

CONTRACT #3
RFS # 318.65-00319
FA # 10-30695

Finance & Administration
Bureau of TennCare

VENDOR:
Public Partnerships, LLC



STATE OF TENNESSEE
BUREAU OF TENNCARE
310 Great Circle Road
NASHVILLE, TENNESSEE 37243

November 22, 2010

Mr. Jim White, Director
Fiscal Review Committee
8th Floor, Rachel Jackson Bldg.
Nashville, TN 37243

RECEIVED
NOV 22 2010
FISCAL REVIEW

Attention: Ms. Leni Chick

RE: Bureau of TennCare Contract Amendment

Dear Mr. White:

The Department of Finance and Administration, Bureau of TennCare, is submitting for consideration by the Fiscal Review Committee amendment #1 to FA1030695, TennCare's non-competitive contract with Public Partnerships, LLC (PPL), to provide financial administration and supports brokerage functions relevant to the TennCare CHOICES in Long-Term Care Program. The proposed amendment will extend the term of the contract for an additional one month period of time but will provide neither additional services nor funding to the existing contract. TennCare has prepared and released a Request for Proposal to identify a competitively procured contractor to provide financial administration and supports brokerage functions. A major component of both the current PPL contract as well as the pro forma contained in the released RFP involves the provision of consumer-directed workers hired to deliver needed care to TennCare's enrollees eligible for Consumer Directed services. Due to required tax documents of these consumer-directed workers, TennCare has been made aware that there are considerable tax complexities involved with implementing the new contract in the middle of a tax quarter. The intent of this amendment is to adjust the end date to coincide with new tax quarter (April 1) to avoid these tax issues, as well as to demonstrate that the State is ensuring a competitive procurement for all interested proposers.

The Bureau of TennCare would greatly appreciate the consideration and approval of this amendment by the Fiscal Review Committee.

Sincerely,

Scott Pierce
Chief Financial Officer

cc: Darin J. Gordon, Deputy Commissioner
Alma Chilton, Director of Contracts

Supplemental Documentation Required for
Fiscal Review Committee

| | | | |
|--|--|---|-------------------|
| *Contact Name: | Scott Pierce | *Contact Phone: | 507-6415 |
| *Original Contract Number: | FA1030695 | *Original RFS Number: | 31865-00319 |
| Edison Contract Number: (if applicable) | 18970 | Edison RFS Number: (if applicable) | 31865-00319 |
| *Original Contract Begin Date: | March 1, 2010 | *Current End Date: | February 28, 2011 |
| Current Request Amendment Number: (if applicable) | 1 | | |
| Proposed Amendment Effective Date: (if applicable) | February 28, 2011 | | |
| *Department Submitting: | Department of Finance and Administration | | |
| *Division: | Bureau of TennCare | | |
| *Date Submitted: | November 22, 2010 | | |
| *Submitted Within Sixty (60) days: | Yes | | |
| If not, explain: | N/A | | |
| *Contract Vendor Name: | Public Partnerships, LLC | | |
| *Current Maximum Liability: | \$1,885,000.00 | | |
| *Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i> | | | |
| FY: 2010 | FY: 2011 | FY: | FY: |
| \$635,000.000 | \$1,250,000.00 | | |
| | | \$ | \$ |
| *Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report) Attached</i> | | | |
| FY: 2010 | FY: 2011 | FY: | FY: |
| \$24,435.00 | \$80,775.00 | \$ 0.00 | \$0.00 |
| | | \$ | \$ |
| IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent: | | The Long Term Care Community Choices Act of 2008 required TennCare to offer its members a Consumer Direction model of service delivery for home and community based services. In support of members who chose this service delivery model, TennCare needed to provide the services of a Fiscal Employer Agent (FEA) to assist the members/representatives who serve as the "employer of record" for consumer-directed workers hired to deliver needed care. The numbers of enrollees who would be participating in this program were unknown at the time of contract initiation, so the maximum liability was factored on estimated volume of per member per month rates. To date, the expenditures of maximum liability funds have been less than actual contract funding. Surplus funds have rolled forward for availability during the remainder of contract term. | |
| IF surplus funds have been carried forward, please give the reasons and provide the authority for the | | If the amount spent on this contract is less than the budgeted amount and contributes to a net surplus for the bureau, surplus funds would be carried forward subject to | |

**Supplemental Documentation Required for
Fiscal Review Committee**

| | | | | | |
|--|---------------|--|--|--------------|--|
| carry forward provision: | | authority granted in Section 48, Item 3 of the General Appropriations Act. | | | |
| IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage: | | NA | | | |
| *Contract Funding Source/Amount: | State: | \$942,500.00 | Federal: | \$942,500.00 | |
| Interdepartmental: | | | Other: | | |
| If "other" please define: | | | | | |
| Dates of All Previous Amendments or Revisions: (if applicable) | | | Brief Description of Actions in Previous Amendments or Revisions: (if applicable) | | |
| N/A | | | N/A | | |
| | | | | | |
| | | | | | |
| Method of Original Award: (if applicable) | | | Non Competitive Negotiation | | |
| *What were the projected costs of the service for the entire term of the contract prior to contract award? | | | The costs associated with this contract were based on negotiated per member per month rates to perform Financial Administration and Supports Brokerage as well as Set up fees for Consumer Direction Participants and Workers. | | |

Supplemental Documentation Required for Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

The maximum liability of this contract is based on per member/per month rates for those members enrolled in consumer direction of HCBS, defined as the number of CHOICES members with an active authorization for consumer directed services.

C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.

- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
- b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

| Service Description | Rate for 1 st 5,000 member months billed | Rate for all subsequent member months billed |
|--------------------------|---|--|
| Financial Administration | \$155.00 Per Member Per Month (PMPM) | \$90.00 Per Member Per Month (PMPM) |
| Supports Brokerage | \$140.00 Per Member Per Month (PMPM) | \$140.00 Per Member Per Month (PMPM) |

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 members with an active authorization for consumer directed services that are receiving consumer directed services.

| Service Description | Rate |
|---|---------------------|
| Set-Up for New Consumer Direction Participant | \$150.00 Per Member |
| Set-Up for New Consumer Directed Worker | \$50.00 Per Worker |

The set up fee covers all applicable costs for processing paperwork, completing training, etc. for new

Supplemental Documentation Required for Fiscal Review Committee

CHOICES members, representatives and employees, including background checks. Except for lapses in employment of a consumer directed worker which warrant a new background check as specified in Section A.29 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.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

| Deliverable description: | FY: 2010 | FY: 2011 |
|---|--------------|----------------|
| All components of scope of work required to provide designated services for Financial Administration and Supports Brokerage for those Consumer Directed participants in the CHOICES Long Term Care Program. | \$635,000.00 | \$1,250,000.00 |

Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.

This contract does not identify savings to the state, however, it provides critical delivery of Financial Administration and Supports Brokerage functions relevant to the very vulnerable members of TennCare Consumer Direction CHOICES Program. This amendment extends term for one month and does not require addition of funds.

| Deliverable description: | FY: | FY: | FY: | FY: | FY: |
|--------------------------|-----|-----|-----|-----|-----|
| | | | | | |
| | | | | | |

Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.

This non competitive contract was required to offer TennCare CHOICES members a Consumer Direction model of service delivery for home and community based services. In support of members who choose this service delivery model, TennCare needed to provide the services of a Fiscal Employer Agent (FEA) to assist the members/representatives who will serve as the "employer of record" for consumer-directed workers hired to deliver needed care. PPL was identified based on their specific expertise and experience in the area of supports brokerage for TennCare LTC programs as evidenced through their successful provision of services through the current contractual relationship relating to the TennCare MR Self-Determination Waiver. An RFP for these services has been released and is progressing through Schedule of Events, however, an extension for one month period is necessitated to continue services so the new competitively procured contractor can begin services at start of federal tax quarter due to employment of Consumer Directed workers.

