statutes and regulations, including meeting all HIPAA requirements;
 - b. Maintain current and archived Member/Representative, Worker, and Contractor files, including the maintenance of original and file copies of all forms and documents needed to comply with federal, State, and local (if applicable) payments of income, FICA and unemployment tax, and workers' compensation insurance payments, if applicable, and all other reporting requirements of employers and for the required period of time;
 - c. Maintain current and archived Member/Representative, Worker, and Contractor files in a secure and confidential manner and for the prescribed period of time as required by federal and State statutes and regulations, including federal and State record retention rules and applicable HIPAA requirements; and
 - d. Establish and maintain a documented disaster recovery plan for electronic and hard copy files including a disaster recovery plan for restoring software and master files and hardware back-up if management information systems are disabled and for continuation of payment of Worker, independent contractors, and other entities as applicable.

Payroll Processing

- A.90. The Contractor shall have in place the following procedures and policies for payroll processing, on behalf of the Member/Representative:
- a. Develop, implement, and maintain a system for managing Worker time and generating and submitting claims to MCOs and DIDD based on Worker time;

- b. Establish the accounting and information systems necessary for processing payments to Workers as specified in the authorization of Consumer-Directed or Self-Directed services, as applicable, and establish the reporting functions and the internal controls necessary to track and manage these functions in an effective and timely manner. This includes ensuring that payments are processed to Workers only for Eligible CHOICES HCBS, Eligible ECF CHOICES HCBS, Eligible Katie Beckett HCBS or Eligible 1915(c) Waiver Programs HCBS, as applicable, and for ensuring compliance with the Fair Labor Standards Act and all other applicable federal and State law and regulations as they pertain to the Contractor's payroll services, as well as TennCare and DIDD policies and/or protocols regarding Worker compensation, overtime and overtime pay, including services delivered in a back-up capacity. The Contractor shall further be responsible for ensuring that its payroll processing systems are capable of tracking Worker time across all programs (CHOICES, ECF CHOICES, Katie Beckett, and 1915(c) Waiver Programs) in the event a single Employer of Record serves as a Representative for Members in all four programs and Worker(s) provide services to Members in more than one program;
- c. Develop and implement a payment processing schedule for Workers, that shall be prior approved by TennCare;
- d. Develop and implement a process for processing payment to Workers outside of the standard payment schedule, as requested by TennCare, including the capability to process payment daily if requested, including a manual process for issuing payroll checks for authorized and approved time;
- e. Develop and implement a process for change requests related to rate changes and/or service changes on an annual basis and as requested by TennCare in an expeditious and timely manner and in all situations in no more than 60 days from written notice of the change. All re-processing of claims at higher rates must be done on the time schedule requested by TennCare and in all situations in no more than 90 days from written notice of the change.
- f. Review timesheets submitted in the Timekeeping System to verify amounts that should be paid to the Worker(s);
- g. Develop a process for identifying and resolving, with a frequency specified by TennCare to ensure accurate payment to the Worker in the scheduled time period, errors or omissions in timesheets, including instances when a Worker fails to submit a timesheet;
- h. Timely resolve discrepancies in time submissions for purposes of paying Workers and generating claims for submission (for purposes of this section, "timely" means that the Contractor shall initiate action and shall make all reasonable efforts to resolve such discrepancies within the current payroll processing period during which payment to the Workers should be processed, and prior to submission of claims to the MCO or DIDD, as applicable, and payment of Workers by the Contractor);
- i. Reconcile and document, pursuant to business rules developed in collaboration with the MCOs and DIDD, any discrepancies between the Timekeeping System, payments made to a Worker, and claims submitted for reimbursement to the MCO or DIDD, as applicable. Such reconciliation shall be conducted on at least a bi-weekly basis and completed within any applicable MCO, TennCare, or DIDD reporting timelines, as applicable, in order to ensure the accuracy of MCO and DIDD reports;
- j. Develop and implement a process for immediately notifying the Member/Representative and Worker when a discrepancy in time reporting cannot be resolved and the Worker shall not be reimbursed for services delivered and submitted in the Timekeeping System;

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

- x. Submit to TennCare and DIDD a list of checks or funds submitted under the State's Unclaimed Property Act each year, after ensuring that the Act's requirements for notice were met prior to reporting to TennCare and DIDD;
- y. Refund over-collected FICA to applicable individual-employers (or State or county government) and Workers in accordance with the December 18, 2000 IRS letter and maintain the relevant documentation in the Contractor's files within one (1) standard pay period as defined in Contract Section A.89.d;
- z. Prepare, file, and distribute IRS Forms W-2 for Member's Workers per IRS instructions for agents, for electronic filing when processing two hundred fifty (250) or more IRS Forms W-2 and maintain the relevant documentation in the Contractor's files by January 31st of every year. The Contractor has the right to charge an administrative fee to Workers for the replacement of lost W-2s;
- aa. Prepare, file, and distribute IRS Forms W-3 in the aggregate for all Members the Contractor represents per IRS instructions and maintain the relevant documentation in the Contractor's files by January 31st of every year;
- bb. Process payments for Workers for authorized services rendered within authorized timeframes and have a system in place for processing Workers' direct deposit and for maintaining the relevant documentation in the Contractor's files; and
- cc. Pay vendors or members for authorized services submitted and approved by the MCO or DIDD for reimbursable services in Katie Beckett Part A or Katie Beckett Part B, as applicable.

Claims Submission

- A.91. For Members, the Contractor shall submit an electronic claims submission file in the 837i format to the MCO at the appropriate frequency.
- A.92. For Members, the Contractor shall electronically submit claims to the MCO in the 837i format and shall reconcile and document, pursuant to business rules developed in collaboration with the MCO, any discrepancies between the Timekeeping System, payments made to a Worker, and claims submitted for reimbursement to the MCO. Such reconciliation shall be conducted on at least a weekly basis and completed within any applicable MCO reporting timelines to TennCare in order to ensure the accuracy of MCO reports. Adjustment and corrections of claims shall occur in a timely manner, within no more than one hundred and twenty (120) calendar days of date of service. Any extension of this time frame shall be approved by TennCare.
- A.93. For Members in Katie Beckett Part B, the Contractor shall electronically submit claims in a format and frequency agreed upon by TennCare, DIDD and the Contractor. Adjustment and corrections of claims shall occur in a timely manner, within no more than one hundred and twenty (120) calendar days of date of service. Any extension of this time frame shall be approved by DIDD.

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

- A.94. For reimbursement for authorized services for Members enrolled in Consumer Direction or Self-Direction:
 - a. Only bill for services that have been authorized by the MCO or DIDD, as applicable, for a Member enrolled in Consumer Direction or Self-Direction, as applicable, at the time of service delivery. The Contractor shall provide a web-based interface for the MCO, DIDD,

and Members to review information on the units of service authorized, utilized, and remaining balances, and information for Members on funds authorized, disbursed, and remaining balances;

- b. Submit all claims for services rendered timely in accordance with requirements agreed to with the MCOs or DIDD, as applicable;
 - c. Track receipt of service funds in its financial information system;
 - d. Maintain a dedicated bank account for the deposit of service funds;
 - e. Be reimbursed via Automated Clearing House deposit and shall be provided a detailed electronic remittance advice; and
 - f. Timely reconcile all accounts receivable.
- A.95. Administrative services shall include reimbursement for services authorized and reimbursed that do not require ongoing supports brokerage functions, to include but not limited to functions such as reimbursement for Vehicle Modification and premium assistance in the Katie Beckett Program or Community Transportation reimbursement for Members in ECF CHOICES when said Member is receiving no other Consumer Directed services. Supports brokerage reimbursements shall not be paid for participants receiving only a reimbursed service. For reimbursement for administrative services, the Contractor shall:
- a. Submit an administrative invoice monthly per TennCare prescribed requirements, which includes at a minimum: number of current Members and new Members; number of current Workers and new Workers; names, Member ID, and Worker Provider Number for each Member and Worker;
 - b. Have a comprehensive information system in place for submitting the administrative invoice billing to TennCare electronically; and
 - c. Provide an accurate report of current enrollment/Member activity.

Ownership and Financial Disclosure

- A.96. The Contractor shall:
- a. Disclose to TennCare in a form and manner specified by TennCare, and the Comptroller General of the United States or Centers for Medicare and Medicaid full and complete information regarding ownership, financial transactions and persons convicted of criminal activity related to Medicare, Medicaid, or the federal Title XX programs in accordance with federal and state requirements, including Public Chapter 379 of the Acts of 1999. The Contractor shall screen its employees and any subcontractors initially and on an ongoing monthly basis to determine whether any of them has been excluded from participation in Medicare, Medicaid, SCHIP, or any Federal health care programs (as defined in Section 1128B (f) of the Social Security Act) and not employ or contract with an individual or entity that has been excluded, as listed in the LEIE database. The Contractor shall disclose the following information on the form located at https://www.tn.gov/content/dam/tn/didd/documents/providers/how-to/New_Provider-Disclosure_of_Ownership-Entities.pdf:
 1. The name and address of each person with an ownership or control interest in the disclosing entity or in any provider or subcontractor in which the disclosing entity has direct or indirect ownership of five percent (5%) or more and whether any of the

persons named pursuant to this requirement is related to another as spouse, parent, child, or sibling. This disclosure shall include the name of any other disclosing entity in which a person with an ownership or control interest in the disclosing entity also has an ownership or control interest;

2. The identity of any provider or subcontractor with whom the Contractor has had significant business transactions, defined as those totaling more than twenty-five thousand dollars (\$25,000) during the twelve (12) month period ending on the date of the disclosure, and any significant business transactions between the Contractor, any wholly owned supplier, or between the Contractor and any provider or subcontractor, during the five (5) year period ending on the date of the disclosure;
3. The identity of any person who has an ownership or control interest in the Contractor, or is an agent or managing employee of the Contractor and who has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, or the federal Title XX services program since the inception of those programs; and
4. Disclosure from officials in legislative and executive branches of government as to possible conflicts of interest.

Administrative Requirements

A.97. The Contractor shall be responsible for the following:

a. Accounting System

The Contractor shall establish and maintain an accounting system in accordance with generally accepted accounting principles. The accounting system shall maintain records pertaining to the tasks defined in the Contract and any other costs and expenditures made under the Contract. Accounting records and procedures are subject to State and federal approval. Accounting procedures, policies, and records shall be completely open to State and federal personnel at any time during the Contract period and for ten (10) years thereafter.

b. Availability of Records

1. Ensure within its own organization and pursuant to any agreement the Contractor may have with any other providers of service, including, but not limited to providers, subcontractors or any person or entity receiving monies directly or indirectly by or through TennCare or DIDD, that TennCare or DIDD representatives and authorized federal, State and Office of the Comptroller of the Treasury personnel, including, but not limited to TennCare, DIDD, the Office of the Inspector General (OIG), the Tennessee Bureau of Investigations, Medicaid Fraud Control Division (TBI MFCD), the Department of Health and Human Services, Office of Inspector General (DHHS OIG) and the Department of Justice (DOJ), and any other duly authorized state or federal agency shall have immediate and complete access to all records pertaining to services provided to TennCare and DIDD enrollees.
2. Ensure that it and any of its subcontractors and any providers of service, including, but not limited to providers or any person or entity receiving monies directly or indirectly by or through TennCare or DIDD shall make all records (including but not limited to, financial and medical records) available at the Contractor's, provider's, and/or the subcontractor's expense for administrative,

civil and/or criminal review, audit, or evaluation, inspection, investigation and/or prosecution by authorized federal, State, and Office of the Comptroller of the Treasury personnel, including Representatives from the OIG, the TBI MFCD, DOJ and the DHHS OIG, TennCare, DIDD, or any duly authorized state or federal agency. Access will be either through on-site review of records or through the mail at the government agency's discretion and during normal business hours, unless there are exigent circumstances, in which case access will be at any time. The Contractor shall send all records to be sent by mail to TennCare or DIDD, as applicable, within twenty (20) business days of request, unless otherwise specified by TennCare or TennCare rules and regulations or DIDD or DIDD rules and regulations. Requested records shall be provided at no expense to TennCare or DIDD, authorized federal, state, and Office of the Comptroller of the Treasury personnel, including Representatives from the OIG, the TBI MFCD, DOJ and the DHHS OIG, or any duly authorized state or federal agency. Records related to appeals shall be forwarded within the timeframes specified in the appeal process portion of this contract. Such requests made by TennCare or DIDD shall not be unreasonable.

3. Ensure that it as well as any of its management company and any subcontractor shall cooperate with the State, or any of the State's contractors and agents, including, but not limited to TennCare or DIDD, OIG, TBI MFCD, DOJ and the DHHS OIG, and the Office of the Comptroller of the Treasury, and any duly authorized governmental agency, during the course of any financial or operational examinations or during any administrative, civil or criminal investigation, hearing or prosecution. This cooperation shall include, but shall not be limited to the following:
 - a. Provide full cooperation and direct and unrestricted access to facilities, information, and staff, including facilities, information and staff of any management company or subcontractor, to the State or any of the State's contractors and agents, which includes, but is not limited to TennCare or DIDD, OIG, TBI MFCD, DOJ and the DHHS OIG, and the Office of the Comptroller of the Treasury and any duly authorized governmental agency, including federal agencies; and
 - b. Maintain full cooperation and open authority for claims processing systems access and mailroom visits by the Tennessee Department of Commerce and Insurance or designated representatives or any authorized entity of the state or federal government, and to cooperate fully with detail claims testing for claims processing system compliance.
 4. Cooperate fully with audits the State may conduct of medical management to include clinical processes and outcomes, internal audits, provider networks, and any other aspect of the program the State deems appropriate. The State may select any qualified person or organization to conduct the audits.
 5. In the event of termination of the contract between TennCare and the Contractor for any reason, the Contractor shall immediately make available, to TennCare, or its designated representative, in a usable form, any or all records related to the Contractor's activities undertaken pursuant to the contract. The provision of such records shall be at no expense to TennCare.
- c. Auditing Requirements/Records Maintained for Ten (10) Years

The Contractor and its providers, subcontractors and other entities receiving monies originating by or through TennCare or DIDD shall maintain books, records, documents, and other evidence pertaining to services rendered, equipment, staff, financial records, medical records, and the administrative costs and expenses incurred pursuant to this contract as well as medical information relating to the individual enrollees as required for the purposes of audit, or administrative, civil and/or criminal investigations and/or prosecution or for the purposes of complying with the requirements set forth in Section 2.20 of the Contractor Risk Agreement. Records other than medical records may be kept in an original paper state or preserved on micromedia or electronic format. Medical records shall be maintained in their original form or may be converted to electronic format as long as the records are readable and/or legible. These records, books, documents, etc., shall be available for any authorized federal, state, including, but not limited to TennCare, OIG, TBI MFCD, DOJ and the DHHS OIG, and Office of the Comptroller of the Treasury personnel during the contract period and ten (10) years thereafter, unless an audit, administrative, civil or criminal investigation or prosecution is in progress or audit findings or administrative, civil or criminal investigations or prosecutions are yet unresolved in which case records shall be kept until all tasks or proceedings are completed. During the contract period, these records shall be available at the Contractor's chosen location in Tennessee subject to the written approval of TennCare or DIDD. If the records need to be sent to TennCare or DIDD, the Contractor shall bear the expense of delivery. Prior approval of the disposition of Contractor, subcontractor or provider records shall be requested and approved by TennCare or DIDD, as applicable, in writing.

d. Safeguarding Member Information

The Contractor shall ensure that all material and information, in particular information relating to Members or potential Members, which is provided to or obtained by or through the Contractor's performance under this contract, whether verbal, written, tape, or otherwise, shall be treated as Confidential Information to the extent confidential treatment is provided under state and federal laws. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the MCO or State or acquired by the Contractor pursuant to this contract shall be regarded as Confidential Information in accordance with the provisions of state and federal law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with state and federal law and ethical standards. The Contractor shall comply with all state and federal law regarding information security and confidentiality of information. In the event of a conflict among these requirements, the Contractor shall comply with the most restrictive requirement. The use or disclosure of information concerning Members/potential Members shall be limited to purposes directly connected with the administration of this Contract and shall be in compliance with federal and State law.