Payments to A Vendor
Public Partnerships

| Funding Year | Invoice | Reference Document | Name | Gross Amt | Pymnt Date |
|----------------------|-------------------|--------------------|-------------------------|--------------------|------------|
| 2010 | Invoice # FY10-01 | FA1030695 | Public Partnerships Llc | \$5,850.00 | 6/29/2010 |
| 2010 | Invoice# FY10-02 | FA1030695 | Public Partnerships LLC | \$9,300.00 | 7/16/2010 |
| 2010 | Invoice# FY10-03 | FA1030695 | Public Partnerships LLC | \$9,285.00 | 9/3/2010 |
| FY 2010 Total | | | | \$24,435.00 | |

| Funding Year | Invoice | Reference Document | Name | Gross Amt | Pymnt Date |
|----------------------|-------------------|--------------------|-------------------------|--------------------|------------|
| 2011 | Invoice # FY11-01 | FA1030695 | Public Partnerships LLC | \$16,940.00 | 9/17/2010 |
| 2011 | Invoice# FY 11-02 | FA1030695 | Public Partnerships LLC | \$29,020.00 | 10/13/2010 |
| 2011 | Invoice# FY11-03 | FA1030695 | Public Partnerships LLC | \$34,815.00 | 11/19/2010 |
| FY 2011 Total | | | | \$80,775.00 | |

NON-COMPETITIVE AMENDMENT REQUEST:

NON-AMD123008

| |
|--|
| <p>APPROVED</p> |
| <p>Commissioner of Finance & Administration</p> |

| | | |
|---|--|--|
| 1) RFS # | 31865-00319 | |
| 2) Procuring Agency : | Department of Finance and Administration Bureau of TennCare | |
| EXISTING CONTRACT INFORMATION | | |
| 3) Service Caption : | Financial Administration and Supports Brokerage functions relevant to the TennCare CHOICES in Long-Term Care Program | |
| 4) Contractor : | Public Partnerships, LLC | |
| 5) Contract # | FA1030695 | |
| 6) Contract Start Date : | March 1, 2010 | |
| 7) CURRENT Contract End Date : (if ALL options to extend the contract are exercised) | February 28, 2011 | |
| 8) CURRENT Maximum Cost : (if ALL options to extend the contract are exercised) | \$ 1,885,000.00 | |
| PROPOSED AMENDMENT INFORMATION | | |
| 9) Amendment # | 1 | |
| 10) Amendment Effective Date : (attached explanation required if < 60 days after F&A receipt) | February 28, 2011 | |
| 11) PROPOSED Contract End Date : (if ALL options to extend the contract are exercised) | March 31, 2011 | |
| 12) PROPOSED Maximum Cost : (if ALL options to extend the contract are exercised) | \$ 1,885,000.00 | |
| 13) Approval Criteria : (select one) | <input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state | |
| | <input type="checkbox"/> only one uniquely qualified service provider able to provide the service | |
| 14) Description of the Proposed Amendment Effects & Any Additional Service : | | |
| <p>The proposed amendment to the Public Partnerships, LLC (PPL) contract will extend the term of the contract for an additional one month period of time but will provide neither additional services nor funding to the existing contract.</p> | | |
| 15) Explanation of Need for the Proposed Amendment : | | |
| <p>The Bureau of TennCare has prepared and released a Request for Proposal to identify a competitively procured contractor to provide financial administration and supports brokerage functions. These functions are in support of TennCare members participating in the CHOICES Consumer Direction model of service delivery for Home and Community-Based Services (HCBS). A major component of both the current PPL contract as well as the pro forma contained in the released RFP involves the provision of consumer-directed workers hired to deliver needed care. Due to required tax documents of these consumer-directed workers, TennCare has been made aware that there are considerable tax complexities involved with implementing the new contract in the middle of a tax quarter. The intent of this amendment is to adjust the end date to coincide with new tax quarter (April 1) to avoid these tax issues, as well as to demonstrate that the State is ensuring a competitive procurement for all interested proposers.</p> | | |

16) Name & Address of Contractor's Current Principal Owner(s) : (not required for a TN state education institution)

Marc Fenton, President
Public Partnerships, LLC
148 State Street, 10th Floor
Boston, MA 02109

17) Office for Information Resources Endorsement : (required for information technology service; n/a to THDA)

Documentation is ... Not Applicable to this Request Attached to this Request

18) eHealth Initiative Endorsement : (required for health-related professional, pharmaceutical, laboratory, or imaging service)

Documentation is ... Not Applicable to this Request Attached to this Request

19) Department of Human Resources Endorsement : (required for state employees training service)

Documentation is ... Not Applicable to this Request Attached to this Request

20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

Because the FEA is only one of many critical aspects of the CHOICES program and must interact with multiple other entities (MCOs and the Electronic Visit Verification vendor subcontracted by MCOs) in designing and testing information systems prior to CHOICES go-live, the time required for a competitive bid process would have jeopardized the very ambitious initial March 1 go-live date set for CHOICES implementation. The State considered contracting with MCOs for this function and allowing each MCO in turn to subcontract with an FEA vendor of their choosing. However, there were significant concerns with this approach, which would place the State one step removed from directly overseeing the design of a critical new aspect of the long-term care service delivery system for this vulnerable population. The strategy the State used for purposes of implementation was a more direct contracting approach to ensure implementation of a consistent Consumer Direction program which accomplished the State's intended goals. Further, PPL was an existing State partner with a solid track record of good performance in designing, implementing and managing consumer directed programs, including the Self-Determination Waiver Program for persons with mental retardation. Since initial implementation, the Bureau has released an RFP to identify competitively procured contractor.

21) Justification for the Proposed Non-Competitive Amendment :

Per The Long Term Care Community Choices Act of 2008, TennCare was required to offer its members a Consumer Direction model of service delivery for home and community based services. In support of members who choose this service delivery model, TennCare will need to provide the services of a Fiscal Employer Agent (FEA) to assist the members/representatives who will serve as the "employer of record" for consumer-directed workers hired to deliver needed care. PPL was identified based on their specific expertise and experience in the area of supports brokerage for TennCare LTC programs as evidenced through their successful provision of services through the current contractual relationship relating to the TennCare MR Self-Determination Waiver. The Bureau of TennCare has released an RFP to identify a contractor to begin work March 1, 2011, however the tax constraints of the consumer-directed workers have necessitated the State to extend the current contract for an additional month to allow the new contractor to avoid complexities associated with beginning the contract in the middle of a tax structured quarter. TennCare would very much appreciate approval by the Commissioner of Finance and Administration.

AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)



11-18-2010

Mike Morrow, Commissioner



CONTRACT AMENDMENT

| | | | |
|---|---------------------------|----------------------------------|--------------------------|
| Agency Tracking # 31865-00319 | Edison ID 18970 | Contract # FA-10-30695 | Amendment # 01 |
|---|---------------------------|----------------------------------|--------------------------|

| | |
|---|--------------------------------------|
| Contractor Legal Entity Name Public Partnerships, LLC | Registration ID 0000005040 |
|---|--------------------------------------|

Amendment Purpose & Effect(s)
Amendment extends contract term for one month for the continued provision of Financial Administration and Supports Brokerage functions relevant to the TennCare CHOICES in Long-Term Care Program

Amendment Changes Contract End Date: YES NO **End Date:** March 31, 2011

Maximum Liability (TOTAL Contract Amount) Increase/Decrease per this Amendment: **\$0.00**

| FY | State | Federal | Interdepartmental | Other | TOTAL Contract Amount |
|---------------|---------------------|---------------------|-------------------|-------|-----------------------|
| 2010 | \$317,500.00 | \$317,500.00 | | | \$635,000.00 |
| 2011 | \$625,000.00 | \$625,000.00 | | | \$1,250,000.00 |
| | | | | | |
| | | | | | |
| TOTAL: | \$942,500.00 | \$942,500.00 | | | \$1,885,000.00 |

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

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

OCR USE

| | |
|---------------------------------|---------------------------------|
| Speed Code TN00000236 | Account Code 70803000 |
|---------------------------------|---------------------------------|

**AMENDMENT NO #1
TO FA1030695 BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
TENNCARE BUREAU
AND
PUBLIC PARTNERSHIPS, LLC.**

This contract, by and between the State of Tennessee, Department of Finance and Administration, Bureau of TennCare, hereinafter referred to as the State, or TennCare and Public Partnerships, LLC, hereinafter referred to as the Contractor, is hereby amended as follows:

1. Contract language is amended by deleting Section B.1 in its entirety and replacing with the following:
 - B.1. This Contract shall be effective for the period beginning March 1, 2010, and ending on March 31, 2011. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

The revisions set forth herein shall be effective February 28, 2011. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF:

PUBLIC PARTNERSHIPS, LLC.