Readiness Review

- A.98. Prior to the implementation of this Contract, contract amendments, or implementation of any new programs, policies or procedures, at a schedule established by TennCare and DIDD, TennCare and DIDD shall verify that the Contractor is ready to begin operations. TennCare and DIDD shall conduct a readiness review that consists of a desk audit of requested deliverables, one or more on-site reviews, and any necessary follow-up regarding issues stemming from an onsite review or that are not adequately addressed during an on-site review.

The requested deliverables may include, but shall not be limited to: policies and procedures regarding Supports Broker roles and responsibilities, qualifications, staffing ratios, and management of staffing ratios and turnover; communication with MCOs, Care Coordinators,

Support Coordinators, Nurse Care Managers, and DIDD Case Managers as applicable; payroll and claims processing, data and information exchange, customer service, records management, reportable event management and reporting, fraud, waste, and abuse plan, program materials such as copies of Worker employment and Member enrollment packets and program manuals, and training materials for Workers, Members/Representatives, and Contractor staff.

On-site reviews will consist of, at a minimum: follow-up on items identified in desk audit, participation in training activities, end-to-end system testing and a walk-through of the Contractor's operations, system demonstrations (including systems connectivity testing), and interviews with Contractor's staff. The scope of the review may include any and all requirements of the Contract related to CHOICES, ECF CHOICES, Katie Beckett, and the 1915(c) Waiver Program, as determined by TennCare and DIDD. Based on the results of the review activities, TennCare will issue a letter of findings and, if needed, will request a corrective action plan from the Contractor. TennCare and DIDD shall not allow Members to participate in the Contractor's Consumer Direction or Self-Direction delivery model until TennCare and DIDD have determined that the Contractor is able to meet all requirements related to this Contract.

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

Member Advocacy Group

- A.99. The Contractor shall be required to develop and maintain a Member advocacy group. Such group shall include, at minimum:
- a. Six (6) Members currently receiving Consumer-Directed or Self-Directed services, with at least one (1) Member from each program included (CHOICES, ECF CHOICES, Katie Beckett, and the 1915(c) Waiver Programs);
 - b. Three (3) family members of Members currently receiving Consumer-Directed or Self-Directed services;
 - c. One (1) Worker currently providing Consumer-Directed services and one (1) Worker currently providing Self-Directed Services; and
 - d. Two (2) Member advocates not belonging to any preceding group and in no way affiliated with the Contractor.

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

- A.100. Control Memorandum Process.

- a. The Control Memorandum (“CM”) process shall be utilized by the State to clarify Contract requirements, issue instruction to the Contractor, document action required of the Contractor, or request information from the Contractor. In addition, the CM process shall be used by the State to impose assessments of damages, either actual or liquidated. This process will be used to address issues or matters that do not require a contract amendment. Each CM must be in writing and indicate the date on which it was issued. CMs may provide relevant history, background, and other pertinent information regarding the issue(s) being addressed in the CM. Each CM will establish a deadline or timeframe for the Contractor’s reply or other action. All CMs submitted to the Contractor must be signed and approved by the State’s Project Director (or his/her designee). When the CM pertains to damages, either actual or liquidated, the State may issue consecutive CMs, as may be necessary or appropriate.
- b. A CM may include one (1) or more of the following five (5) components of the CM process described below:
1. On Request Report – a request directing the Contractor to provide information by the time and date set out in the CM.
 2. Control Directive (CD) – instructions that require the Contractor to complete, within a designated timeframe, one (1) or more deliverables or to perform any other request from the State that is within the scope of the Contract. A CD may also provide clarification of certain Contract terms. Once a CM/CD has been issued, it shall be considered to be incorporated into this Contract.
 3. Notice of Potential Damages (Actual or Liquidated) (NPD) – notification to the Contractor that the State has determined that a potential Contract performance or compliance failure exists and that the State is contemplating assessing damages, actual and/or liquidated. The NPD shall identify the Contract provision(s) on which the State determination rests.
 4. Notice of Calculation of Potential Damages (Actual or Liquidated) (NCPD) – notification to the Contractor that provides a calculation of the amount of potential damages, actual and/or liquidated, that the State is contemplating assessing against the Contractor. NPDs and NPCDs may be issued consecutively or simultaneously.
 5. Notice of Intent to Assess Damages (Actual or Liquidated) (NIAD) – notification to the Contractor that the State is assessing damages and specifying whether the damages are actual damages, Liquidated Damages, or both, and setting out the performance or compliance failure underlying each intended damage assessment. The NIAD shall identify the NPD and NCPD upon which it is based. The NIAD shall specify the total amount and type of damages, whether actual or liquidated, the State intends to assess. Following the issuance of an NIAD, the State may elect to withhold damages from payments due to Contractor. The State may not issue a NIAD without first issuing a NPD and a NPCD. The State may not obtain both Liquidated Damages and Actual Damages for the same occurrence of a Contract performance or compliance failure.
- c. Damages for failure to comply with CM. The Contractor shall fully comply with all CMs. Failure to do so may result in the State pursuing recovery of damages, as defined in Section E.9, including Liquidated Damages as listed in Contract Attachment B, a corrective action plan, and/or termination of the Contract.

- d. Appeal of Damages by Contractor. Contractor may appeal either the basis for NPD or calculation of NCPD potential damages, either actual or liquidated. To do so, the Contractor shall submit to the State's Project Director (or his/her designee) a written response to the NPD and/or NCPD within ten (10) business days of receipt of a CM which includes a NPD or a NCPD. The State's Project Director (or his/her designee) shall review the appeal and provide notice of his/her determination to the Contractor through a CM. If the Contractor disagrees with the State's Project Director's (or his/her designee) initial appeal determination or the State's Project Director (or his/her designee) is unable to resolve the appeal, the Contractor may submit a written request to the State's Project Director (or his/her designee) that the matter be escalated to senior management of the Agency. Contractor shall submit such a request for escalation within ten (10) business days of its receipt of the initial appeal determination from the State's Project Director (or his/her designee) or of notification by the State's Project Director that he/she is unable to resolve the appeal. The State's senior management shall provide written notice of its final determination to the Contractor within (10) days of the receipt of the appeal from the Contractor. Upon appeal or escalation, the State shall not increase the amount of the potential damages.

A.101. Non-Disclosure and Contractors.

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

All information the Contractor may receive, have disclosed to it, or otherwise becomes known to Contractor during the performance of this Contract from any other State contractor or State agency, that the State contractor or State agency considers to be proprietary or confidential in nature pursuant to a Non-Disclosure Document entered into between the Contractor and another State contractor or State agency, shall be governed by such Non-Disclosure Document.

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

Compliance with the 21st Century Cures Act: Electronic Visit Verification

- A.102. The Contractor shall have in place a fully operational, HIPAA-compliant and secure Electronic Visit Verification (EVV) system to be used for services provided through Consumer or Self-Direction that meets the requirements specified below.

- a. At a minimum, the EVV system shall verify:
1. The type of service performed;
 2. The Member receiving the service;
 3. The date of the service;
 4. The location of service delivery;

5. The Worker providing the service;
 6. The time the service begins and ends; and
 7. The method in which the check in and check out is made.
- b. The EVV system implemented by the Contractor must have flexibility and adaptability related to internet access, the use of mobile devices, and Interactive Voice Response (IVR) as an alternative and shall accommodate the system's use in rural areas where internet service may be limited.
 - c. The EVV system implemented by the Contractor shall not have rigid scheduling rules and shall allow for ease of schedule changes based on the Member's needs and preferences.
 - d. The EVV system implemented by the Contractor shall not restrict the locations in which Members may receive services.
 - e. The EVV system implemented by the Contractor shall provide a variety of accessible means for Members to review and approve service hours, using both innovative and standard technologies.
 - f. The EVV system implemented by the Contractor shall provide functionality for the retroactive adjustment of shift start or end times, when appropriate and approved by the MCO and TennCare. The system shall facilitate efficient communication, resolution of problems, and track historical data reflective of the volume and frequency these changes occur
 - g. The EVV system used by the Contractor shall not constrain Members' selection of Workers or impede the manner in which services are delivered through Consumer or Self- Direction.
 - h. The Contractor shall develop and provide training for Workers who will use the EVV system which incorporates best practices identified by the U.S. Department of Health and Human Services as provided to the Contractor by TennCare.
- A.103. The Contractor shall oversee the EVV system/vendor to ensure the EVV system operates in compliance with this Contract, with current policies and protocols established by TennCare, and with the requirements of the 21st Century Cures Act, which requires electronic (not manual) verification of the type of service performed, the individual receiving the service, the date of the service, location of service delivery, the individual providing the service, and time the service begins and ends. The Contractor shall notify TennCare within five (5) business days of the identification of any issue affecting EVV system operation which impacts the Contractor's performance of this Contract, including actions that will be taken by the Contractor to resolve the issue and the specific timeframes within which such actions shall be completed.
- A.104. The Contractor shall make available a report or usable dashboard access that provides MCO's, DIDD, and TennCare access to view and use data related to visits that have occurred, including the ability to aggregate data and ensure resolution of any overlapping visits. The Contractor shall collaborate with MCO's, DIDD, and TennCare to educate, train, and reduce manual confirmations to ensure compliance with the 21st Century Cures Act on an ongoing basis, and to assure overall program integrity and that members are receiving necessary services. The Contractor shall not deny payment to Workers for services provided except upon written direction or approval from TennCare.
- A.105 The Contractor shall obtain and maintain in full force and effect for the duration of this contract, the types and minimum limits of insurance as required by state and federal law including, but not limited to, Workers' Compensation and Employer Liability Insurance for the Contractor's services and

employees. This provision does not apply to consumer directed or self-directed workers who provide services to Participants.

B. TERM OF CONTRACT:

- B.1. This Contract shall be effective on May 1, 2023 (“Effective Date”) and extend for a period of thirty-nine (39) months after the Effective Date (“Term”). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.
- B.2. Renewal Options. This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months by the State, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of Sixty-Two (62) months.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Thirty-Six Million, Five Hundred Forty-Four Thousand Dollars (\$36,544,000.00) (“Maximum Liability”). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- C.2. Compensation Firm. The payment methodology in Section C.3. of this Contract shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment methodology for goods or services authorized by the State in a total amount as set forth in Section C.1.
- a. The Contractor’s compensation shall be contingent upon the satisfactory provision of goods or services as set forth in Section A.
 - b. The period beginning May 1, 2023 through June 30, 2023 shall be an uncompensated transition period whereby payments for services begin on July 1, 2023.
 - c. The Contractor shall be compensated based upon the following payment methodology:

July 1, 2023, through June 30, 2026	
Cost Item Description	Amount (per compensable increment)
* Financial Administration	\$75.88 Per Member/Per Month
* Supports Brokerage	\$96.12 Per Member/Per Month
Set-Up for New Consumer Direction Participant	\$95.00 Per Month

Set-Up for New Consumer Directed Worker	\$125.00 Per Worker
July 1, 2026, through June 30, 2028 (Option Years 1 and 2)	
Cost Item Description	Amount (per compensable increment)
* Financial Administration	\$75.88 Per Member/Per Month
* Supports Brokerage	\$96.12 Per Member/Per Month
Set-Up for New Consumer Direction Participant	\$95.00 Per Month
Set-Up for New Consumer Directed Worker	\$125.00 Per Worker

*The Per Member per Month (PMPM) payment shall be based only on Members enrolled in Consumer Direction of HCBS, defined as the number of CHOICES, ECF CHOICES, or Katie Beckett Part A Members with an active authorization for Consumer Direction services who are receiving Consumer-Directed services, or the number of 1915(c) Waiver Program or Katie Beckett Part B Members with an active authorization for Self-Direction services who are receiving Self-Directed services.

*The Per Member per Month (PMPM) supports brokerage payments shall not be paid for Members receiving only reimbursed services that do not require ongoing supports brokerage functions, such as Vehicle Modification or Premium Assistance reimbursements for Katie Beckett members and Community Transportation reimbursements for ECF CHOICES with no other consumer-directed services. Reimbursement only services shall be billed as PMPM Financial Administration rates for each month a reimbursement service is utilized.

The set-up fee covers all applicable costs for processing paperwork, completing training, etc., for new CHOICES Members (including persons specified by TennCare who are not enrolled in CHOICES, but who may qualify for CHOICES only through receipt of Consumer-Directed services), ECF CHOICES Members, Katie Beckett Part A Members, 1915(c) Waiver Program and Katie Beckett Part B Members, Representatives and their identified Workers, including background checks. These fees may be billed only upon completion of all tasks associated with Member or Worker enrollment, and shall not be billed when a Member withdraws from Consumer Direction or Self Direction prior to completion of these tasks, and/or when a Worker decides not to proceed with employment prior to completion of these tasks, or is determined to not qualify for employment. Except for lapses in employment of a Worker, which warrant a new background check as specified in Section A.30 above, the fee shall be applicable only once per lifetime for each Member/Representative, and/or Worker, even if the Worker is employed by multiple Members/Representatives and regardless of any lapses in the Member's participation in Consumer Direction or Self Direction. Set-up fees for New Consumer Direction or Self-Direction Referral and for New Workers shall not be paid to the Contractor for Members already enrolled in Consumer Direction or Self-Direction and transitioned to the Contractor at implementation of this Contract, or for the Workers already employed to provide services.

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in Section C.3., above. Contractor shall submit invoices and necessary supporting documentation, no more

frequently than once a month, and no later than thirty (30) days after goods or services have been provided to the following address:

Division of TennCare
310 Great Circle Road
Nashville, TN 37243

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

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

b. Contractor's invoices shall:

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

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

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

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

- C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.
- a. The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
 - b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

D. MANDATORY TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- D.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

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

The Contractor:

Ben Bledsoe | President / Chief Executive Officer
 Consumer Direct Care Network
 100 Consumer Direct Way, Suite 428
 Missoula, MT 59808
 Telephone# 406-532-2001
 FAX# 833-406-3763
BenB@consumerdirectcare.com

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

- D.3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials.
- D.4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- D.5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
- D.6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
- D.7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
- D.8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of

Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

- D.9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination. This Section D.9 shall not be deemed to limit or abridge any requirement set forth in Section E.25.
- D.10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment C, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- D.11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of ten (10) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the

- State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- D.15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
- D.16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless from any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- D.17. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. The State's total liability under this Contract (including any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- D.18. Limitation of Contractor's Liability. In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in Section C.1. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death. For clarity, except as otherwise expressly set forth in this Section, Contractor's indemnification obligations and other remedies available under this Contract are subject to the limitations on liability set forth in this Section.
- D.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities,

losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

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

- D.20. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
 - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
- D.21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.

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

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

- D.24. Force Majeure. “Force Majeure Event” means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor’s representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor’s performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees for the affected obligations until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- D.25. State and Federal Compliance. The Contractor shall comply with all State and federal laws and regulations applicable to Contractor in the Contractor's performance of this Contract.
- D.26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 408.
- D.27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
- D.28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- D.29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- D.30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes: Attachment A -Definitions, Attachment B – Liquidated Damages, Attachment C – Attestation RE Personnel Used in Contract Performance, Attachment D – Contractor's Commitment to Diversity, and Attachment E – HIPAA Business Associate Agreement.
 - c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
 - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
 - f. the Contractor's response seeking this Contract.
- D.31. Iran Divestment Act. The requirements of Tenn. Code Ann. § 12-12-101, *et seq.*, addressing contracting with persons as defined at Tenn. Code Ann. §12-12-103(5) that engage in investment activities in Iran, shall be a material provision of this Contract. The Contractor certifies, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.
- D.32. Insurance. Contractor shall maintain insurance coverage as specified in this Section. The State reserves the right to amend or require additional insurance coverage, coverage amounts, and endorsements required under this Contract. Contractor's failure to maintain or submit evidence of insurance coverage, as required, is a material breach of this Contract. If Contractor loses insurance coverage, fails to renew coverage, or for any reason becomes uninsured during the Term, Contractor shall immediately notify the State. All insurance companies providing coverage must be: (a) acceptable to the State; (b) authorized by the Tennessee Department of Commerce

and Insurance (“TDCI”); and (c) rated A- / VII or better by A.M. Best. All coverage must be on a primary basis and noncontributory with any other insurance or self-insurance carried by the State. Contractor agrees to name the State as an additional insured on any insurance policy with the exception of workers’ compensation (employer liability) and professional liability (errors and omissions) insurance. All policies must contain an endorsement for a waiver of subrogation in favor of the State. Any deductible or self insured retention (“SIR”) over fifty thousand dollars (\$50,000) must be approved by the State. The deductible or SIR and any premiums are the Contractor’s sole responsibility. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

To achieve the required coverage amounts, a combination of an otherwise deficient specific policy and an umbrella policy with an aggregate meeting or exceeding the required coverage amounts is acceptable. For example: If the required policy limit under this Contract is for two million dollars (\$2,000,000) in coverage, acceptable coverage would include a specific policy covering one million dollars (\$1,000,000) combined with an umbrella policy for an additional one million dollars (\$1,000,000). If the deficient underlying policy is for a coverage area without aggregate limits (generally Automobile Liability and Employers’ Liability Accident), Contractor shall provide a copy of the umbrella insurance policy documents to ensure that no aggregate limit applies to the umbrella policy for that coverage area. In the event that an umbrella policy is being provided to achieve any required coverage amounts, the umbrella policy shall be accompanied by an endorsement at least as broad as the Insurance Services Office, Inc. (also known as “ISO”) “Noncontributory—Other Insurance Condition” endorsement or shall be written on a policy form that addresses both the primary and noncontributory basis of the umbrella policy if the State is otherwise named as an additional insured.

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

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

The insurance obligations under this Contract shall be: (1)—all the insurance coverage and policy limits carried by the Contractor; or (2)—the minimum insurance coverage requirements and policy

limits shown in this Contract; whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and minimum required policy limits, which are applicable to a given loss, shall be available to the State. No representation is made that the minimum insurance requirements of the Contract are sufficient to cover the obligations of the Contractor arising under this Contract. The Contractor shall obtain and maintain, at a minimum, the following insurance coverages and policy limits.

a. Commercial General Liability (“CGL”) Insurance

- 1) The Contractor shall maintain CGL, which shall be written on an ISO Form CG 00 01 occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises and operations products and completed operations, bodily injury, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

The Contractor shall maintain single limits not less than one million dollars (\$1,000,000) per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this policy or location of occurrence or the general aggregate limit shall be twice the required occurrence limit.

b. Workers’ Compensation and Employer Liability Insurance

- 1) For Contractors statutorily required to carry workers’ compensation and employer liability insurance, the Contractor shall maintain:

- i. Workers’ compensation in an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.

- 2) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 – 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:

- i. The Contractor employs fewer than five (5) employees;
- ii. The Contractor is a sole proprietor;
- iii. The Contractor is in the construction business or trades with no employees;
- iv. The Contractor is in the coal mining industry with no employees;
- v. The Contractor is a state or local government; or
- vi. The Contractor self-insures its workers’ compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

c. Automobile Liability Insurance

- 1) The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles).
- 2) The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

d. Technology Professional Liability (Errors & Omissions)/Cyber Liability Insurance

- 1) The Contractor shall maintain technology professional liability (errors & omissions)/cyber liability insurance appropriate to the Contractor's profession in an amount not less than ten million dollars (\$10,000,000) per occurrence or claim and ten million dollars (\$10,000,000) annual aggregate, covering all acts, claims, errors, omissions, negligence, infringement of intellectual property (including copyright, patent and trade secret); network security and privacy risks, including but not limited to unauthorized access, failure of security, information theft, damage to destruction of or alteration of electronic information, breach of privacy perils, wrongful disclosure and release of private information, collection, or other negligence in the handling of confidential information, and including coverage for related regulatory fines, defenses, and penalties.
Such coverage shall include data breach response expenses, in an amount not less than ten million dollars (\$10,000,000) and payable whether incurred by the State or Contractor, including but not limited to consumer notification, whether or not required by law, computer forensic investigations, public relations and crisis management firm fees, credit file or identity monitoring or remediation services and expenses in the performance of services for the State or on behalf of the State hereunder.

e. Crime Insurance

- 1) The Contractor shall maintain crime insurance, which shall be written on a "loss sustained form" or "loss discovered form" providing coverage for third party fidelity, including cyber theft and extortion. The policy must allow for reporting of circumstances or incidents that may give rise to future claims, include an extended reporting period of no less than two (2) years with respect to events which occurred but were not reported during the term of the policy, and not contain a condition requiring an arrest or conviction.
Any crime insurance policy shall have a limit not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate. Any crime insurance policy shall contain a Social Engineering Fraud Endorsement with a limit of not less than two hundred and fifty thousand dollars (\$250,000). This insurance may be written on a claims-made basis, but in the event that coverage is cancelled or non-renewed, the Contractor shall purchase an extended reporting or "tail coverage" of at least two (2) years after the Term.

- D.33. Major Procurement Contract Sales and Use Tax. Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.
- D.34. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or

federal law shall be regarded as “Confidential Information.” Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. The Contractor shall only use Confidential Information for activities pursuant to and related to the performance of the Contract, including limited disclosures of information to subcontractors to satisfy the requirements of the Contract. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

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

- D.35. Boycott of Israel. The Contractor certifies that it is not currently engaged in, and covenants that it will not, for the duration of the Contract, engage in a Boycott of Israel, as that term is defined in Public Chapter No. 775.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract’s other terms and conditions.
- E.2. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor’s Response to 31865-00633 (Attachment D) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor’s performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans, and persons with disabilities. Such reports shall be provided to the State of Tennessee Governor’s Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>.

- E.3. State Ownership of Goods. The State shall have ownership, right, title, and interest in all goods provided by Contractor under this Contract including full rights to use the goods and transfer title in the goods to any third parties.
- E.4. Intellectual Property Indemnity. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State’s failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
- E.5. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible personal property furnished by the State for the Contractor’s use under this Contract. Upon termination of this Contract, all property furnished by the State shall be returned to the State in the same condition as when received, less

ordinary wear and tear. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the fair market value of the property at the time of loss.

- E.6. Work Papers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis work papers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.7. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.
- E.8. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

- E.9. Liquidated Damages. In the event of a Contract performance or compliance failure by the Contractor, the State may, but is not obligated to address such Contract performance or compliance failure and/or assess damages ("Liquidated Damages") in accordance with Attachment B of the Contract. The State shall notify the Contractor of any amounts to be assessed as Liquidated Damages via the Control Memorandum process specified in Contract Section A.100. The Parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Contract performance or compliance failure, as these amounts are likely to be uncertain and not easily proven. Contractor has carefully reviewed the Liquidated Damages contained in Contract Attachment B and agrees that these amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of a Contract performance or compliance failure, are a reasonable estimate of the damages that would occur from a Contract performance or compliance failure, and are not punitive. The Parties agree that although the Liquidated Damages represent the reasonable estimate of the damages and injuries sustained by the State due to the Contract performance or compliance failure, they do not include any injury or damage sustained by a third party. The Contractor agrees that the Liquidated Damages are in

addition to any amounts Contractor may owe the State pursuant to the indemnity provision or any other sections of this Contract.

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

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

- E.10. Partial Takeover of Contract. The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.
- E.11. Personally Identifiable Information. While performing its obligations under this Contract, Contractor may have access to Personally Identifiable Information held by the State ("PII"). For the purposes of this Contract, "PII" includes "Nonpublic Personal Information" as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999 or any successor federal statute, and the rules and regulations thereunder, all as may be amended or supplemented from time to time ("GLBA") and personally identifiable information and other data protected under any other applicable laws, rule or regulation of any jurisdiction relating to disclosure or use of personal information ("Privacy Laws"). Contractor agrees it shall not do or omit to do anything which would cause the State to be in breach of any Privacy Laws. Contractor shall, and shall cause its employees, agents and representatives to: (i) keep PII confidential and may use and disclose PII only as necessary to carry out those specific aspects of the purpose for which the PII was disclosed to Contractor and in accordance with this Contract, GLBA and Privacy Laws; and (ii) implement and maintain appropriate technical and organizational measures regarding information security to: (A) ensure the security and confidentiality of PII; (B) protect against any threats or hazards to the security or integrity of PII; and (C) prevent unauthorized access to or use of PII. Contractor shall immediately notify State: (1) of any disclosure or use of any PII by Contractor or any of its employees, agents and representatives in breach of this Contract; and (2) of any disclosure of any PII to Contractor or its employees, agents and representatives where the purpose of such disclosure is not known to Contractor or its employees, agents and representatives. The State reserves the right to review Contractor's policies and procedures used to maintain the security and confidentiality of PII and Contractor shall, and cause its employees, agents and representatives to, comply with all reasonable requests or directions from the State to enable the State to verify or ensure that Contractor is in full compliance with its obligations under this Contract in relation to PII. At the State's sole direction at any time,

Contractor shall immediately return to the State any and all PII which it has received under this Contract and shall destroy all records of such PII.

The Contractor shall report to the State any instances of unauthorized access to or potential disclosure of PII in the custody or control of Contractor (“Unauthorized Disclosure”) that come to the Contractor’s attention. Any such report shall be made by the Contractor within forty-eight (48) hours after the Unauthorized Disclosure has come to the attention of the Contractor. Contractor shall take all necessary measures to halt any further Unauthorized Disclosures. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals whose PII was affected by the Unauthorized Disclosure. The Contractor shall bear the cost of notification to all individuals affected by the Unauthorized Disclosure, including individual letters and public notice. The remedies set forth in this Section are not exclusive and are in addition to any claims or remedies available to this State under this Contract or otherwise available at law. The obligations set forth in this Section shall survive the termination of this Contract.

- E.12. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

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

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

As defined in 2 C.F.R. § 170.315, “Executive” means officers, managing partners, or any other employees in management positions.
- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor’s preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial

- Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
 - c. If this Contract is amended to extend the Term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the term extension becomes effective.
 - d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

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

- E.13. Survival. The terms, provisions, representations, and warranties contained in this Contract which by their sense and context are intended to survive the performance and termination of this Contract, shall so survive the completion of performance and termination of this Contract.
- E.14. Unencumbered Personnel. The Contractor shall not restrict its employees, agents, subcontractors or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.
- E.15. Applicable Legal Authority. The Contractor agrees to comply with all applicable legal authority, including federal and State laws, rules, regulations, policies, sub-regulatory guidance, executive orders, TennCare waivers, the State Medicaid Manual, and all current, modified or future Court decrees, orders or judgments applicable to the State's TennCare program. Such compliance shall be performed at no additional cost to the State.
- E.16. Business Associate. As the Contractor will provide services to TennCare pursuant to which the Contractor will have access to, receive from, create, or receive on behalf of TennCare Protected Health Information, or Contractor will have access to, create, receive, maintain or transmit on behalf of TennCare Electronic Protected Health Information (as those terms are defined under HIPAA and HITECH), Contractor hereby acknowledges its designation as a business associate under HIPAA and agrees to comply with all applicable HIPAA regulations and the terms in the associated Business Associate Agreement (See Attachment E).