MARC FENTON, PRESIDENT

DATE

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

COMMISSIONER

DATE



CONTRACT

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

| | |
|---|---------------------------|
| Agency Tracking # 31865-00319 | Edison ID 18970 |
|---|---------------------------|

| | |
|--|--|
| Contractor Public Partnerships, LLC | Contractor Federal Employer Identification or Social Security # <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 043468852 |
|--|--|

Service
Financial Administration and Supports Brokerage functions relevant to the TennCare CHOICES in Long-Term Care Program

| | | | |
|--------------------------------------|--|--|-----------|
| Contract Begin Date March 1, 2010 | Contract End Date February 28, 2011 | Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor | CFDA #(s) |
|--------------------------------------|--|--|-----------|

| FY | State | Federal | Interdepartmental | Other | TOTAL Contract Amount |
|---------------|-------------------|-------------------|-------------------|-------|-----------------------|
| 2010 | 317,500.00 | 317,500.00 | | | \$635,000.00 |
| 2011 | 625,000.00 | 625,000.00 | | | \$1,250,000.00 |
| | | | | | |
| | | | | | |
| | | | | | |
| TOTAL: | 942,500.00 | 942,500.00 | | | \$1,885,000.00 |

American Recovery and Reinvestment Act (ARRA) Funding - YES NO

| | |
|---|---|
| <p>— OCR Use —</p>  <p>F&A Secured Document # FA1030695</p> | <p>Agency Contact & Telephone # Alma Chilton 615-507-6384</p> <p>Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred)</p> |
| Speed Code TN00000236 | Account Code 70803000 |

Contractor Ownership/Control

African American
 Person w/ Disability
 Hispanic
 Small Business
 Government
 Asian
 Female
 Native American
 NOT Minority/Disadvantaged
 Other

Contractor Selection Method

RFP
 Competitive Negotiation *
 Alternative Competitive Method *
 Non-Competitive Negotiation *
 Other *

***Procurement Process Summary**
The Contractor currently provides Fiscal Intermediary, Fiscal Employer Agent and other Administrative Services to support Consumer Self-Direction programs, including managed care programs, and is the largest provider of these services in the country. The Contractor also currently has a competitively awarded contract with the Dept of F&A, DMRS, for the provision of financial administration and support brokerage services to TennCare enrollees in the self-determination waiver. The Contractor was identified based on this specific expertise and experience. The terms of this Contract, including price, were negotiated taking into consideration the Contractor's experience, quality of services provided, and willingness to provide services consistent with the TennCare program goals.

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION,
BUREAU OF TENNCARE
AND
PUBLIC PARTNERSHIPS, LLC.**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Bureau of TennCare, hereinafter referred to as the "State" or "TennCare" and Public Partnerships, LLC., hereinafter referred to as the "Contractor", is for the provision of Financial Administration and Supports Brokerage functions relevant to the TennCare CHOICES in Long-Term Care Program, as further defined in the "SCOPE OF SERVICES".

The Contractor is a limited liability company.

Contractor Federal Employer Identification or Social Security Number: 043468852

Contractor Place of Incorporation or Organization: Delaware

PREAMBLE

Consumer Direction is a model of service delivery which affords members more choice and control in the delivery of home and community-based services (HCBS).

The model of Consumer Direction that will be implemented in CHOICES is a prior authorization model. The determination regarding the services a member will receive will be based on a comprehensive needs assessment performed by a care coordinator which identifies the member's needs, the availability of family and other caregivers to meet those needs, and the gaps in care for which paid services may be authorized. Once the type and amount of services that a member needs have been determined, the member can elect to have certain "eligible HCBS" provided by a more traditional "contract provider," or to participate in Consumer Direction and actually employ the persons who will deliver needed care. Consumer Direction is a model of service delivery for specified HCBS, and not a service.

Members electing to participate in Consumer Direction (or their designated representative) serve as the "employer of record" for consumer-directed workers hired to deliver needed care. Assistance is provided to the member/representative (as applicable) in his/her employer role by a Fiscal Employer Agent (FEA) contracted with TennCare. The FEA provides two (2) functions on behalf of all members participating in Consumer Direction: 1) Financial Administration functions in the performance of payroll and related tasks; and 2) Supports Brokerage functions to assist the member/representative with other non-administrative employer tasks such as recruiting and training workers.

In order to participate in Consumer Direction, members, their representatives (as applicable), and their workers must agree to use the services of TennCare's contracted FEA to perform required Financial Administration and Supports Brokerage functions.

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The Contractor shall provide the financial administration and supports brokerage functions for consumer direction of HCBS for all CHOICES Group 2 and 3 members assessed by an MCO to need eligible HCBS and who choose to participate in consumer direction of HCBS for some or all needed eligible HCBS.

- a. Financial administration functions are functions related to the performance of payroll and related tasks.
- b. Supports brokerage functions are those functions that assist the member (or his/her representative, as applicable) with non-payroll-related employer tasks such as recruiting and training workers.
- c. The Contractor's financial administration and support brokerage functions are available only to CHOICES members who elect to participate in consumer direction. The use of the Contractor's financial administration and supports brokerage functions shall be mandatory for all members electing to participate in consumer direction.
- d. Definitions relative to this Contract are included as Attachment A.

Federal and State Approval to be a Fiscal Employer Agent (FEA)

- A.3. Before the Contractor may begin performing financial administration and supports brokerage functions as specified in this Contract for a member participating in the CHOICES Program, the Contractor must have received federal and State approval to be the Fiscal Employer Agent (FEA) for that member. This shall include the following tasks and/or any others required by federal or State law or policy:
- a. 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) it represents as agent. The FEIN shall not be used for processing wages and related federal forms and taxes for workers of a parent organization or subentity. A reporting agent uses this separate FEIN when performing FEA services on behalf of a member;
 - b. Have a system in place for obtaining and retiring a 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 for each maintaining all relevant documentation (copy of IRS Form 2678, Request for Approval Letter and IRS Notification of FEA Approval) 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 filing, renewing and revoking an IRS Form 8821, Tax Information Authorization for each member it represents and for maintaining copies of the Form in each member's file;
 - f. Have a system in place for revoking IRS Form 8821 for each member it no longer represents in accordance with IRS requirements and for maintaining the relevant documentation in each member's file, and
 - g. Have a system in place for obtaining and revoking state power of attorney (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.

Member Outreach

- A.4. The Contractor shall coordinate with the TennCare MCOs to conduct outreach activities for CHOICES members, as specified herein. The outreach activities shall be targeted to CHOICES members for whom, through an assessment, a care coordinator has determined eligible HCBS are needed, but the members have not yet chosen to participate in consumer direction of HCBS. The Contractor's outreach activities shall focus on providing information about the CHOICES consumer direction of HCBS option (e.g., how it works, using a representative, roles and responsibilities, program requirements, how to enroll in consumer direction, assistance provided by to a member/representative by the Contractor, coordination between the Contractor and the MCO, etc.).
- a. All outreach materials must be prior approved by TennCare. TennCare shall review the submitted outreach materials and either approve or deny them within fifteen (15) calendar days from the date of submission. In the event TennCare does not approve the materials, TennCare may provide written comments, and the Contractor shall resubmit the materials. No outreach materials shall be utilized until receipt of written approval from TennCare
 - b. Prior to modifying any approved outreach materials, the Contractor shall submit for written approval by TennCare a detailed description of the proposed modification; TennCare reserves the right to notify the Contractor to discontinue or modify outreach materials after approval.
- A.5. The Contractor shall ensure that all member materials, including outreach materials meet the following TennCare specifications:
- a. All member materials, including outreach materials shall be worded at a sixth (6th) grade reading level, unless approved otherwise by TennCare;
 - b. Unless otherwise approved in writing by TennCare, all written materials shall be clearly legible with a minimum font size of 12pt;
 - c. All written materials shall be printed with the assurance of non-discrimination on the grounds of handicap, and/or disability, age, race, color, religion, sex or national origin;
 - d. All Contractor member materials shall be translated and available in Spanish. Within ninety (90) calendar days of notification by TennCare, all vital Contractor 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 notify enrollees that oral interpretation is available for any language at no expense to them and how to access those services, and
 - f. All written member materials shall be made available in alternative formats for persons with special needs at no expense to the member.
- A.6. The Contractor shall provide written notice to members of any changes in the Contractor's policies or procedures described in written materials previously sent to members. These written notices shall be provided at least thirty (30) days prior to the effective date of the change.
- A.7. The Contractor shall not include the following on any written materials, including but not limited to outreach materials, without the written approval of TennCare:
- a. The Seal of the State of Tennessee;

- b. The TennCare name unless the initials "SM" denoting a service mark, is superscripted to the right of the name (TennCaresm); or
 - 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.
- A.8. The Contractor shall provide a copy of all outreach materials to all TennCare MCOs, provide advance notice to MCOs regarding outreach activities conducted in their Grand Region (including, at a minimum, dates, times and locations) and invite MCOs to participate in the Contractor's outreach activities. The Contractor's outreach activities shall not duplicate the activities of the MCOs.
- A.9. The Contractor and TennCare shall develop mutually acceptable specifications for outreach activities concerning consumer direction of HCBS.