- E.17. Notification of Breach and Notification of Suspected Breach. The Contractor shall notify TennCare's Privacy Office immediately upon becoming aware of and in no case later than forty-eight (48) hours after discovery of any incident, either confirmed or suspected, that represents or may represent unauthorized access, use or disclosure of encrypted or unencrypted computerized data that materially compromises the security, confidentiality, or integrity of a TennCare enrollee's Protected Health Information (PHI) that is 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, Personal Digital Assistants (PDA), Blackberry devices (or other Smartphones), Universal Serial Bus (USB) drives, thumb drives, flash drives, Compact Discs (CD), and/or hard disks.
- E.18. Transmission of Contract Deliverables. All information or data that is necessary for one or more deliverable set forth in this Contract shall be transmitted between TennCare and Contractor via the data transfer method specified in advance by TennCare. This may include, but shall not be limited to, transfer through the TennCare Secure File Transfer Protocol (SFTP) system. Failure by the Contractor to transmit information or data that is necessary for a deliverable in the manner specified by TennCare, may, at the option of TennCare, result in liquidated damages as set forth in Contract Attachment B.
- E.19. Social Security Administration (SSA) Required Provisions for Data Security.
- a. Definitions.
 1. SSA-supplied data” or “data” as used in this section means an individual’s personally identifiable information (e.g., name, social security number, income), supplied by the Social Security Administration to TennCare to determine entitlement or eligibility for federally-funded programs pursuant to a Computer Matching and Privacy Protection Act Agreement and Information Exchange Agreement between SSA and the State of Tennessee.
 - b. 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, which provide the requirements that the SSA stipulates that the Contractor must follow with regard to use, treatment, and safeguarding data in the event data is exchanged with a federal information system. In addition, the Contractor shall have in place administrative, physical, and technical safeguards for data. The Contractor shall also comply with Section 1106(a) of the Act (42 U.S.C. 1306) and the regulations promulgated pursuant to that section (20 C.F.R. Part 401).
 - c. The Contractor shall specify in its agreements with any agent or subcontractor that will have access to data that such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Contractor pursuant to this Section.
 - d. The Contractor shall not duplicate in a separate file or disseminate, without prior written permission from TennCare, the data governed by the Contract for any purpose other than that set forth in this Contract 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.

- e. The Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Contract.
- f. The Contractor shall maintain a current list of the employees of such contractor with access to SSA data and provide such lists to TennCare upon request and at any time there are changes.
- g. The Contractor shall restrict access to the data obtained from TennCare to only those authorized employees who need such data to perform their official duties in connection with purposes identified in this Contract. The Contractor shall not further duplicate, disseminate, or disclose such data without obtaining TennCare's prior written approval.
- h. The Contractor shall ensure that its employees:
 - 1) Properly safeguard SSA-supplied data furnished by TennCare under this Contract from loss, theft or inadvertent disclosure;
 - 2) Receive regular, relevant and sufficient SSA data related training, including use, access and disclosure safeguards and information regarding penalties for misuse of information;
 - 3) Understand and acknowledge that they are responsible for safeguarding this information at all times, regardless of whether or not the Contractor employee is at his or her regular duty station;
 - 4) Ensure that laptops and other electronic devices/ media containing SSA-supplied data are encrypted and/or password protected;
 - 5) Send emails containing SSA-supplied data only if the information is encrypted or if the transmittal is secure; and,
 - 6) Limit disclosure of the information and details relating to a SSA-supplied data loss only to those with a need to know.
- i. Contractor employees who access, use, or disclose TennCare or TennCare SSA-supplied data in a manner or purpose not authorized by this Contract may be subject to civil and criminal sanctions pursuant to applicable federal statutes.
- j. Loss or Suspected Loss of Data - If an employee of the Contractor becomes aware of suspected or actual loss of SSA-supplied data, the Contractor must notify TennCare immediately upon becoming aware to report the actual or suspected loss. The Contractor must provide TennCare with timely updates as any additional information about the loss of SSA-supplied data 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.
- k. TennCare may immediately and unilaterally suspend the data flow under this Contract, or terminate this Contract, 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) otherwise violated or failed to follow the terms and conditions of this Contract .

E.20. Internal Revenue Service (IRS) Safeguarding of Return Information.

- a) Performance.

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) This provision shall not apply if information received or delivered by the Parties under this Contract is NOT "federal tax returns or return information" as defined by IRS Publication 1075 and IRC 6103.
- (2) All work will be done under the supervision of the Contractor or the Contractor's employees. The Contractor and the Contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (3) Any Federal tax returns or return information (hereafter referred to as returns or return information) made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (5) The Contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the TennCare or its designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy print-outs and will provide the TennCare or its designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (7) All computer systems receiving, processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
- (8) No work involving Federal tax information furnished under this contract will be subcontracted without prior written approval of the IRS.
- (9) The Contractor will maintain a list of employees authorized access. Such list will be provided to the TennCare and, upon request, to the IRS reviewing office.
- (10) TennCare will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

b) Criminal/Civil Sanctions.

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301 .6103(n)-1.
- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.
- (3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (4) Granting a Contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors should be advised of the provisions of IRC Sections 7431, 7213, and 7213A. The training

provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For both the initial certification and the annual certification, the contractor should sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

c) Inspection.

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

E.21. Medicaid and CHIP. The Contractor must provide safeguards that restrict the use or disclosure of information concerning Medicaid and Children's Health Insurance Plan (CHIP) applicants and beneficiaries to purposes directly connected with the administration of the plan:

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

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

b) The Contractor must have adequate safeguards to assure that:

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

c) The Contractor must have criteria that govern the types of information about applicants and beneficiaries that are safeguarded. This information must include, at minimum, the following:

- 1) Names and addresses;
- 2) Medical services provided;
- 3) Social and economic conditions or circumstances;
- 4) Contractor evaluation of personal information;
- 5) Medical data, including diagnosis and past history of disease or disability
- 6) Any information received for verifying income eligibility and amount of medical assistance payments, including income information received from the Social Security Administration (SSA) or the Internal Revenue Service (IRS);
- 7) Income information received from SSA or the IRS must be safeguarded according to Medicaid and CHIP requirements;

- 8) Any information received in connection with the identification of legally liable third-party resources; and,
 - 9) Social Security Numbers.
- d) The Contractor must have criteria approved by TennCare specifying:
- 1) the conditions for release and use of information about applicants and beneficiaries;
 - 2) Access to information concerning applicants or beneficiaries must be restricted to Contractor representatives or other individuals who are subject to standards of confidentiality that are comparable to those of TennCare;
 - 3) The Contractor shall not publish names of applicants or beneficiaries;
 - 4) The Contractor shall obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility and the amount of medical assistance payment to an authorized individual or entity, or if, because of an emergency situation, time does not permit obtaining consent before release, the Contractor shall notify TennCare, the family or individual immediately after supplying the information.
 - 5) The Contractor's policies must apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials.
 - 6) The Contractor shall notify TennCare of any requests for information on applicants or beneficiaries by other governmental bodies, the courts or law enforcement officials ten (10) days prior to releasing the requested information.
 - 7) If a court issues a subpoena for a case record or for any Contractor representative to testify concerning an applicant or beneficiary, the Contractor must notify TennCare at least ten (10) days prior to the required production date so TennCare may inform the court of the applicable statutory provisions, policies, and regulations restricting disclosure of information.
 - 8) The Contractor shall not request or release information to other parties to verify income, eligibility and the amount of assistance under Medicaid or CHIP, prior to express approval from TennCare.
- E.22. Employees Excluded from Medicare, Medicaid, or CHIP. The Contractor does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly employ, in the performance of this Contract, employees who have been excluded from participation in the Medicare, Medicaid, and/or CHIP programs pursuant to the Social Security Act, Section 1128 (Exclusion of Certain Individuals and Entities from Participation in Medicare and State Health Care Programs).
- E.23. Offer of Gratuities. By signing this contract, the Contractor signifies that no member of or a delegate of Congress, nor any elected or appointed official or employee of the State of Tennessee, the federal General Accounting Office, federal Department of Health and Human Services, the Center for Medicare and Medicaid Services, or any other state or federal agency has or will benefit financially or materially from this Contract. This Contract may be terminated by TennCare if it is determined that gratuities of any kind were offered to or received by any of the aforementioned officials or employees from the Contractor, its agent, or employees.
- E.24. Discovery and Litigation. TennCare is frequently involved in litigation as either a party or a non-party with relevant information. If any litigation should arise, the Contractor shall cooperate fully and timely with any State attorneys or paralegals at no additional cost to the State, which shall include the following responsibilities:
- a. Litigation Support. The Contractor shall make its personnel available to testify in Tennessee, whether in person before a tribunal or by deposition. The Contractor agrees to waive any

objections to any subpoena issued by a Tennessee tribunal, in any case relating to this Contract.

- b. **Discovery and Litigation Hold Requirements.** The Contractor shall cooperate with all TennCare requests to aid in data and document retention and collection, as required for litigation. The Contractor shall promptly provide the State with all information within the Contractor's control if required to do so by a discovery demand or court order. The State will exert its best effort to narrow the scope of any discovery request.

The obligation to meet the requirements listed above shall survive the termination of the Contract and shall extend to any subcontractor hired by the Contractor to provide goods or perform services on its behalf as required herein.

E.25. Nondiscrimination Compliance Requirements.

- a. General Requirements. The Contractor shall comply with all applicable federal and state civil rights laws, regulations, rules, and policies and Contract Section D.9 of this Contract.
 1. *Nondiscrimination Compliance Coordinator.* In order to demonstrate compliance with the applicable federal and State civil rights laws and regulations, which may include, but are not limited to, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, and 42 U.S.C. § 18116 (codified at 45 C.F.R. pt. 92), the Contractor shall designate a Nondiscrimination Compliance Coordinator ("NCC") who shall be responsible for compliance with the nondiscrimination requirements set forth in this Contract. Contractor agrees that its civil rights compliance staff member will work directly with TennCare's Director of Civil Rights Compliance ("DCRC") in order to implement and coordinate nondiscrimination compliance activities.
 2. *Readiness Review.* Prior to implementation of this Contract, the NCC shall participate in a nondiscrimination/civil rights readiness review phase. The DCRC shall provide the NCC with the nondiscrimination/civil rights protocols and readiness review expectations for this Contract and provide technical assistance to the NCC.
 3. *Complaint Forms.* The Contractor shall use and have available TennCare's discrimination complaint forms to provide to individuals who want to file a complaint and the Contractor may direct the individual to TennCare's real-time complaint form at <https://www.tn.gov/tenncare/members-applicants/civil-rights-compliance.html>. Upon request, the Contractor shall mail the individual a copy of the TennCare Complaint form and post the forms on the Contractor's website that is specific to the TennCare program. TennCare's discrimination complaint forms are vital documents and must be available at a minimum in the English, Spanish, Arabic languages. The above link to TennCare's discrimination complaint forms may be placed on the Contractor's website, which will direct individuals to TennCare's complaint forms. The Contractor shall provide assistance to individuals that request that the Contractor assist them with filing discrimination complaints with the TennCare program(s) covered under this contract. The Contractor shall inform its employees and its providers and subcontractors that are considered to be recipients of federal financial assistance under this contract about how to assist individuals with obtaining discrimination complaint forms and assistance with submitting the forms to the DCRC.
 4. *Nondiscrimination Notice and Taglines.* Should the Contractor create TennCare materials, the Contractor shall ensure that significant publications and significant communications, including small sized publications and communications that are targeted to beneficiaries, participants, enrollees, applicants, and members of the public shall be

printed with the notice of nondiscrimination and LEP taglines as required by TennCare and set forth in TennCare tagline templates and the applicable federal civil rights laws, including 45 C.F.R. pt. 92 and 68 Fed. Reg. 47311-02. Written materials specific to TennCare program members shall be prior approved in writing by TennCare prior to the materials being sent to these individuals.

- b. *Nondiscrimination Compliance Reports*. The Contractor shall submit the following nondiscrimination compliance deliverables to TennCare as follows:
1. *Annual Compliance Questionnaire*. Annually, the DCRC shall provide the NCC with a Nondiscrimination Compliance Questionnaire. The NCC shall answer the questions contained in the Compliance Questionnaire and submit the completed Questionnaire to DCRC within sixty (60) days of receipt of the Questionnaire with any requested documentation, which shall include, the Contractor's Assurance of Nondiscrimination. The Nondiscrimination Compliance Questionnaire deliverables shall be in a format specified by TennCare and will gather data on the Contractor's annual compliance activities like the provision of language and communication assistance services and completing the annual civil rights and cultural compliance training requirements.
 2. *Quarterly Compliance Reports*. The NCC shall submit a quarterly Non-discrimination Compliance Report which shall include the following:
 - (i) A summary listing that captures the total number of the Contractor's new hires that have completed civil rights/nondiscrimination training and cultural competency training and the dates the trainings were completed for that quarter;
 - (ii) The NCC shall provide a listing of all discrimination claims that are reported to the Contractor that are claimed to be related to the provision of and/or access to TennCare's covered services provided by the Contractor.
 - (iii) The language and communication assistance report shall capture a summary listing of language and communication assistance services that were requested by members and/or participants (i.e. Arabic; Braille) and the methods used to provide those services.
- c. *Discrimination Complaint Investigations*. All discrimination complaints against the Contractor and its employees and its subcontractors that are considered to be recipients of federal financial assistance under this contract shall be resolved according to the provisions of this Section and TennCare's policies and protocols. When complaints concerning alleged acts of discrimination committed by the Contractor and/or its employees and subcontractors related to the provision of and/or access to one of TennCare's programs are reported to the Contractor, the NCC shall send such complaints within two (2) business days of receipt to the DCRC. The DCRC shall investigate and resolve all alleged acts of discrimination committed by the Contractor and/or its employees and subcontractors. The Contractor and/or its employees and subcontractors shall cooperate with TennCare during the investigation and resolution of such complaints. During the complaint investigation, the NCC shall have the opportunity to provide the DCRC with any information that is relevant to the complaint investigation. The Contractor shall take reasonable methods to keep such documentation and materials confidential and shall not disclose the documentation or materials related to such investigation, to any third party unless otherwise required by law.
- d. *Electronic and Information Technology Accessibility Requirements*.
1. The Contractor shall comply with the civil rights requirements set forth in 42 C.F.R. § 433.112 regarding the design, development, installation or enhancement of mechanized

processing and information retrieval systems. In addition, the Contractor shall participate in the State's effort to comply with the nondiscrimination requirements for acquiring automatic data and processing equipment and services set forth in 45 C.F.R. § 95.633.

2. To the extent that the Contractor is using electronic and information technology to fulfill its obligations under this Contract, the Contractor agrees to comply with the electronic and information technology accessibility requirements under the federal civil rights laws including Section 504 and Section 508 of the Rehabilitation Act of 1973 ("Section 508"), the Americans with Disabilities Act, and 45 C.F.R. pt. 92 (or any subsequent standard adopted by an oversight administrative body, including the Federal Accessibility Board). To comply with the accessibility requirements for Web content and non-Web electronic documents and software, the Contractor shall use the most current W3C's Web Content Accessibility Guidelines ("WCAG") level AA or higher with a goal to transition to WCAG 3 level silver (For the W3C's guidelines see: <https://www.w3.org/WAI/standards-guidelines/>; and for Section 508 standards see: <https://www.access-board.gov/ict/>).
 3. Additionally, the Contractor agrees to comply with Title VI of the Civil Rights Act of 1964. As part of achieving Title VI compliance, the Contractor should add a system function that allows users to translate the content into a language other than English. This requirement may be satisfied by the provision of a link to Google translate or other machine translate tool or translating the page into non-English languages as directed by TennCare.
- e. Ethical/Moral/Religious Directives. Should the Contractor or its subcontractor not perform services or activities pursuant to its obligations under this Contract because of moral/ethical or religious reasons, the Contractor shall provide a list of these services to TennCare. This list shall be used by TennCare to provide information to TennCare applicants and members about where and how the individuals can obtain the services that are not being delivered due to Ethical and Religious Directives.
 - f. Health Care Disparities. The Contractor shall collaborate with TennCare and other entities designated by TennCare to develop and implement projects that identify, evaluate, and reduce, to the extent practicable, health disparities based on age, race, ethnicity, sex, primary language, and disability statuses.
 - g. Culturally Competent Delivery of Program Services. The Contractor and its subcontractors that are providing services pursuant to this Contract shall participate in the State's efforts to promote the delivery of services in a culturally competent manner to all applicants and enrollees, including those with Limited English Proficiency, disabilities and diverse cultural and ethnic backgrounds regardless of an individual's sex. This includes the Contractor emphasizing the importance of having the capabilities to ensure accommodations and accessible equipment or technologies for providing services to applicants and members with physical or mental disabilities.
 - h. Enrollee/Member Enrollment, Disenrollment, Re-enrollment.
 1. The Contractor shall accept enrollees in the order in which applications are approved and enrollees are assigned to the Contractor (whether by selection or assignment). The Contractor shall not use any policy or practice that has the effect of discriminating against individuals eligible to enroll on the basis of race, color, national origin, sex, sexual orientation, gender identity, or disability.
 2. The Contractor shall accept an enrollee in the health condition the enrollee is in at the time of enrollment and shall not discriminate against individuals on the basis of health status, the need for health care services, or on the basis of race, color, national origin, sex, sexual orientation, gender identity, or disability.

i. Provider Participation, Reimbursement, or Indemnification.

1. The Contractor shall not discriminate for the participation, reimbursement, or indemnification of any provider who is acting within the scope of his or her license or certification under applicable state law, solely on the basis of that license or certification. The Contractor's ability to credential providers as well as maintain a separate network and not include any willing provider is not considered. The Contractor's written policies and procedures for the selection and retention of providers shall not discriminate against particular providers that service high risk populations or specialize in conditions that require costly treatment.
2. The Contractor shall not discriminate against providers and entities in accordance with the federal prohibition against discrimination as provided for under the collective "federal health care provider conscience protection statutes," referenced individually as the Church Amendments, 42 U.S.C. § 300a-7, section 245 of the Public Health Service Act, 42 U.S.C. § 238n, and the Weldon Amendment, Consolidated Appropriations Act, 2010, Public Law 111-117, Div. D, Sec. 508(d), 123 Stat. 3034, 3279-80.

- E.26. End of Contract Transition Requirements. If applicable, prior to the end of the Contract term or extension of the Contract term, or in the event of a Contract Termination or Partial Takeover as further defined herein, the State may contract with a successor contractor (Successor Contractor) to assume the Contractor's duties and requirements upon the end of the term or termination of this Contract. This may result in a period of transition during which the Contractor continues to provide services while the Successor Contractor prepares to assume those services, with a switch over from the Contractor to the Successor Contractor occurring on an implementation date (Implementation Date) specified by the State. The Implementation Date will typically coincide with the Successor Contractor's Go-Live Date pursuant to its contract with the State. However, the State may elect, in its sole discretion, to have the Contractor continue some portion of its services and systems after the Successor Contractor's Implementation Date, in which case, unless otherwise agreed to in writing by the State and Contractor, the Contractor shall be compensated for such services and systems in accordance with the provisions of Contract Section C.

The Contractor shall be required to participate as directed by the State, at no additional cost, in assisting with the transition by providing specified deliverables, information relating to the Contractor's duties and attending meetings with the State and/or Successor Contractor. The Contractor shall, at no additional cost to the State, work with designated State personnel and/or the Successor Contractor to develop and provide to the State for its review and approval a comprehensive Transition Plan no later than one hundred and eighty (180) days prior to the Contract end date, notwithstanding delays in notification of end date, Termination, or Partial Takeover. The Transition Plan shall cover both the Contractor's and the Successor Contractor's duties and responsibilities to ensure an orderly transition of responsibilities. The Contractor shall, at all times, act in good faith toward the State and/or Successor Contractor to facilitate as seamless a transition as possible. The State shall specify deliverables required of the Contractor in aid of the transition process. Failure to fully and timely cooperate with the State's request or provide the requested deliverables may result in the assessment of damages. The State shall not be liable to the Contractor for any costs and expenses relating to these deliverables or relating to the services provided by the Contractor during the transition period, other than as set forth in Contract Section C.3.

- E.27. Extraneous Terms and Conditions. Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services

under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.

E.28. Contractor Hosted Services Confidential Data, Audit, and Other Requirements

a. "Confidential State Data" is defined as data deemed confidential by State or Federal statute or regulation. The Contractor shall protect Confidential State Data as follows:

- (1) The Contractor shall ensure that all Confidential State Data is housed in the continental United States, inclusive of backup data.
- (2) The Contractor shall encrypt Confidential State Data at rest and in transit using the current version of Federal Information Processing Standard ("FIPS") 140-2 validated encryption technologies.
- (3) The Contractor and the Contractor's processing environment containing Confidential State Data shall either (1) be in accordance with at least one of the following security standards: (i) International Standards Organization ("ISO") 27001; (ii) Federal Risk and Authorization Management Program ("FedRAMP"); or (2) be subject to an annual engagement by a CPA firm in accordance with the standards of the American Institute of Certified Public Accountants ("AICPA") for a System and Organization Controls for service organizations ("SOC") Type II audit. The State shall approve the SOC audit control objectives. The Contractor shall provide proof of current ISO certification or FedRAMP authorization for the Contractor and Subcontractor(s), or provide the State with the Contractor's and Subcontractor's annual SOC Type II audit report within 30 days from when the CPA firm provides the audit report to the Contractor or Subcontractor. The Contractor shall submit corrective action plans to the State for any issues included in the audit report within 30 days after the CPA firm provides the audit report to the Contractor or Subcontractor.

If the scope of the most recent SOC audit report does not include all of the current State fiscal year, upon request from the State, the Contractor must provide to the State a letter from the Contractor or Subcontractor stating whether the Contractor or Subcontractor made any material changes to their control environment since the prior audit and, if so, whether the changes, in the opinion of the Contractor or Subcontractor, would negatively affect the auditor's opinion in the most recent audit report.

No additional funding shall be allocated for these certifications, authorizations, or audits as these are included in the Maximum Liability of this Contract.

- (4) The Contractor must annually perform Penetration Tests and Vulnerability Assessments against its Processing Environment. "Processing Environment" shall mean the combination of software and hardware on which the Application runs. "Application" shall mean the computer code that supports and accomplishes the State's requirements as set forth in this Contract. "Penetration Tests" shall be in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses which have the potential to gain access to the Processing Environment's features and data. The "Vulnerability Assessment" shall be designed and executed to define, identify, and classify the security holes (vulnerabilities) in the Processing Environment. The Contractor shall allow the State, at its option, to perform

Penetration Tests and Vulnerability Assessments on the Processing Environment.

- (5) Upon State request, the Contractor shall provide a copy of all Confidential State Data it holds. The Contractor shall provide such data on media and in a format determined by the State
- (6) Upon termination of this Contract and in consultation with the State, the Contractor shall destroy all Confidential State Data it holds (including any copies such as backups) in accordance with the current version of National Institute of Standards and Technology ("NIST") Special Publication 800-88. The Contractor shall provide a written confirmation of destruction to the State within ten (10) business days after destruction.

b. Minimum Requirements

- (1) The Contractor and all data centers used by the Contractor to host State data, including those of all Subcontractors, must comply with the State's Enterprise Information Security Policies as amended periodically. The State's Enterprise Information Security Policies document is found at the following URL: <https://www.tn.gov/finance/strategic-technology-solutions/strategic-technology-solutions/sts-security-policies.html>.
- (2) The Contractor agrees to maintain the Application so that it will run on a current, manufacturer-supported Operating System. "Operating System" shall mean the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.
- (3) If the Application requires middleware or database software, Contractor shall maintain middleware and database software versions that are at all times fully compatible with current versions of the Operating System and Application to ensure that security vulnerabilities are not introduced.

c. Comptroller Audit Requirements

Upon reasonable notice and at any reasonable time, the Contractor and Subcontractor(s) agree to allow the State, the Comptroller of the Treasury, or their duly appointed representatives to perform information technology control audits of the Contractor and all Subcontractors used by the Contractor. Contractor will maintain and cause its Subcontractors to maintain a complete audit trail of all transactions and activities in connection with this Contract. Contractor will provide to the State, the Comptroller of the Treasury, or their duly appointed representatives access to Contractor and Subcontractor(s) personnel for the purpose of performing the information technology control audit.

The information technology control audit may include a review of general controls and application controls. General controls are the policies and procedures that apply to all or a large segment of the Contractor's or Subcontractor's information systems and applications and include controls over security management, access controls, configuration management, segregation of duties, and contingency planning. Application controls are directly related to the application and help ensure that transactions are complete, accurate, valid, confidential, and available. The audit shall include the Contractor's and

Subcontractor's compliance with the State's Enterprise Information Security Policies and all applicable requirements, laws, regulations or policies.

The audit may include interviews with technical and management personnel, physical inspection of controls, and review of paper or electronic documentation.

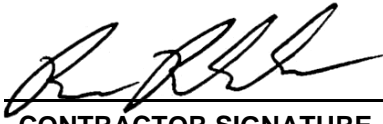
For any audit issues identified, the Contractor and Subcontractor(s) shall provide a corrective action plan to the State within 30 days from the Contractor or Subcontractor receiving the audit report.

Each party shall bear its own expenses incurred while conducting the information technology controls audit.

- d. Business Continuity Requirements. The Contractor shall maintain set(s) of documents, instructions, and procedures which enable the Contractor to respond to accidents, disasters, emergencies, or threats without any stoppage or hindrance in its key operations ("Business Continuity Requirements"). Business Continuity Requirements shall include:
- (1) "Disaster Recovery Capabilities" refer to the actions the Contractor takes to meet the Recovery Point and Recovery Time Objectives defined below. Disaster Recovery Capabilities shall meet the following objectives:
 - i. Recovery Point Objective ("RPO"). The RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: 1-Hour.
 - ii. Recovery Time Objective ("RTO"). The RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: 4-Hours.
 - (2) The Contractor and the Subcontractor(s) shall perform at least one Disaster Recovery Test every three hundred sixty-five (365) days. A "Disaster Recovery Test" shall mean the process of verifying the success of the restoration procedures that are executed after a critical IT failure or disruption occurs. The Disaster Recovery Test shall use actual State Data Sets that mirror production data, and success shall be defined as the Contractor verifying that the Contractor can meet the State's RPO and RTO requirements. A "Data Set" is defined as a collection of related sets of information that is composed of separate elements but can be manipulated as a unit by a computer. The Contractor shall provide written confirmation to the State after each Disaster Recovery Test that its Disaster Recovery Capabilities meet the RPO and RTO requirements.

IN WITNESS WHEREOF,

CONSUMER DIRECT FOR TENNESSEE, LLC:



April 21, 2023

CONTRACTOR SIGNATURE

DATE

Ben Bledsoe, CEO

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

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



April 21, 2023

JIM BRYSON, COMMISSIONER

DATE

DEFINITIONS

Abuse - Provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes recipient practices that result in unnecessary cost to the Medicaid program (see 42 C.F.R. 455.2).

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

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

Budget Authority – An HCBS self-directed model that allows participants to hire, fire, and supervise personal support workers (e.g., personal care attendants, homemakers), as well as use their funds to purchase other goods and services designed to meet disability-related needs and, in the case of people with psychiatric disabilities, recovery-related supports.

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

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

Caregiver - For purposes of CHOICES and ECF CHOICES, a person who is (a) a family member or is unrelated to the member but has a close, personal relationship with the member and (b) routinely involved in providing unpaid support and assistance to the member. A caregiver may be also designated by the member as a representative for CHOICES or ECF CHOICES or for consumer direction of eligible CHOICES HCBS or eligible ECF CHOICES. For purposes of Part A of the Katie Beckett Program, the "caregiver" is generally the child's parent(s) or other legal guardian except when someone other than the

child's parent(s) or other legal guardian are routinely involved in providing unpaid support and assistance to the child.