MCO Staff Training

- A.10. Prior to the implementation of CHOICES in each Grand Region, the Contractor shall provide standardized training to care coordinators employed by each at-risk TennCare MCO operating in that Grand Region regarding consumer direction of HCBS and the role and responsibilities of the Contractor (including financial administration and supports brokerage functions);

Referrals for Consumer Direction of HCBS

- A.11. The Contractor shall, within two (2) business days of receipt of a referral from the MCO, assign a supports broker to the member, notify the care coordinator of the assignment and provide the name and contact information of the supports broker. Within five (5) 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 of HCBS.
- A.12. The Contractor shall assist the MCO in identifying and addressing in the risk assessment and plan of care processes any additional risk associated with the member participating in consumer direction.
- A.13. The Contractor shall assist the member/representative as needed in developing a back-up plan for consumer direction that adequately identifies how the member/representative will address situations when a scheduled worker is not available or falls to show up as scheduled. The member/representative (as applicable) shall have primary responsibility for the development of the back-up plan for consumer directed services. The member/representative (as applicable) may not elect, as part of a back-up plan, to go without services.
- a. The back-up plan for consumer direction shall be integrated into the member's back-up plan for services provided by contracted providers, as applicable, and the member's plan of care.
 - b. The back-up plan for consumer direction shall include the names and telephone numbers of contacts (workers, agency staff, organizations, supports) for alternate care, the order in which each shall be notified and the services to be provided by each contact. Back-up contacts may include paid and unpaid supports; however, it is the responsibility of the member electing consumer direction and/or his/her representative to secure paid (as well as unpaid) back-up contacts who are willing and available to serve in this capacity. The MCO 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.
- c. All persons and/or organizations noted in the back-up plan for consumer directed services shall be contacted by the member/representative to determine their willingness and availability to serve as back-up contacts. 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.
 - d. The Contractor shall assist the member or his/her representative (as applicable) in implementing the back-up plan for consumer direction as needed, monitor to ensure that the back-up plan is implemented and effectively working to address the member's needs, and notify the care coordinator immediately regarding any concerns with the back-up plan or the member's care.
 - e. The Contractor shall assist the member or his/her representative (as applicable) in reviewing and updating the back-up plan for consumer direction at least annually and as frequently as necessary, including any time there are changes in the type, amount, duration, or scope of eligible HCBS or the schedule at which such services are needed, changes to consumer-directed workers (when such workers also serve as back-up to other workers), and changes in the availability of paid or unpaid back-up workers to deliver needed care. As part of the annual review of the back-up plan, the member or his/her representative and the Contractor shall confirm that each person specified in the back-up plan continues to be willing and available to serve as back-up workers to deliver needed care and to perform the tasks and functions needed by the member. Any updates to the back-up plan for consumer direction shall be provided to the member's care coordinator.
 - f. The Contractor and the MCO shall each file a copy of the back-up plan for consumer direction in the member's file.
- A.14. The care coordinator shall develop and/or update, as applicable, a risk agreement which takes into account the member's decision to participate in consumer 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 measures to mitigate these risks. The member and his/her representative (if applicable) shall participate in the risk assessment process. Once a referral has been made to the Contractor for consumer direction, the member's supports broker should be involved in risk assessment and risk planning activities whenever possible. The new or updated risk agreement, as applicable, shall be signed by the care coordinator and the member (or the member's representative, as applicable). The MCO, member/representative and Contractor shall receive a copy of the risk agreement.
- A.15. The Contractor shall notify the member's care coordinator immediately when there are changes in the member's needs and/or circumstances which warrant a reassessment of needs and/or risk, or changes to the plan of care or risk agreement.
- A.16. The Contractor shall work with the MCOs to develop mutually acceptable specifications regarding the medium, periodicity and format for program referral transmissions.

Service Authorization and Initiation

- A.17. The Contractor shall:

- a. Ensure that consumer directed services begin as soon as possible but no later than sixty (60) days from the date of the MCO's referral to the Contractor, except due to circumstances beyond the Contractor's control, which must be documented in writing;
- b. Work with the member/representative to determine the appropriate level of assistance necessary to recruit, interview and hire workers, and provide the required level of assistance;
- c. As needed, assist the member/representative in developing job descriptions;
- d. As needed, assist the member/representative in locating and recruiting workers;
- e. As needed, assist the member/representative in interviewing workers (developing questions, evaluating responses);
- f. As needed, assist the member/representative with hiring workers;
- g. Periodically update the member's care coordinator of the status of completing required functions necessary to initiate consumer direction, including obtaining completed paperwork from the member/representative, obtaining workers for each identified consumer directed service, completing worker paperwork and training, and any anticipated timeframes by which qualified workers will be secured and consumer directed services may begin;
- h. Once potential workers are identified, verify that a potential worker meets all applicable qualifications;
- i. Ensure that a service agreement, using the TennCare template, is signed between the member or member's 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;
- j. Ensure that a service agreement is updated anytime there is a change in any of the terms or conditions specified in the agreement, including a change in the eligible HCBS provided by a worker;
- k. Ensure that new representatives sign all service agreements;
- l. Provide a copy of each service agreement to the member/representative and worker and maintain a copy in the Contractor's files;
- m. Notify the MCO when all requirements have been fulfilled and the date that the member is ready to begin consumer direction of specified eligible HCBS;
- n. Input the member and/or representative's assignment of individual consumer directed workers into the EVV system in accordance with MCO guidelines and the schedule at which services are needed by the member, based on the member's plan of care and the MCO's service authorization;
- o. Ensure that services provided via consumer direction of HCBS are not initiated for a CHOICES member 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 in order; (2) the Contractor verifies that workers meet all qualifications, including participation in required training and completion of required paperwork; (3) the Contractor secures a signed service agreement, specific to each worker as applicable, between the member/representative and each worker; and (4) the

MCO issues to the Contractor an authorization for each service to be delivered through consumer direction, and

- p. If initiation of consumer directed services does not begin within sixty (60) days from the date of the MCO's referral to the Contractor, contact the MCO regarding the cause of the delay and provide appropriate documentation to demonstrate efforts to meet timeframe.
- A.18. The Contractor shall have a system in place for receiving and maintaining member specific information received from an MCO, including a member's plan of care for the authorized consumer direction services, via the format agreed to with the MCO.
- A.19. The Contractor shall have a comprehensive information system in place to receive and disburse consumer directed funds and track funds disbursed. The Contractor will only submit claims to the MCO and pay workers for those services that have been authorized by the MCO.
- A.20. The Contractor shall provide a web-based interface for MCOs and members/representatives to review information on the services authorized and reimbursed.
- A.21. The Contractor, in conjunction with the MCOs, shall facilitate a seamless transition between contract providers and workers with no interruptions or gaps in services.

Member Enrollment Packet

- A.22. The Contractor shall develop and distribute an enrollment packet to each CHOICES member referred by an MCO for enrollment into consumer direction of HCBS. The enrollment packet shall be pre-populated with required data and made available for the MCO 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, 8821);
 - 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; and
 - g. State power of attorney form(s) as applicable.
- A.23. 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. Sufficient copies of enrollment packet materials shall be available and provided to the State upon request.

Member Education and Training

- A.24. The Contractor shall provide education and training activities for CHOICES members, as specified herein. The education and training activities shall be limited to CHOICES members who have chosen to participate in consumer direction of HCBS and for whom the Contractor has received a referral from an MCO. All member education and training materials shall meet TennCare specifications and be prior approved by TennCare (refer to Sections A.4, A.5 and A.7).
- A.25. 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 or supports broker determine that additional training is warranted. When training is not directly provided by the Contractor, the Contractor shall validate completion of training. Initial training must be completed prior to initiation of consumer directed services. At a minimum, consumer direction training for members and/or representatives shall address the following issues:
- a. Understanding the role of members and/or representatives in consumer direction;
 - b. Understanding the role of the FEA, including as it relates to the care coordinator;
 - c. Selecting workers;
 - d. Abuse and neglect prevention and reporting;
 - e. Being an employer, evaluating worker performance and managing workers;
 - f. Fraud and abuse prevention and reporting;
 - g. Performing administrative tasks such as reviewing and approving electronically captured visit information; and
 - h. Scheduling workers and back-up planning.
- A.26. The Contractor shall assist the member/representative in determining to what extent the member/representative shall be involved in training referenced in A.25. The member/representative shall provide additional training to the worker regarding the member's individualized service needs and preferences and specific health care tasks the member elects to self-direct (as applicable).
- A.27. The Contractor shall train all consumer directed workers on how to use the MCO's EVV system and MCO guidelines regarding scheduling.
- A.28. The Contractor and TennCare shall develop mutually acceptable specifications for education and training concerning consumer direction of HCBS, including definition of roles and responsibilities.