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

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

Comprehensive Aggregate Cap Waiver (CAC) -- A HCBS Waiver (Control Number TN 0357) approved by the Centers for Medicare and Medicaid Services pursuant to Section 1915(c) of the Social Security Act which serves individuals with intellectual disabilities who are former members of the certified class in the United States vs. the State of Tennessee, et al. (Arlington Developmental Center), former members of the certified class in the United States vs. the State of Tennessee, et al. (Clover Bottom Developmental Center), persons discharged from the Harold Jordan Center following a stay of at least 90 days, and individuals transitioned from the Statewide Waiver (#0128) upon its renewal on January 1, 2015, because they were identified by the state as receiving services in excess of the individual cost neutrality cap established for the Statewide Waiver. These are individuals who have been institutionalized in a public institution, were part of a certified class because they were determined to be at risk of placement in a public institution, or have significant services/support needs consistent with that of the population served in a public ICF/IID and who qualify for and, absent the provision of services provided under the CAC waiver, would require placement in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID). The CAC Waiver offers a continuum of services that are designed to support each person's independence and integration into the community, including opportunities for employment and work in competitive integrated settings and engage in community life. A person-centered planning process is used to identify services to be included in each waiver member's Person-Centered Support Plan, based on the person's individually identified goals and need for specific services to advance toward, achieve or sustain those goals.

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

Consumer-Directed or Self-Directed Worker(Worker) – An individual who has been hired by a Member/Representative, or by a parent or other legal guardian of a Katie Beckett member to provide one or more Eligible CHOICES HCBS, Eligible ECF CHOICES HCBS, Eligible Katie Beckett HCBS, or Eligible 1915(c) Waiver Program HCBS to the Member. Worker does not include an employee of an agency that is being paid by an MCO or DIDD to provide HCBS to the Member.

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

Consumer Direction of Eligible Katie Beckett HCBS - The opportunity for the parent or other legal guardian of a child enrolled in Katie Beckett Part A assessed to need specified types of Katie Beckett

HCBS as set forth in TennCare rules and regulations as available for consumer direction to elect to direct and manage (or in limited circumstances to have a representative direct and manage) certain aspects of the provision of such services – primarily, the hiring, firing, and day-to-day supervision of consumer-directed workers delivering the needed service(s) and the delivery of each eligible Katie Beckett HCBS within the authorized budget for that service. Eligible Katie Beckett HCBS do not include home health or private duty nursing services.

Consumer-Direction of Eligible 1915(c) Comprehensive Aggregate Cap/Statewide Waiver HCBS–

The opportunity for a CAC or SWW Member assessed to need specified types of HCBS, limited to personal assistance, respite, and community transportation; or any other service approved by CMS and specified in TennCare Rules as available for Consumer to elect to direct and manage (or to have a Representative direct and manage) certain aspects of the provision of such services—primarily, the hiring, firing, and day-to-day supervision of Consumer-Directed workers delivering the needed service(s), including, the delivery of each eligible CAC Waiver or SWW HCBS within the authorized budget for that service.

Contract Provider - A provider who is under contract through the MCO or DIDD. Also called “Network Provider” or “In-Network provider.”

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

Credible Allegation of Fraud – An allegation of fraud which has been evaluated by the State, using information from any source, including:

- Fraud hotline complaints,
- Claims data mining, and/or
- Patterns identified through provider audits, civil false claims cases, and law enforcement investigations.

Allegations are considered to be credible when they have indicia of reliability and the State Medicaid agency has reviewed all allegations, facts, and evidence carefully and acts judicially on a case-by-case basis. (42 CFR 455.2) TCR 1200-13-18-.02(11).

Department of Intellectual and Developmental Disabilities Case Manager (Case Manager) - A qualified individual employed by DIDD who provides support coordination services to members in the Self-Determination Waiver and is responsible for the assessment, planning, implementation, coordination, and monitoring of services and supports that assist individuals with intellectual and developmental disabilities enrolled in the program to identify and achieve individualized goals related to work (in competitive, integrated employment), personal relationships, community involvement, understanding and exercising personal rights and responsibilities, financial management, increased independence and control over their own lives, and personal health and wellness as specified in the Person-Centered Support Plan (PCSP), and the tracking and measurement of progress and outcomes related to such individualized goals, as well as the provider’s performance in supporting the person’s achievement of these goals.

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

Eligible ECF CHOICES HCBS - For purposes of Consumer Direction, ECF CHOICES HCBS that may be Consumer-Directed are limited to personal assistance, supportive home care, hourly respite, community transportation, and/or any other ECF CHOICES HCBS specified in TennCare Rules as eligible for Consumer Direction which an ECF CHOICES Member is determined to need and elects to direct and manage (or have a Representative direct and manage) certain aspects of the provision of such services – primarily the hiring, firing and day-to-day supervision of Consumer-Directed workers delivering the

needed service(s) and the delivery of each eligible ECF CHOICES HCBS within the authorized budget for that service. Eligible ECF CHOICES HCBS do not include home health or private duty nursing services.

Eligible Katie Beckett HCBS - Respite, Supportive Home Care, Community Transportation and any other Katie Beckett HCBS specified in TennCare rules and regulations as eligible for consumer direction for which a Katie Beckett member is determined to need and which the member's parent or other legal guardian elects to direct and manage (or in limited circumstances to have a representative direct and manage) certain aspects of the provision of such services – primarily the hiring, firing and day-to-day supervision of consumer-directed workers delivering the needed service(s) and, as applicable, the delivery of each eligible Katie Beckett HCBS within the authorized budget for that service. Eligible Katie Beckett HCBS do not include home health or private duty nursing services.

Eligible 1915(c) Comprehensive Aggregate Cap/Statewide Waiver Program HCBS - For purposes of Consumer-Direction, Eligible 1915(c) CAC or SWW Program HCBS that may be Consumer-Directed are limited to respite services, personal assistance, and community transportation services.

Eligible 1915(c) Self-Determination Waiver Program HCBS - For purposes of Self-Direction, Eligible 1915(c) Waiver Program HCBS that may be Self-Directed are limited to respite services (when provided by an approved respite provider who serves only one (1) Member), personal assistance; day services (except those selected by and provided in a facility-based setting); and individual transportation services.

Employer Authority – An HCBS self-directed model that allows participants to hire, fire, and supervise personal support workers (e.g., personal care attendants, homemakers), but does not allow the participant to use their funds for any other goods or services.

Employer of Record (Employer) – The Member or a Representative designated by the Member to assume the Consumer Direction or Self-Direction functions on the Member's behalf or the parent or other legal guardian of a Katie Beckett member participating in consumer direction of eligible Katie Beckett HCBS. In limited circumstances, the parent or legal guardian of a child in Katie Beckett may delegate a representative for consumer direction.

Electronic Visit Verification (EVV) Compliance – The consistent use of an electronic visit verification method when checking in and out of visits.

False Claims Act - A federal law that creates civil liability for any person or organization that knowingly files a false claim (1902(a)(68) of the social security act) or makes a false record seeking payment from the U.S. government services or supplies. The State of Tennessee has a similar statute, the Tennessee Medicaid False Claims Act that only applies to false claims submitted under the state's Medicaid program. 31 U.S.C. 2739; T.C.A. 71-5-181 through 71-5-184.

FICA - Federal Insurance Contributions Act.

Fiscal Employer Agent (Contractor) – An entity contracting with the State, MCOs, and/or DIDD that helps Members in Consumer Direction and Self-Direction. The Contractor provides both Financial Administration and Supports Brokerage functions for Members. This term is used by the IRS to designate an entity operating under Section 3504 of the IRS code, Revenue Procedure 70-6 and Revenue Procedure 2013-39 as the agent to Members for the purpose of filing certain federal tax forms and paying federal income tax withholding, FICA and FUTA taxes. The Contractor also files state income tax withholding and unemployment insurance tax forms and pays the associated taxes and processes payroll based on the Eligible CHOICES HCBS, Eligible ECF CHOICES HCBS, Eligible Katie Beckett HCBS, or Eligible 1915(c) Waiver Program HCBS, as applicable, authorized and provided.

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

Fraud - An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law (see 42 C.F.R. 455.2).

FUTA - Federal Unemployment Tax Act.

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

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

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

Home and Community-Based Services (HCBS) for Katie Beckett - Specified wraparound services that are available only to eligible children enrolled in Katie Beckett Part A. Only certain Katie Beckett Part A HCBS are eligible for Consumer Direction. Katie Beckett Part A HCBS do not include home health or private duty nursing services or any other HCBS that are covered by Tennessee’s Title XIX State Plan or under the TennCare demonstration for all eligible children, although such services shall be counted for purposes of determining whether the cost of providing a Katie Beckett Part A member’s needs at home will exceed the estimated Medicaid cost of institutional care.

Individual Support Plan (ISP) – An individualized written plan that identifies a Member's preferences, capacities, needs and resources and that identifies supports and services to meet such needs; and by which Members and their family are assisted to access the 1915(c) Waiver Program, Katie Beckett Part B and other necessary services. Effective September 1, 2021, these plans will be called Person Centered Plans (PCSPs).

Investigation - A review of a provider’s services and/or claims submissions in response to a tip or allegation of potential or suspected fraud or abuse. Investigations shall include a retrospective review of claims and may be supplemented by provider and member interviews and provider research.

Katie Beckett Part A - One of two components of Tennessee’s Katie Beckett Program that serves a limited number of children with the most significant disabilities or complex medical needs who meet institutional level of care, as established by TennCare, and who qualify for Medicaid only by waiving the deeming of parents’ income and/or assets to the child. Children enrolled by TennCare into Katie Beckett Part A are eligible to receive all covered, medically necessary Medicaid benefits, including benefits provided under the Early Periodic Screening, Diagnosis and Treatment (EPSDT) program as well as case management and specified wraparound home- and community-based services not otherwise covered by the Medicaid program, including respite. Part A will consist of children who are under age 18 who (1) have medical needs that are likely to last at least twelve months or result in death; and result in severe functional limitations based on medical eligibility criteria developed by TennCare specifically for children; (2) qualify for care in a medical institution; and (3) qualify for supplemental security income (SSI) due to the child’s disability – except for the parent’s income and/or assets. To qualify for (initial and continued) enrollment in Katie Beckett Part A, a licensed physician must agree and certify that in-home care will meet the child’s needs, the cost of providing the child’s care at home (including traditional Medicaid benefits and wraparound HCBS) cannot exceed the estimated Medicaid cost of institutional care, and the child cannot be Medicaid-eligible or receiving long-term services and supports in another Medicaid program. Katie Beckett Part A is administered by TennCare through its contracted MCO.

Katie Beckett Part A Member- A member who has been enrolled by TennCare into Part A of the Katie Beckett Program.

Katie Beckett Program Part B- One of two components of Tennessee’s Katie Beckett Program that functions as a Medicaid diversion program and offers a capped package of wraparound services and supports as well as premium assistance on a sliding fee scale to a broader group of children with disabilities, including those “at risk” of institutionalization. Part B is an innovative, new approach that helps divert children from becoming Medicaid eligible by helping their families purchase private insurance

and providing wraparound services and supports to meet the child's needs. Part B will consist of children who are under age 18 who (1) have medical needs that are likely to last at least twelve months or result in death and result in severe functional limitations based on medical eligibility criteria developed specifically for children; (2) qualify for care in a medical institution or be "at-risk" of institutional placement; and (3) the child cannot be Medicaid eligible or receiving other long-term services and supports in another TennCare Medicaid program. Katie Beckett Part B is administered by DIDD.

Katie Beckett Part B Member – A person who has been enrolled by TennCare into Part B of the Katie Beckett Program.

Legal Guardian – For purposes of the Katie Beckett Program, the individual with physical custody of the child and the legal authority to make decisions concerning the child's protection, education, care, medical treatment, etc., including the child's PCSP for Katie Beckett. Generally, the child's parent(s) is the legal guardian except when guardianship has been otherwise established through court proceedings.

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

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

Member – Member shall mean an individual who is enrolled in CHOICES, ECF CHOICES, 1915(c) Waiver, or Katie Beckett and is Consumer-Directing/Self-Directing services under this Contract. The term collectively refers to CHOICES, ECF CHOICES, 1915(c) Waiver, and Katie Beckett Members when used in this Contract, unless a specific program is referenced (i.e., CHOICES Member, ECF CHOICES Member, 1915(c) Waiver Member, or Katie Beckett Member). As it relates to responsibilities pertaining to Consumer Direction in Katie Beckett, the term shall refer to the parent or other legal guardian of the child enrolled in Katie Beckett who has primary physical custody of the child and legal authority to make decisions on the child's behalf.

Modified Budget Authority – An HCBS self-directed model that allows participants to hire, fire, and supervise personal support workers (e.g., personal care attendants, homemakers), as well as use their funds, in a limited capacity, to purchase other goods and services designed to meet disability-related needs.

Nurse Care Manager – For purposes of the Katie Beckett Program Part A, a person who is employed and contracted by an MCO to perform responsibilities related to the continuous engagement and management of:

- (a) Assessing a child's strengths, physical and behavioral health and long-term services and supports needs, goals and challenges;
- (b) Identifying the services and supports (including unpaid supports voluntarily provided by family members and other caregivers, and paid services provided by private insurance, the MCO, and other payor sources) that will be provided to the child to meet the child's physical and behavioral health and long-term services and supports needs, and support the child in achieving his or her individualized goals;
- (c) Working closely with providers in implementing the Integrated Plan of Care. Long-term services and supports identified through nurse care management and provided by the MCO shall build upon and not supplant a member's existing support system, including but not limited to informal supports provided by family and other caregivers, service that may be available at no cost to the member through other entities, and services that are reimbursable through other public or private funding sources, such as Medicare or private insurance;
- (d) Developing and maintaining for each member, through a person and family centered planning process, an individualized, plan of care. The child should be involved in helping define his or her individualized goals and develop the plan of care the maximum extent possible and appropriate. This planning process, and the resulting person and family centered plan of care shall: 1) ensure the delivery

of services in a manner that reflects the family's strengths, needs, preferences and choices; 2) assists the child in achieving personally defined outcomes in the most integrated community setting, which shall include planning and preparation for the child's transition to employment and community living with as much independence as possible upon becoming an adult; and 3) help to engage, strengthen, support and build the capacity and confidence of the family in order to ensure the child's safety, well-being and permanency;

(e) ensuring timely access to and provision, coordination and monitoring of covered physical and behavioral health services and wraparound HCBS; and

(f) collaboration between providers and payors of the member's physical and behavioral health services and wraparound HCBS, including physicians, other physical and behavioral health care providers, HCBS providers, TennCare, DIDD, the local education authority, Vocational Rehabilitation, and the MCO to facilitate seamless access to care and maximize health and quality of life outcomes, and to plan and prepare for the child's transition to employment and community living with as much independence as possible upon becoming an adult.

Office of Attorney General Medicaid Fraud and Integrity Division (AG/MFID) - The division of the State of Tennessee that is responsible for civil prosecution of violations of the Tennessee Medicaid False Claims Act.

Office of Inspector General (OIG) – The State of Tennessee agency that investigates and may prosecute civil and criminal fraud, waste, and abuse of the TennCare program or any other violations of state law related to the operation of the TennCare program administratively, civilly or criminally.

Office of Program Integrity (OPI) - The State Medicaid Agency unit responsible for the prevention, detection and investigation of alleged provider fraud, waste, and abuse of the TennCare program.

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

- (a) Ensuring that the Contractor allows people chosen by the Member/Representative to be present for discussion about Consumer Direction or Self-Direction, as applicable;
- (b) Provides the Member/Representative with necessary information and support to ensure the Member/Representative directs the process to the maximum extent possible, and is enabled to make informed choices and decisions;
- (c) Required meetings with Members/Representatives are timely and occur at times and locations of convenience for the Member/Representative;
- (d) Reflects cultural considerations of the Member/Representative and is conducted by providing information in plain language and in a manner accessible for individuals with disabilities and individuals who are limited English proficient; and
- (e) The Contractor and its staff have strategies for solving conflict or disagreement.

Person-Centered Support Plan (PCSP) - As it pertains to CHOICES, ECF CHOICES, and the 1915(c) Waiver Program, the PCSP is a written plan developed by the Support Coordinator, Care Coordinator, or DIDD Case Manager in accordance with person-centered planning requirements set forth in federal regulation, and in TennCare policies and protocols, using a person-centered planning process that accurately documents the member's strengths, needs, goals, lifestyle preferences and other preferences and outlines the services and supports that will be provided to the member to help them achieve their preferred lifestyle and goals, and to meet their identified unmet needs (after considering the availability and role of unpaid supports provided by family members and other natural supports) through paid services provided by the member's MCO and other payor sources. The person-centered planning process is directed by the member with long-term support needs and may include a representative whom the member has freely chosen to assist the member with decision-making, and others chosen by the member to contribute to the process. If the member has a guardian or conservator, the member shall lead the planning process to the maximum extent possible, and the guardian or conservator shall have a participatory role as needed and defined by the individual, except as explicitly defined under State law and the order of guardianship or conservatorship. Any decisions made on the member's behalf should be made using principles of substituted judgment and supported decision-making. This planning process, and the resulting PCSP, will

assist the member in achieving a personally defined lifestyle and outcomes in the most integrated community setting appropriate, ensure delivery of services in a manner that reflects personal preferences and choices, and contribute to the assurance of health, welfare, and personal growth. Services in CHOICES, and ECF CHOICES shall be authorized, provided, and reimbursed only as specified in the PCSP.

As it pertains to Part A of the Katie Beckett Program, the plan of care is a written document developed by the Nurse Care Manager in accordance with this Contract and in a manner consistent with federal regulation, and in TennCare policies and protocols, through a person- and family-centered planning process that assesses the child's strengths, needs, goals and challenges; and outlines the services and supports (including unpaid supports voluntarily provided by family members and other caregivers, and paid services provided by private insurance, the MCO, and other payor sources) that will be provided to the child to meet the child's physical and behavioral health and long-term services and supports needs and support the child in achieving his or her individualized goals. The child should be involved in helping to define his or her individualized goals and develop the plan of care to the maximum extent possible and appropriate. This planning process, and the resulting person- and family-centered plan of care shall: 1) ensure the delivery of services in a manner that reflects the child and family's strengths, needs, preferences and choices; 2) assist the child in achieving personally defined outcomes in the most integrated community setting, which shall include planning and preparation for the child's transition to employment and community living with as much independence as possible upon becoming an adult; and 3) help to engage, strengthen, support, and build the capacity and confidence of the family in order to ensure the child's safety, well-being and permanency. Services in the Katie Beckett Program shall be authorized, provided, and reimbursed only as specified in the plan of care.

For purposes of CHOICES and Part A of the Katie Beckett Program, "plan of care" shall be used interchangeably with "person-centered support plan" or "PCSP."

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

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

Definitions of each of these terms are contained in TennCare Rule 1200-13-13-.01. Provider does not include Consumer-Directed Workers (See Consumer-Directed Worker); nor does provider include the Contractor (Fiscal Employer Agent).

Reportable Event - For purposes of CHOICES, ECF CHOICES, Katie Beckett, and the 1915(c) Waiver Programs, a Reportable Event is an event that is classified as Tier 1, Tier 2, or Additional Reportable Events, as defined by TennCare, that the contracted provider, MCO, or Contractor shall be responsible for reporting to the Member's MCO, DIDD, law enforcement, and/or APS or CPS, as appropriate, within the timeframes and in the manner as specified by TennCare .

Representative – As it relates to Consumer Direction in the 1915(c) Comprehensive Aggregate Cap and Statewide Waivers, CHOICES and ECF CHOICES, and Self-Direction in the 1915(c) Self-Determination Waiver Program, a person who is authorized by the Member to serve as the Employer of Record, and to direct and manage the Member's Worker(s), and signs a Representative agreement. As it relates to Katie Beckett, the parent or other legal guardian of a Katie Beckett member will generally serve as the Employer of Record, but may authorize a representative for consumer direction in limited circumstances. The child cannot assume Consumer Direction or Self-Direction functions or authorize a Representative to perform such functions. The Representative for Consumer Direction or Self-Direction must also: be at least eighteen (18) years of age; have a personal relationship with the Member and understand his/her support needs; know the Member's daily schedule and routine, medical and functional status, medication regimen, likes and dislikes, and strengths and weaknesses; and be physically present in the Member's residence on a regular basis or at least at a frequency necessary to supervise and evaluate Workers.

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

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

Self-Direction of Health Care Tasks – A decision by a Member or the parent or other legal guardian of a Katie Beckett member in Consumer Direction or Self-Direction to direct and supervise a paid Worker delivering Eligible CHOICES HCBS, Eligible ECF CHOICES, Eligible Katie Beckett HCBS, or Eligible 1915(c) Waiver Program HCBS in the performance of health care tasks that would otherwise be performed by a licensed nurse. Self-Direction of health care tasks is not a service, but rather, health care-related duties and functions (such as administration of medications) that a Member in Consumer Direction or Self-Direction or the parent or other legal guardian of a child enrolled in Katie Beckett may elect to have performed by a Consumer-Directed or Self-Directed Worker as part of the delivery of Eligible CHOICES HCBS, Eligible ECF CHOICES HCBS, Eligible Katie Beckett HCBS, or Eligible 1915(c) Waiver Program HCBS s/he is authorized to receive.

Self-Determination Waiver Program - A Home and Community Based Services (HCBS) Waiver (Control Number TN 0427) approved by the Centers for Medicare and Medicaid Services pursuant to Section 1915(c) of the Social Security Act which serves children and adults with intellectual disabilities and children under age six with developmental delay who qualify for and, absent the provision of services provided under the Self-Determination waiver, would require placement in a private Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID). The Self-Determination Waiver Program affords Members the opportunity to directly manage selected services, including the recruitment and management of service providers. Members and families (as appropriate) electing self-direction are empowered and have the responsibility for managing, in accordance with waiver service definitions and limitations, a self-determination budget affording flexibility in service design and delivery. The Self-Determination Waiver Program serves persons who have an established non-institutional place of residence where they live with their family, a non-related caregiver or in their own home and whose needs can be met effectively by the combination of waiver services through this program and natural and other supports available to them. The Self-Determination Waiver does not include residential services such as supported living. The Self-Determination Waiver offers a continuum of services that are designed to support each person's independence and integration into the community, including opportunities for employment and work in competitive integrated settings and engage in community life. A person-centered planning process is used to identify services to be included in each waiver participant's Person-Centered Support Plan, based on the person's individually identified goals and need for specific services to advance toward, achieve or sustain those goals.

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

Support Coordinator (CAC & Statewide Waiver) – For purposes of CAC & Statewide Waiver members, a qualified individual employed by a Support Coordination provider agency contracted with one or more MCOs to provide support coordination services to members in the Statewide or CAC Waivers and is responsible for the assessment, planning, implementation, coordination, and monitoring of services and supports that assist individuals with intellectual and developmental disabilities enrolled in the program to identify and achieve individualized goals related to work (in competitive, integrated employment), personal relationships, community involvement, understanding and exercising personal rights and responsibilities, financial management, increased independence and control over their own lives, and

personal health and wellness as specified in the Person-Centered Support Plan (PCSP), and the tracking and measurement of progress and outcomes related to such individualized goals, as well as the provider's performance in supporting the person's achievement of these goals.

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

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

Supports Broker - An individual assigned by the Contractor to each Member who assists the Member/Representative as requested by the Member/Representative in performing certain Employer of Record functions as follows: developing job descriptions; recruiting, interviewing, and hiring Workers; Member and Worker enrollment in Consumer Direction and Consumer Direction training or Self-Direction and Self-Direction training, as applicable; and developing (as part of the onboarding process for new Workers) a schedule for the Member's Workers that comports with the schedule at which services are needed by the Member as reflected in the Member's or Person's Supported PCSP, as applicable. The Supports Broker shall also assist the Member as needed with developing and verifying the initial Back-up Plan. The Supports Broker collaborates with the Member's Care Coordinator, Support Coordinator, Nurse Care Manager, or DIDD Case Manager, as applicable and appropriate. The Supports Broker does not have authority or responsibility for Consumer Direction or Self-Direction. The Member/Representative must retain authority and responsibility for Consumer Direction or Self-Direction, as applicable.

SUTA - State Unemployment Tax Act.

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

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

TennCare Employment and Community First CHOICES (ECF CHOICES) - A managed long-term services and supports program that offers HCBS 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.

TennCare Katie Beckett Program (Katie Beckett) – A program which offers Medicaid-reimbursed assistance to a specified number of eligible children under age 18 1) who have complex medical needs and/or disabilities; 2) would qualify for SSI and for Medicaid if institutionalized; 3) do not otherwise qualify for Medicaid because of the parents' income or assets; and 4) for whom the cost of services in the home is less than or equal to the cost of services in an institutional setting.

Tennessee Bureau of Investigation, Medicaid Fraud Control Division (TBI MFCD) – The Tennessee Bureau of Investigation's Medicaid Fraud Control Division has the authority to investigate and prosecute (or refer for prosecution) violations of all applicable state and federal laws pertaining to fraud in the administration of the Medicaid program, the provision of medical assistance, the activities of providers of medical assistance in the state Medicaid program (TennCare), allegations of abuse or neglect of patients in health care facilities receiving payments under the state Medicaid program, misappropriation of patients' private funds in such facilities, and allegations of fraud, waste, and abuse in board and care facilities.

Timekeeping System - A system developed, implemented, and maintained by the Contractor to capture time submitted for the delivery of Consumer-Directed and Self-Directed services. The system is used to monitor Member receipt of Eligible CHOICES HCBS, Eligible ECF CHOICES HCBS, and Eligible 1915(c) Waiver Program HCBS to ensure provided HCBS is authorized by the MCO or DIDD, as applicable, generate payment to Workers for hours worked, as appropriate, and also generate claims for submission by the provider. The system will not allow payment to Workers for services not authorized by the MCO or DIDD, as applicable.

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

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

Waste - Is the overutilization of services, or other practices that, directly or indirectly, result in unnecessary costs to the Medicaid program. Waste is generally not considered to be caused by criminally negligent actions but rather the misuse of resources.

1915(c) Waiver Program – One of the three waivers (Statewide, Comprehensive Aggregate Cap, and Self-Determination) approved by the Centers for Medicare and Medicaid Services pursuant to Section 1915(c) of the Social Security Act to which provide HCBS not otherwise available under the State Plan to eligible persons with I/DD enrolled in such waivers.

LIQUIDATED DAMAGES

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

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

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

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

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

	PROGRAM ISSUES	DAMAGE
1.	Failure by the Contractor to meet the standards for privacy, security, and confidentiality of individual data as evidenced by a breach of the security per Sections D.34, E.17, and E.18.	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.
2.	Failure by the Contractor to execute the appropriate agreements to effectuate transfer and exchange of enrollee PHI or TennCare confidential information including, but not limited to, a data use agreement, trading partner agreement, business associate agreement or qualified protective order prior to the use or disclosure of PHI to a third party. (See E.16. and Business Associate Agreement between the parties)	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.
3.	Failure by the Contractor to seek express written approval from TennCare prior to the use or disclosure of enrollee data or TennCare confidential information in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States. (See E.11 and Business Associate Agreement between the parties)	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.
4.	Failure by the Contractor to timely report violations in the access, use and disclosure of PHI or timely report a security incident or timely make a notification of breach or notification of suspected breach per Sections (See E.17 and Business Associate Agreement between the parties)	The damage that may be assessed shall be one thousand dollars (\$1,000.00) per affected member per occurrence.
5.	Failure to obtain written approval of any written Member materials including educational materials prior to using such materials.	\$250 per Member or educational material (i.e., per document, regardless of the number of persons to whom such document may have been disseminated) for which prior approval was not obtained.
6.	Failure to complete and process all required employer paperwork, including but not limited to IRS Forms SS-4 LB-0927, LB-00441, and 2678 for the Member/Representative, as applicable, prior to initiating Consumer Direction or Self-Direction, as applicable, for the Member.	\$500 per Member for which all required employer paperwork is not completed and processed prior to initiating Consumer Direction or Self-Direction.