Worker Qualifications and Enrollment

- A.29. The Contractor shall ensure that workers meet the following requirements prior to delivering consumer directed services.
- a. Pass a background check which includes 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 licensure verification, as applicable. Except for lapses in employment (i.e., when a worker is not employed by *any* CHOICES member participating in consumer direction or his/her representative) which exceed 365 days, a background check is required only once prior to the person's initial employment as a

consumer directed worker in the CHOICES program, even if s/he is subsequently employed by multiple members and/or representatives participating in consumer direction. If he/she fails the background check, the Contractor shall make the decision regarding exceptions to disqualification when a member chooses to hire a worker who fails a background check in accordance with TennCare policy. In the event a member chooses to hire a worker that has failed a background check but has met all of the conditions for an exception to disqualification, as prescribed by TennCare, and the Contractor has granted the exception, the Contractor shall notify the care coordinator prior to initiation of services provided by that worker. Exceptions to qualifications may be granted at the member's discretion and only if all of the following conditions are met:

1. Offense is a misdemeanor;
 2. Offense occurred more than five (5) years ago;
 3. Offense is not related to physical or sexual or emotional abuse of another person;
 4. Offense does not involve violence against another person or the manufacture, sale, or distribution of drugs; and
 5. There is only one disqualifying offense.
- b. Complete all required training (refer to Section A.35);
 - c. Complete all applicable required applications to become a TennCare provider;
 - d. Sign an abbreviated Medicaid agreement;
 - e. Are assigned a Medicaid provider ID number; and
 - f. Sign a service agreement, using the TennCare template.
- A.30. The Contractor shall have a system in place to process criminal background checks on prospective workers (selected by a CHOICES member), and for maintaining copies of the documentation in the worker's file.
- A.31. 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.
- A.32. 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 notify the member/representative within five (5) business days of receiving a portion of the worker's employment packet if a worker's employment packet is not correct or is incomplete. 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);
 - 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. IRS Notice 797: Possible Federal Tax Refund Due to the Earned Income Credit (EIC);
 - e. IRS Form W-5: Earned Income Credit Advanced Payment Certificate;
 - f. Worker payroll schedule;
 - g. Notice about option for direct deposit and instructions for how to request direct deposit;
 - h. Change of Address/Contact Form;
 - i. Information about how to receive assistance, including the Contractor's toll-free number; and
 - j. Information about the customer service and complaint systems.
- A.33. The Contractor shall develop a process to submit to TennCare worker Medicaid provider ID numbers, using the TennCare prescribed format, and shall include Medicaid provider ID numbers on all submitted claims.
- A.34. The Contractor shall screen monthly 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 regarding the worker's status and work with the member to find a replacement worker. The Contractor shall notify the MCO regarding the worker status. The MCO shall work with the member to obtain a replacement contract provider until a replacement worker can be found and all worker requirements are fulfilled and verified.
- A.35. The Contractor shall be responsible for providing or arranging for initial and ongoing training of all workers, except that the member or his/her representative shall be responsible for training the worker(s) regarding individualized service needs and preferences and for specific training regarding health care tasks the member or his/her representative elects to self-direct (as applicable). When training is not directly provided by the Contractor, the Contractor shall validate completion of training. Initial training must be completed prior to initiation of services and payment for services. At a minimum, training shall consist of the following required elements:
- a. Overview of the CHOICES program and consumer direction of HCBS;
 - b. Caring for elderly and disabled populations;
 - c. Abuse and neglect identification and reporting;
 - d. CPR and first aid certification;
 - e. Critical incident reporting;
 - f. Submission of required documentation and withholdings;
 - g. Use of EVV system; and
 - h. General training regarding administration of self-directed health care task(s) and bloodborne pathogens training (the member or his/her representative shall be responsible for specific training regarding health care tasks s/he elects to self-direct).
- A.36. Verify that workers have successfully completed all required training prior to service initiation and payment for services.

- A.37. The Contractor shall ensure that workers maintain CPR and first aid certification and receive required refresher training as a condition of continued employment and shall arrange for the appropriate training. Additional training components may be provided to a worker to address issues identified by the supports broker, care coordinator, member and/or the representative or at the request of the worker. Refresher training may be provided more frequently if determined necessary by the supports broker, care coordinator, member/representative or at the request of the worker.

Supports Brokerage Functions

- A.38. The Contractor shall provide directly, or through a subcontractor, supports brokerage functions. The Contractor shall assign a supports broker to each CHOICES member referred by the MCO for consumer direction of HCBS and ensure that each supports broker provides the following:
- a. Facilitate the linkage between the member/representative and his/her workers and the Contractor;
 - b. Collaborate with, but not duplicate, the functions of the member's care coordinator;
 - c. Maintain contact with the member or the member's representative to ensure that needed services are being provided, and
 - d. Participate in development of the member's plan of care and the risk assessment upon notification by the care coordinator.
- A.39. 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.

Monitoring and Oversight

- A.40. The Contractor shall:
- a. Monitor the quality of services provided by workers;
 - b. Monitor assignment of workers by the member/representative including the Contractor's entry of such assignment into the EVV to ensure adherence to the schedule for consumer directed services specified in the plan of care and in the service authorization, and notify the member's care coordinator when a member's scheduling needs have changed, such that a new authorization is needed;
 - c. Monitor timeliness of service delivery;
 - d. Monitor service utilization and worker payments;
 - e. Monitor to ensure compliance with the Fair Labor Standards Act and all other applicable federal and state law and regulation, as well as TennCare 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 and/or representative to develop an adequate supply of reliable workers;

- f. Adhere to the quality requirements for service delivery that are required by the MCO for the CHOICES program;
 - g. Provide a web portal for MCOs to review and monitor member status at any time;
 - h. Establish and maintain a system for tracking and monitoring all information including but not limited to: adherence to timeframes for initiation of services; name of care coordinator and contact information; authorizations for consumer direction of HCBS; supports broker visits and outcomes; results of monitoring activities; service agreements; supports broker assignments; notification to MCO of supports broker assignment; information received from MCO and information transmitted to MCO; and service utilization;
 - i. Assist the member/representative in monitoring and evaluating the performance of workers;
 - j. Assist the member/representative in managing and monitoring payments to workers;
 - k. Work with the member/representative to help identify and find replacement workers;
 - l. Ensure that new representatives sign service agreements;
 - m. Communicate with the MCO any concerns regarding member health, safety and welfare and/or change in condition and concerns regarding workers, and
 - n. Within three (3) business days of becoming aware, notify the MCO of changes to representative contact information.
- A.41. The Contractor shall conduct at least semi-annual face-to-face visits in the member's place of residence and conduct at least monthly phone contacts. These visits and contacts shall supplement and not supplant the minimum care coordinator contacts. The Contractor shall document the dates of each visit, the purpose and outcome in the member's files and shall use these visits to monitor the quality of service delivery including, at a minimum:
- a. Identifying any service delivery issues regarding services provided via consumer direction;
 - b. Determining the adequacy and appropriateness of documentation of service delivery; and
 - c. Determining if back-up plans are implemented when needed, work as intended and the efficacy of the plans and processes.
- A.42. The Contractor shall, at a minimum, conduct quarterly reports of expenditures for each member and monthly reviews and reports of hours billed for services across all members, by each worker.
- A.43. The Contractor shall establish and maintain a system for responding to and tracking complaints from members, representatives and workers regarding the Contractor. 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. Both verbal and written responses to complaints shall be documented in its system;
 - b. Resolve and notify the member 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 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;

- c. Assist members with the complaint process, including but not limited to completing forms.
- A.44. The Contractor shall identify, report, investigate and participate in the investigation of, as appropriate, abuse and neglect and critical incidents.
- A.45. The Contractor shall, within 24 hours, report to the MCO on worker and/or staff identification of critical incidents in accordance with the MCO's critical incident reporting process, including the form to be used to report critical incidents and reporting timeframes. Critical incidents shall include but not be limited to the following incidents when they occur in a home and community-based long-term care service delivery setting:
- a. Unexpected death of a CHOICES member;
 - b. Suspected physical or mental abuse of a CHOICES member;
 - c. Theft or financial exploitation of a CHOICES member;
 - d. Severe injury sustained by a CHOICES member;
 - e. Medication error involving a CHOICES member self-directing medication administration; and
 - f. Sexual abuse and/or suspected abuse and neglect of a CHOICES member.
- A.46. The notification of a critical incident shall include at a minimum: the member name; date of allegation reported and/or identified; description of issue; measures taken to mitigate risk; status of reporting to CPS or APS, as appropriate.
- A.47. If the allegation is in reference to a worker or representative, the Contractor shall contact the member/representative to request immediate release from his/her duties until the investigation is complete. The Contractor shall notify the MCO regarding this communication with the member/representative and the member or representative's decision. The care coordinator shall work with the member to find a new representative and the Contractor shall work with the member/representative to find a suitable replacement worker, if applicable.
- A.48. Supports brokers shall refer all instances of suspected abuse, neglect or exploitation as defined in TCA 71-6-103 to Adult Protective Services for investigation.
- A.49. Supports brokers shall conduct investigations of all other critical incidents regarding CHOICES members participating in consumer direction and shall review the results of such investigations with the member and/or his/her representative (as applicable). As the employer of record, the member and/or his/her representative (as applicable) shall determine the appropriate corrective action when an incident has occurred; however, the supports broker may offer recommendations and/or assistance to the member and/or his/her representative in making the determination. The supports broker shall report to the MCO all critical incidents identified, including incidents referred to APS, the results of all incident investigations conducted by the supports broker, including corrective actions determined by the member or his/her representative (as applicable), and any concerns regarding the member's health and safety, including updates to the plan of care or risk assessment and/or risk agreement, as appropriate.
- A.50. If the allegations are substantiated as a result of the investigation, the representative and/or worker shall no longer be allowed to participate in the CHOICES program in any capacity. If the

investigation is inconclusive, the member may elect to retain the worker or representative. The MCO, with appropriate assistance from the Contractor, shall make any updates to the plan of care and/or risk assessment/risk agreement deemed necessary to help ensure the member's health and safety, and may initiate action to involuntarily disenroll the member from consumer direction at any time the MCO feels that the member'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.