7.	Failure to ensure that each Worker completes all required employee paperwork, including an abbreviated Medicaid agreement, and to the extent applicable, obtains a Medicaid provider ID number prior to authorizing the Worker to deliver Consumer-Directed or Self-Direct services, as applicable, for a Member.	\$500 per Worker for which all required employee paperwork was not completed prior to authorizing the Worker to deliver Consumer-Directed or Self-Directed services, as applicable, for a Member.
8.	Failure to collect and maintain documentation that represents that each Worker completed all training requirements prior to authorizing the Worker to deliver Consumer-Directed or Self-Directed services, as applicable.	\$500 per Worker for which documentation was not collected, that represented that all training requirements were completed, prior to authorizing the Worker to deliver Consumer-Directed or Self-Directed services, as applicable, for a Member.
9.	Failure to be responsible for validating, based solely on the documentation and information that the Worker provides the Contractor, that each Worker meets all qualifications specified in this Contract (with the exception to those that apply to the Form I-9, and in TennCare or DIDD Rules, as applicable, and completes a background check (including all applicable registry and database checks)); failure to maintain documentation of such qualifications and background (including registry and database) checks; or failure to allow a Worker who has failed his/her background check to provide Consumer-Directed or Self-Directed services, as applicable, only as permitted pursuant to this Contract.	\$1,000 per Worker for which qualifications were not verified, or a background check was not completed prior to authorizing the Worker to deliver Consumer-Directed or Self-Directed services, as applicable; for which documentation of such qualifications and background check was not maintained; or for each Worker whose background check returned results that prohibited the Worker from providing Consumer-Directed or Self-Directed services, but this Worker that was permitted to provide Consumer-Directed or Self-Directed services and the Member/Representative did not otherwise voluntarily and affirmatively choose to take on the risk associated with hiring an individual with a criminal history.
10.	Failure to obtain a signed Service Agreement for each Worker prior to such Worker being authorized to deliver Consumer-Directed or Self-Directed services, as applicable, and any time there is a change in the terms or conditions of a Worker's employment or a change in the Member's Representative, as applicable.	\$1,000 per Worker for which a Service Agreement was not signed prior to authorizing the Worker to deliver Consumer-Directed or Self-Directed services, as applicable, for a Member, or for which a new Service Agreement is not signed when there is a change in the terms or conditions of a Worker's employment or a change in the Member's Representative, if applicable.
11.	Failure to confirm each back-up person and organization's willingness and availability to provide back-up care when needed prior to initiation of Consumer Direction or Self-Direction, as applicable.	\$500 per Member for whom the Contractor failed to confirm each back-up person and organization's willingness and availability to provide back-up care when needed prior to initiation of Consumer Direction or Self-Direction, as applicable.
12.	Failure to report a Reportable Event within the timeframes specified in this Contract.	\$250 per Reportable Event not timely reported.

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

19.	Failure to provide 1) an Electronic Visit Verification system that is compliant with Federal and State requirements. This includes access and ability to provide real time compliance information to the State and Contracted partners; 2) standard and ad hoc reporting related to each visit; or 3) education, training, and retraining to Consumer Directed or Self-Directed Members and Workers.	<p>\$500 per instance when the system provided does not perform or provide the Federal and State required functions.</p> <p>\$500 per instance when the Contractor fails to provide data and access to data for all visits.</p> <p>\$500 per instance when appropriate training, education, and retraining is not provided resulting in non-compliance with the 21st Century Cures Act.</p>
20.	Failure to provide timely customer service and/or Support Brokerage Functions for Members in CHOICES, ECF CHOICES, 1915(c) Waiver or Katie Beckett Program Members as specified in this Contract.	Failure to provide required assistance, training, and support to participants during the enrollment process and ongoing service delivery shall result in \$500 per Member at issue.
21.	RPO is defined as the maximum targeted period in which data might be lost from an IT service due to a major incident: 1-Hour.	<p>Five thousand dollars (\$5,000) for each loss of data.</p> <p>An additional five hundred dollars (\$500) per hour past the initial one (1) hour to recover the data.</p>
22.	RTO is defined as the targeted duration of time and a service level within which a business process must be restored after a disaster (or disruption) in order to avoid unacceptable consequences associated with a break in business continuity: 4-Hours.	<p>Five thousand dollars (\$5,000) for each failure to restore essential services within four (4) hours, irrespective of the time the incident occurred.</p> <p>An additional five hundred dollars (\$500) per hour that the essential services are not re-stored after the initial four (4) hours.</p>

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	77998
CONTRACTOR LEGAL ENTITY NAME:	Consumer Direct for Tennessee
EDISON VENDOR IDENTIFICATION NUMBER:	# 0000268391

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



CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

Ben Bledsoe, CEO

PRINTED NAME AND TITLE OF SIGNATORY

April 21, 2023

DATE OF ATTESTATION

SAMPLE LETTER OF DIVERSITY COMMITMENT

(Filled out only by selected Contractor)

SAMPLE LETTER OF DIVERSITY COMMITMENT

(Company Letterhead/Logo)

(Address)

(Date)

(Salutation),

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

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

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

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

_____ %.

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

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

Further, we commit to:

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

businesses owned by minority, women, service-disabled veterans, businesses owned by persons with disabilities, and small business accomplished under contract # **(Edison number)**.

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

Regards,

(Company authority – signature and title)



HIPAA Business Associate Agreement

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is between The State of Tennessee, Division of TennCare (“TennCare” or “Covered Entity”), located at 310 Great Circle Road, Nashville, TN 37243 and _____ Consumer Direct Care Network Tennessee, LLC

_____, (“Business Associate”), located at 100 Consumer Direct Way, Missoula MT, 59808 _____, including all office locations and other business locations at which Business Associate data may be used or maintained. Covered Entity and Business Associate may be referred to herein individually as “Party” or collectively as “Parties.”

BACKGROUND

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

LIST OF AGREEMENTS AFFECTED BY THIS HIPAA BUSINESS ASSOCIATE AGREEMENT:

- **Contract 77998**

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

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

1. DEFINITIONS

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

1.1 “Commercial Use” means obtaining PHI with the intent to sell, transfer or use it for commercial, or personal gain, or malicious harm; sale to third party for consumption, resale, or processing for resale; application or conversion of data to make a profit or obtain a benefit contrary to the spirit of this Agreement, including but not limited to presentation of data or examples of data in a conference or meeting setting where the ultimate goal is to obtain or gain new business.

1.2 “Confidential Information” shall mean any non-public, confidential or proprietary information, whether written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, which is supplied by TennCare to the Business Associate under this Agreement. Any information, whether written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, relating to individuals enrolled in the TennCare program (“TennCare enrollees”), or relating to individuals who may be potentially enrolled in the TennCare program, which is provided to or obtained through the Business Associate’s performance under this Agreement, shall also be treated as “Confidential

Information” to the extent that confidential status is afforded such information under state and federal laws or regulations. All confidential information shall not be subject to disclosure under the Tennessee Public Records Act.

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

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

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

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

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

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

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

2.5 Business Associate Contracts. Business Associate shall require any agent, including a Subcontractor, to whom it provides PHI received from, maintained, created or received by Business Associate on behalf of Covered Entity, or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI or other confidential TennCare information, to agree, by written agreement with Business Associate, to substantially similar, but not less stringent restrictions and conditions that apply through this Agreement to Business Associate with respect to such information except for the provision at section 4.6, which shall only apply to the Business Associate notwithstanding the requirements in this section 2.5.

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

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

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

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

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

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

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

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

- (a) The Parties understand that if either Party receives a request for access to or copies of PHI from an Individual which the Party may complete with only its own onsite information, the time for such response shall be thirty (30) days, with notification to the Covered Entity upon completion.
- (b) If the Covered Entity receives a request and requires information from the Business Associate in addition to the Covered Entity's onsite information to fulfill the request, the Business Associate shall have fifteen (15) days from date of Covered Entity's notice to provide access or deliver such information to the Covered Entity so that the Covered Entity may timely respond to the Individual within the thirty (30) day requirement of 45 C.F.R. § 164.524.
- (c) If the Party designated above as responding to the Individual's request is unable to complete the response to the request in the time provided, that Party shall provide the Individual, or Individual's designee, with a written statement of the reasons for the delay and the date by which the Party will complete its action on the request. The Party may extend the response time once for no more than thirty (30) additional days.
- (d) Business Associate is permitted to send an Individual or Individual's designee unencrypted emails including Electronic PHI if the Individual requests it, provided the Business Associate has advised the Individual of the risk and the Individual still prefers to receive the message by unencrypted email.

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

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

2.13 Accounting for Disclosures of PHI. The Business Associate agrees to provide to Covered Entity or to an

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

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

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

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

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

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

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

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

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

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

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

3.3 Security Provisions in Business Associate Contracts. Business Associate shall ensure that any agent to whom it provides Electronic PHI received from, maintained, or created for Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, shall execute a bilateral contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, incorporating substantially similar, but not less stringent restrictions and conditions in this Agreement with Business Associate regarding PHI except for the provision in Section 4.6.

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

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

Holly Stephens, Privacy Officer
100 Consumer Direct Way
Missoula, MT 59808
hollyst@consumerdirectcare.com
406-532-2926
Fax 877-434-7811

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

3.5 Contact for Security Incident Notice. Notification for the purposes of Sections 2.8 and 3.4 shall be in writing made by email/fax, certified mail or overnight parcel immediately upon becoming aware of the event, with supplemental notification by facsimile and/or telephone as soon as practicable, to:

TennCare Privacy Officer
310 Great Circle Rd.
Nashville Tennessee 37243
Phone: (615) 507-6697
Facsimile: (615) 734-5289
Email: Privacy.TennCare@tn.gov

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

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

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

4. USES AND DISCLOSURES BY BUSINESS ASSOCIATE

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

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

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

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

4.5 Covered Entity Authorization for Additional Uses. Any use of PHI or other confidential TennCare information by Business Associate, its Subcontractors, its affiliate or Contractor, other than those purposes of this Agreement, shall require express written authorization by the Covered Entity, and a Business Associate agreement or amendment as necessary. Activities which are prohibited include, but not are not limited to, Marketing or the sharing for Commercial Use or any purpose construed by Covered Entity as Marketing or Commercial use of TennCare enrollee personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws.

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

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

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

4.9 Limitation on Permitted Uses and Disclosures. Business Associate will limit the uses and disclosures it makes

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

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

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

5. OBLIGATIONS OF COVERED ENTITY

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

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

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

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

6. TERM AND TERMINATION

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

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

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

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

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

- 6.3.1 The Business Associate shall consult with the Covered Entity as necessary to assure an appropriate means of return and/or destruction and shall notify the Covered Entity in writing when such destruction is complete. If information is to be returned, the Parties shall document when all information has been received by the Covered Entity.
- 6.3.2 This provision (Section 6.3 and its subsections) shall not prohibit the retention of a single separate, archived file of the PHI and other confidential TennCare information by the Business Associate if the method of such archiving reasonably protects the continued privacy and security of such information and the Business Associate obtains written approval at such time from the Covered Entity. Otherwise, neither the Business Associate nor its Subcontractors and agents shall retain copies of TennCare confidential information, including enrollee PHI, except as provided herein in subsection 6.3.5.
- 6.3.3 The Parties agree to anticipate the return and/or the destruction of PHI and other TennCare confidential information, and understand that removal of the confidential information from Business Associate's information system(s) and premises will be expected in almost all circumstances. The Business Associate shall notify the Covered Entity whether it intends to return and/or destroy the confidential with such additional detail as requested. In the event Business Associate determines that returning or destroying the PHI and other confidential information received by or created for the Covered Entity at the end or other termination of the Service Agreement is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible.
- 6.3.4 Except for Business Associate Agreements in effect prior to April 21, 2005 when the Security Rule became effective, for the renewal or amendment of those same Agreements, or for other unavoidable circumstances, the Parties contemplate that PHI and other confidential information of the Covered Entity shall not be merged or aggregated with data from sources unrelated to that Agreement, or Business Associate's other business data, including for purposes of data backup and disaster recovery, until the parties identify the means of return or destruction of the TennCare data or other confidential information of the Covered Entity at the conclusion of the Service Agreement, or otherwise make an express alternate agreement consistent with the provisions of Section 6.3 and its subsections.
- 6.3.5 Upon written mutual agreement of the Parties that return or destruction of PHI is unfeasible and upon express agreement as to the means of continued protection of the data, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

7. MISCELLANEOUS

- 7.1 Regulatory Reference. A reference in this Agreement to a section in the Privacy and/or Security Rule means the section as in effect or as amended.
- 7.2 Amendment. The Parties agree to take such action to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191. Business Associate and Covered Entity shall comply with any amendment to the Privacy and Security Rules, the Health Insurance Portability and Accountability Act, Public Law 104-191, and related regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended, including, but not limited to, changes required by the American Recovery and Reinvestment Act of 2009, Public Law 111-5.
- 7.3 Survival. The respective rights and obligations of Business Associate under Confidentiality and Section 6.3 of this Agreement shall survive the termination or expiration of this Agreement.
- 7.4 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and the Business Associate to comply with the Privacy and Security Rules.
- 7.5 Headings. Paragraph Headings used in this Agreement are for the convenience of the Parties and shall have no legal meaning in the interpretation of the Agreement.
- 7.6 Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by electronic mail, hand, by facsimile

transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice. (For purposes of this section, effective notice to "Respective Party" is not dependent on whether the person named below remains employed by such Party.) The Parties agree to use their best efforts to immediately notify the other Party of changes in address, telephone number, and fax numbers and to promptly supplement this Agreement as necessary with corrected information.

Notifications relative to Sections 2.8 and 3.4 of this Agreement must also be reported to the Privacy Officer pursuant to Section 3.5.

COVERED ENTITY:
Stephen Smith, Director

Division of TennCare

310 Great Circle Rd.
Nashville, TN 37243
Fax: (615) 253-5607

BUSINESS ASSOCIATE:

Holly Stephens, Privacy Officer _____

Consumer Direct for Tennessee, LLC _____

100 Consumer Direct Way _____
Missoula, MT 59808 _____
hollyst@consumerdirectcare.com
Fax 877-434-7811 _____

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

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

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

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

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

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

7.12 Validity of Execution. Unless otherwise agreed, the parties may conduct the execution of this Business

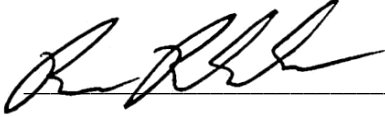
Associate Agreement transaction by electronic means. The parties may agree that an electronic record of the Agreement containing an Electronic Signature is valid as an executed Agreement.

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

DIVISION OF TENNCARE:

By: 
Stephen M. Smith, Director

BUSINESS ASSOCIATE:

By: 
Ben Bledsoe, CEO

Date: April 21, 2023

Date: April 21, 2023

Division of TennCare
310 Great Circle Road
Nashville, TN 37243
Fax: (615) 253-5607

Consumer Direct Care Network Tennessee, LLC
100 Consumer Direct Way
Missoula, MT 59808