- A.51. The Contractor shall develop and implement a fraud and abuse compliance plan that tracks suspected and/or confirmed fraud and abuse. An electronic copy of the plan shall be provided to the TennCare Program Integrity Unit within ninety (90) calendar days of contract execution and annually thereafter. TennCare shall provide notice of approval, denial, or modification to the Contractor within thirty (30) calendar days of receipt.
- A.52. The Contractor shall report any concerns regarding health, safety and welfare and the member's ability to participate in consumer direction of HCBS to the MCO as well as concerns regarding representatives.
- A.53. On an annual basis, the Contractor shall conduct a survey of participating members/representatives to determine satisfaction with the Contractor and participation in consumer direction of HCBS. This survey shall represent a statistically valid sample size of the existing CHOICES members enrolled in consumer direction of HCBS. The survey instrument shall be prior approved by TennCare. A comprehensive report of results shall be provided to TennCare and MCOs using the TennCare specified process and format; copies of survey results shall be provided to the MCOs and to TennCare.
- A.54. The Contractor shall maintain an active registry of supports brokers and their assigned members and report to MCO periodically or upon the request of the MCO.
- A.55. 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, as well as appropriate administrative and/or management personnel who administer the services provided by the Contractor. The monitoring shall occur periodically during the subcontract period and may include announced or unannounced visits, or both.
- A.56. 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 up to date 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.57. The Contractor shall implement 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.

Reporting

- A.58. The Contractor shall develop and submit reports as specified below, using a format prescribed by TennCare. All reports shall be made available to TennCare via a web portal that provides the current detail on authorized services and expenditures. The reports shall be capable of sorting by selected date ranges as specified by the requestor.
 - a. Submit to TennCare a monthly supports broker report (electronic copy), due on the 20th of the following month. At a minimum, the report should include the turnover rate for

supports brokers, the supports broker-to-member ratio and, per member, the type and frequency of supports broker contacts.

- b. Quarterly reports, due on the 30th of the following month, using a format prescribed by TennCare:
 1. A member utilization report that provides the following information, at a minimum, by month and for the cumulative quarter:
 - (a) Name and identification number of each CHOICES member participating in consumer direction of HCBS;
 - (b) Services authorized and rate per service for each worker;
 - (c) Units of services provided, amount of payments made on each member's behalf;
 - (d) Total units of each service and payments made on each member's behalf; and
 - (e) Identification of members enrolled in consumer direction who incur no utilization of consumer directed services for a period of at least thirty (30) consecutive days.
 2. Report by month and cumulative for the quarter, on the complaints received from members/representatives, workers and care coordinators regarding the Contractor, workers or representatives, and the resolution and timeframe for resolution of reported incidents.
 3. Report by month and cumulative for the quarter, on the issues identified and tracked through the Contractor's fraud and abuse system and the resolution and timeframes for resolution of identified issues.
- c. Develop and submit an annual member utilization report, due ninety (90) days after the end of the calendar year, using a format prescribed and approved by TennCare:
 1. Name and identification number of each CHOICES member participating in consumer action of HCBS;
 2. Services authorized and rate per service for each worker;
 3. Names of each member's worker(s) and identifying number, units of services provided, amount of payments made on each member's behalf;
 4. Total units of each service and payments made on each member's behalf;
 5. Total authorized units of services remaining for each member; and
 6. Identification of members who incur no service utilization for a period of thirty (30) consecutive days.
- d. Additional ad hoc reports shall be prepared and submitted as directed by TennCare within ten (10) business days from the date of the request unless otherwise specified by TennCare.

Withdrawal from Consumer Direction of HCBS

- A.59. In the event that the Contractor has concerns that a worker is unable to deliver appropriate care as prescribed in the service agreement and the plan of care, the Contractor shall notify the care coordinator regarding those concerns within one (1) business day of identifying issue(s) as well as inform the member and/or representative of any potential risks associated with continuing to use the worker, and in conjunction with the MCOs shall:
- a. Collaborate to develop strategies to address identified issues and concerns;
 - b. Abide by TennCare's decision regarding disenrollment of a member from consumer direction;
 - c. Facilitate a seamless transition from workers to contract providers and ensure there are no interruptions or gaps in services, and
 - d. For members who have been involuntarily withdrawn and choose to be reinstated in consumer direction of HCBS, 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 training programs prior to re-instatement in consumer direction of HCBS.
- A.60. When TennCare disenrolls a member from consumer direction, either voluntarily or involuntarily, the Contractor shall retire the member's IRS Forms 2678 and 8821 and the member's 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.61. The Contractor shall have the capability to accept all relevant MCO 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.
- A.62. 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 requirements for transmission, protection and identification of health information.
- A.63. The Contractor shall establish with the MCOs 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).

Customer Service

- A.64. 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 functions. The toll free telephone line shall handle calls from callers with Limited English Proficiency as well as calls from callers who are hearing impaired. The Contractor shall:
- a. Ensure that the toll free telephone line is staffed adequately to respond to members'/representatives' questions during normal business hours, defined as 8 a.m. to 5 p.m. in the time zone applicable to the Grand Region being served by the MCO, Monday through Friday, except State of Tennessee holidays. At all other times, the Contractor shall have an answering service available. Calls 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;
 - c. Have a secured HIPAA 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. The Contractor shall also provide general information regarding the Contractor's services and program materials;
 - d. Establish and maintain a system for receiving, returning, and tracking calls from individuals during and after regular business hours. This system should capture, at a minimum: the name of the caller; date and time call received; purpose of the call; name of person who received the call; if after business hours, when the call was returned (date and time) and by whom; and if the call required additional time to resolve, when the caller was contacted with the additional information (date and time) and by whom;
 - 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 hire bilingual customer service representatives. 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 information regarding consumer direction and transfer calls as appropriate, using a warm transfer whenever possible, to the MCO.
- A.65. Information regarding the Contractor's customer service system (as noted above in Section A.61), 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.66. The Contractor shall work with the MCOs to develop a protocol for interfaces and transfers of customer service inquiries that ensures that all calls are transferred and referred appropriately in and in a timely manner.

Staffing Requirements

- A.67. The Contractor shall have sufficient staff with relevant experience and qualifications to fulfill all specified requirements per the terms of this contract, and implement a policy to ensure service coverage for all CHOICES members participating in consumer direction of HCBS during the absence of staff and vacated positions. All supports brokers and other staff, including subcontractors, whose job functions include direct contact with or responsibility for CHOICES members must pass a background check which includes 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 licensure verification, as applicable.
- A.68. The Contractor shall verify the qualifications of all staff and employees prior to hire.

- A.69. The Contractor shall possess and maintain applicable State of Tennessee business license, 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. Four (4) year degree in Human Services (psychology, sociology, social work, recreational therapy, education, nursing, PT, OT, speech, etc.) and at least one year professional experience working with elderly and disabled persons; a four (4) year degree in any other subject and two (2) years experience working with elderly and disabled persons; or a two (2) year degree in Human Services (psychology, sociology, social work, recreational therapy, education, nursing, PT, OT, speech, etc.) and at least five (5) years professional experience working with elderly and disabled persons; and
 - b. Must satisfactorily complete a TennCare approved orientation and training program on participant-managed services and the role of the supports broker. The program must be prior approved by TennCare before staff can participate.
- A.70. The Contractor shall provide staff training including;
- a. Customer service training for Contractor staff;
 - b. As appropriate, train staff on how to use the EVV system and MCO scheduling requirements;
 - c. On MCOs' requirements for; critical incident identification, reporting and investigation; and identification, reporting and investigation of abuse and neglect, and
 - d. On MCO's complaint system.

Record Management and Retention

- A.71. The Contractor shall have in place the following Record Management and Retention process:
- 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.72. The Contractor shall have in place the following procedures and policies for payroll processing:

- a. Establish the accounting and information systems necessary for processing and paying workers as specified in the authorization of consumer directed services 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 payment to workers is only made for eligible HCBS authorized by the MCO and for ensuring compliance with the Fair Labor Standards Act and all other applicable federal and state law and regulation , as well as TennCare policies and/or protocols regarding worker compensation, overtime and overtime pay, including services delivered in a back-up capacity;
- b. Develop and implement a twice-monthly payment schedule for workers or as otherwise agreed upon with TennCare and the MCOs;
- c. Review electronically captured visit information in the EVV and adjudicated time data to verify amounts that should be paid to the worker(s);
- d. Develop a process for resolving errors or omissions in electronically captured visit information, including instances when a worker fails to log in or out of a consumer direction service visit;
- e. Timely resolve exceptions in electronically captured visit information for purposes of paying workers and generating claims for submission (in this context, "timely" means that the FEA shall initiate action and shall make all reasonable efforts to resolve such exceptions on at least a weekly basis and within the current payroll processing period during which payment to the worker should be processed, and prior to submission of claims to the MCO and payment of workers by the Contractor).
- f. Reconcile and document, pursuant to business rules developed in collaboration with the MCO, any discrepancies between electronically captured visit information in the EVV system, payments made to a consumer directed 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 regarding missed and late visits;
- g. Develop and implement a process for immediately notifying the member and his/her worker when an exception cannot be resolved and the worker will not be reimbursed for services delivered and electronically captured in the EVV system.
- h. Obtain necessary documentation from the member/representative to ensure that services were provided prior to paying workers, which may be obtained via the EVV system.
- i. Periodically review, during visits to the member's home, 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.
- j. Facilitate resolution of any disputes regarding payment to workers for services rendered;
- k. Compute, withhold, and file federal and state income tax withholding, FICA, FUTA and Tennessee unemployment insurance taxes per State and federal periodicity requirements;
- l. 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 them accordingly;

- m. 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;
- n. 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;
- o. 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;
- p. 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;
- q. Retire a member's State unemployment tax registration number when the member is no longer the employer of workers (permanently);
- r. 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 electronically captured electronic visit data 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 paying 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 will provide workers with the option to receive payment via either mailed check or Electronic Funds Transfer (once total enrollment has exceeded 100 members).
- s. Manage the application of all garnishments, levies and liens on workers' payroll checks in an accurate and timely manner 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;
- t. Report new hires per State requirements;
- u. Submit to TennCare a list of checks reportable under the State's Unclaimed Property Act each year. TennCare will designate a staff person who is authorized to receive and approve the list of abandoned checks from the Contractor. TennCare will receive a remittance check from the Contractor that is equal to the face value of checks reported on the abandoned property report. The Contractor will void all items on the abandoned property report, providing an internal control to prevent re-issuance. TennCare shall assume responsibility for managing the abandoned property filing and for performing any reconciliation related to Medicaid escheatment or CMS-64 reporting. When a check that was previously reported as abandoned by the Contractor is presented for payment, TennCare shall remit the funds to the holder in due course;
- v. 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;
- w. Prepare, file, and distribute IRS Forms W-2 for member's workers per IRS instructions for agents, for electronic filing when processing 250 or more IRS Forms W-2 and maintain the relevant documentation in the Contractor's files. The Contractor has the right to charge an administrative fee to workers for the replacement of lost W-2s;

- x. Prepare, file, and distribute IRS Forms W-3 in the aggregate for all members the agent represents per IRS instructions and maintain the relevant documentation in the Contractor's files;
 - y. Have a system in place for managing Federal Advanced Earned Income Credit (EIC) for each eligible worker in an accurate and timely manner and for maintaining the relevant documentation in the Contractor's files, and
 - z. Pay 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.
- A.73. The Contractor shall work with the MCOs to develop mutually acceptable specifications regarding Contractor access to the EVV system.

Claims Submission

- A.74. The Contractor shall review and resolve exceptions and shall submit an electronic claims submission file in the 837 format to the MCO at the appropriate frequency. In this context, "timely" means that the FEA shall initiate action and shall make all reasonable actions to resolve such exceptions on at least a weekly basis and within the current payroll processing period during which payment to the worker should be processed, and prior to submission of claims to the MCO and payment of workers by the Contractor.
- A.75. To the extent that the Contractor opts not to use the electronic claims submission file provided by the EVV, the Contractor shall electronically submit claims to the MCO in the 837 format and shall reconcile and document, pursuant to business rules developed in collaboration with the MCO, any discrepancies between electronically captured visit information in the EVV system, payments made to a consumer directed 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 regarding missed and late visits.

Claiming and Payment for Consumer Directed Services

- A.76. For reimbursement for authorized services, the Contractor shall:
- a. Only bill for services that have been authorized by the MCO. The Contractor must provide a web-based interface for the MCO and members to review information on the funds authorized, disbursed, and remaining balances.
 - b. Submit all claims for services rendered timely in accordance with requirements agreed to with the MCOs.
 - 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 ACH deposit and shall be provided a detailed electronic remittance advice.
- A.77. 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, social security numbers and IDs for each member and worker.

- b. Have a comprehensive information system in place for submitting the administrative invoice billing to TennCare electronically.
- c. Provide an accurate report of current enrollment/member activity.

Ownership and Financial Disclosure

A.78. The Contractor shall:

- a. Disclose to TENNCARE, and the Comptroller General of the United States or CMS 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. The following information shall be disclosed:
 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.79 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 TENNCARE 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 five (5) 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, that TENNCARE representatives and authorized federal, state and Office of the Comptroller of the Treasury personnel, including, but not limited to TENNCARE, the Office of the Inspector General (OIG), the Tennessee Bureau of Investigations, Medicaid Fraud Control Unit (TBI MFCU), 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 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 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 MFCU, DOJ and the DHHS OIG, TENNCARE 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 within twenty (20) business days of request unless otherwise specified by TENNCARE or TennCare rules and regulations. Requested records shall be provided at no expense to TENNCARE, authorized federal, state, and Office of the Comptroller of the Treasury personnel, including representatives from the OIG, the TBI MFCU, 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 shall not be unreasonable.
3. Ensure that it as well as any of its subcontractors, providers or any entity or person directly or indirectly receiving monies originating from TennCare, shall make all records, including, but not limited to, financial, administrative and medical records available to any duly authorized government agency, including but not limited to TENNCARE, OIG, TBI MFCU, DHHS OIG and DOJ, upon any authorized government agency's request. Any authorized government agency, including but not limited to OIG, TBI MFCU, DHHS OIG and DOJ, may use these records to carry out their authorized duties, reviews, audits, administrative, civil and/or criminal investigations and/or prosecutions.
4. 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, OIG, TBI MFCU, 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, OIG, TBI MFCU, 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 TDCI 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.
5. 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.
 6. 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 5 Years

The Contractor and its providers, subcontractors and other entities receiving monies originating by or through TennCare 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 MFCU, DOJ and the DHHS OIG, and Office of the Comptroller of the Treasury personnel during the contract period and five (5) 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. If the records need to be sent to TENNCARE, the Contractor shall bear the expense of delivery. Prior approval of the disposition of Contractor, subcontractor or provider records must be requested and approved by TENNCARE 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.80. Prior to CHOICES implementation, TennCare shall verify that the Contractor is ready to begin operations. TennCare shall conduct a readiness review that consists of a desk audit of requested deliverables, one or more onsite reviews and any necessary follow-up regarding issues stemming from an onsite review or that are not adequately addressed during an onsite review.

- a. 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 and care coordinators; payroll and claims processing, data and information exchange, customer service, records management, incident management, investigation and reporting, fraud and abuse plan, and program materials such as copies of worker employment and member enrollment packets and program manuals. Onsite reviews will consist of, at a minimum, participation in training activities, system testing and follow-up on items identified in desk audit.
- b. 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.
- c. TennCare shall work with the Contractor to determine appropriate dates for onsite reviews and shall notify the Contractor in advance regarding dates for scheduled onsite reviews and expectations.

B. CONTRACT TERM:

B.1. Contract Term. This Contract shall be effective for the period commencing on March 1, 2010 and ending on February 28, 2011. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Million Eight Hundred Eighty-five Thousand Dollars (\$1,885,000.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of

the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
 - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

| Service Description | Rate for 1st 5,000 member months billed | Rate for all subsequent member months billed |
|----------------------------|---|---|
| Financial Administration | \$155.00 Per Member Per Month (PMPM) | \$90.00 Per Member Per Month (PMPM) |
| Supports Brokerage | \$140.00 Per Member Per Month (PMPM) | \$140.00 Per Member Per Month (PMPM) |

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 members with an active authorization for consumer directed services that are receiving consumer directed services.

| Service Description | Rate |
|---|---------------------|
| Set-Up for New Consumer Direction Participant | \$150.00 Per Member |
| Set-Up for New Consumer Directed Worker | \$50.00 Per Worker |

The set up fee covers all applicable costs for processing paperwork, completing training, etc. for new CHOICES members, representatives and employees, including background checks. Except for lapses in employment of a consumer directed worker which warrant a new background check as specified in Section A.29 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.

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Bureau of TennCare
Fiscal Division – 4 East
310 Great Circle Road
Nashville TN 37243

b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the State to this Contract);
- (5) Account Name: Department of Finance and Administration, Bureau of TennCare;
- (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
- (7) Contractor Name;
- (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
- (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
- (10) Contractor Remittance Address;
- (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
 - iv. Amount Due by Service; and
 - v. Total Amount Due for the invoice period.

c. The Contractor understands and agrees that an invoice to the State under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) not include any future work but will only be submitted for completed service; and
- (3) not include sales tax or shipping charges.

- d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.
 - e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.
- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- 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 which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
- D. STANDARD TERMS AND CONDITIONS:**
- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least sixty (60) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.

- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. 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 disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment B, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) 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.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated, Section 12-4-401 et seq.*
- D.11. 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 and the MCOs.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.

- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. 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 hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

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

The State:

Deputy Commissioner
Department of Finance and Administration
Bureau of TennCare
310 Great Circle Road
Nashville TN 37243
Telephone # (615) 507-6443
FAX # (615) 741-0882

The Contractor:

Marc Fenton, President
Public Partnerships, LLC
148 State Street, 10th Floor
Boston, Massachusetts 02109
Telephone Number: (617) 426-2026 ext. 1244
Facsimile Number: (617) 426-4069

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

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 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 pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 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 may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.
- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
 - b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
 - c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

E.6. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

a. Contractor Breach— The State shall notify Contractor in writing of a Breach.

(1) In event of a Breach by Contractor, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity.

(2) Liquidated Damages— In the event of a Breach, the State may assess Liquidated Damages. The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. 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 Breach by Contractor as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced, Attachment C and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or other section of this Contract.

The State may continue to withhold the Liquidated Damages or a portion thereof until the Contractor cures the Breach, the State exercises its option to declare a Partial Default, or the State terminates the Contract. The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Contractor shall receive a credit for said Liquidated Damages previously withheld except in the event of a Partial Default.

(3) Partial Default— In the event of a Breach, the State may declare a Partial Default. In which case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding

determination of said amount.

The State may assess Liquidated Damages against the Contractor for any failure to perform which ultimately results in a Partial Default with said Liquidated Damages to cease when said Partial Default is effective. Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

(4) **Contract Termination**— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

b. **State Breach**— In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

E.7. **Confidentiality of Records**. Strict standards of confidentiality of records shall be maintained in accordance with the 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 shall be regarded as confidential information in accordance with the provisions of State 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 law and ethical standards.

The Contractor will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the

Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

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

- E.8. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this 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 HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.9. Annual Report and Audit. The Contractor shall prepare and submit, within nine (9) months after the close of the reporting period, an annual report of its activities funded under this Contract to the commissioner or head of the contracting agency, the Tennessee Comptroller of the Treasury, and the Commissioner of Finance and Administration. The annual report for any Contractor that receives five hundred thousand dollars (\$500,000) or more in aggregate federal and state funding for all its programs shall include audited financial statements. All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Contractor may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit contract between the Contractor and the licensed independent public accountant shall be on a contract form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the *Audit Manual for Governmental Units and Recipients of Grant Funds* published by the Tennessee Comptroller of the Treasury. The Contractor shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Contractor shall be subject to the provisions relating to such fees contained in the prescribed contract form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the State Contracting Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.
- E.10. State Ownership of Work Products. The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to

the next subsection and full and final payment for each "Work Product." The State shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.

- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.
 - b. The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.
 - c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
 - d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.
- E.11. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, 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.12. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.
- E.13. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

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

- E.14. 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 or disqualified.

- E.15. Tennessee Bureau of Investigation Medicaid Fraud and Abuse Unit (MFCU)
Access to Contractor and Provider Records Office of TennCare Inspector General Access to Contractor, Provider, and Enrollee Records

Pursuant to the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations, MFCU and TennCare OIG shall be health oversight agencies as defined at 45 C.F.R. §§ 164.501 and 164.512(d) and 65 F.R. § 82462. When acting in their respective capacities as health oversight agencies, MFCU and TennCare OIG do not need authorization to obtain enrollee protected health information (PHI). Because MFCU and TennCare OIG will request the information mentioned above for health oversight activities, "minimum necessary" standards do not apply to disclosures to MFCU or TennCare OIG that are required by law. See 45 C.F.R. §§ 164.502(b)(2)(iv), 164.502(b)(2)(v), and 164.512(d).

The Contractor shall immediately report to MFCU all factually based known or suspected fraud, abuse, waste and/or neglect of a provider or Contractor, including, but not limited to, the false or fraudulent filings of claims and/or the acceptance or failure to return money allowed or paid on claims known to be false or fraudulent. The Contractor shall not investigate or resolve the suspicion, knowledge or action without informing MFCU, and must cooperate fully in any investigation by MFCU or subsequent legal action that may result from such an investigation.

The Contractor and all its health care providers who have access to any administrative, financial, and/or medical records which relate to the delivery of items or services for which TennCare monies are expended, shall, upon request, make them available to MFCU or TennCare OIG. In addition, the MFCU must be allowed access to the place of business and to all TennCare records of any Contractor or health care provider, during normal business hours, except under special circumstances when after hour admission shall be allowed. MFCU shall determine any and all special circumstances.

The Contractor and its participating and non-participating providers shall report TennCare enrollee fraud and abuse to TennCare OIG. The Contractor and/or provider may be asked to help and assist in investigations by providing requested information and access to records. Shall the need arise, TennCare OIG must be allowed access to the place of business and to all TennCare records of any TennCare Contractor or health care provider, whether participating or non-participating, during normal business hours.

The Contractor shall inform its participating and non-participating providers that as a condition of receiving any amount of TennCare payment, the provider must comply with this Section of this Contract regarding fraud, abuse, waste and neglect.

- E.16. SubContract -- If the Contractor delegates responsibilities to a subcontractor, the Contractor shall assure that the subcontracting relationship and subcontracting document(s) comply with federal requirements, including, but not limited to, compliance with the applicable provisions of 42 CFR 438.230(b) and 42 CFR 434.6 as described below:
- a. evaluate the prospective subcontractor's ability to perform the activities to be delegated;
 - b. ensure that the agreement be in writing and specify the activities and report responsibilities delegated to the subcontractor; and provide for revoking delegation or imposing other sanction if the subcontractor's performance is inadequate;
 - c. monitor the subcontractor's performance on an ongoing basis.
 - d. identify deficiencies or areas for improvement and the Contractor and the subcontractor shall take corrective action as necessary;
 - e. not enter into any subsequent agreements or subcontracts for any of the work contemplated under the contract without prior approval of the state;
 - f. provide instruction for all subcontractors who will be interacting directly with TennCare members (including supports brokers, as applicable) regarding the Contractor's written procedure for the provision of language interpretation and translation services for any enrollee who needs such services, including but not limited to, enrollees with Limited English Proficiency, and
 - g. shall not delegate Financial Administration functions
- E.17. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof

and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

- E.18. 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 General Accounting Office, Department of Health and Human Services, CMS, or any other federal agency has or will benefit financially or materially from this procurement. 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, his agent, or employees and may result in termination of the Contract as provided in Section D4.
- E.19. The State and Contractor recognize that TennCare operates subject to several Federal Class Action Consent Decrees. During the term of this Contract there may be litigation in Federal Court concerning the implementation or modification of these decrees. In addition, the possibility exists that new litigation of this same type may commence during the course of the Contract. Therefore, in addition to the records requirements contained in Contract Section A and Section D.12, the Contractor will make available as required, all records of whatever type, [correspondence, memo, databases, worksheets, training material, etc.], in their original form, be it electronic or paper, including emails with metadata preserved. These records will be produced at no cost to the State, as required to satisfy the discovery demands of any of the class action litigation affecting TennCare. The State will endeavor to keep the discovery requests as reasonable in extent as possible. The Contractor retains the right to object in Court to any discovery request it feels is too broad or otherwise unduly burdensome.

IN WITNESS WHEREOF:

PUBLIC PARTNERSHIPS, LLC.:

Marc Fenton President Jan. 25, 2010
NAME AND TITLE DATE

MARC FENTON, PRESIDENT

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY

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

M D Goetz Jr 1/27/10
M. D. GOETZ, JR., COMMISSIONER DATE

ATTACHMENT A

DEFINITIONS

Definitions

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 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 the plan of care for all CHOICES members receiving companion care or non-residential HCBS in their own home and which specifies unpaid persons as well as paid Consumer-Directed Workers and/or contract providers (as applicable) who are available, have agreed to serve as back-up, and who will be contacted to deliver needed care in situations when regularly scheduled HCBS providers or workers are unavailable or do not arrive as scheduled. The member/representative (as applicable) may 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 and agencies to contact and the services to be provided by each of the listed contacts. The member and his/her representative (as applicable) shall have primary responsibility for the development and implementation of the back-up plan for Consumer Directed services with assistance from the Contractor as needed.

Care Coordinator – The individual who has primary responsibility for performance of care coordination activities for a CHOICES member.

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.

CHOICES Member – A member who has been enrolled by TENNCARE into CHOICES.

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 Agreement. Any such information relating to individuals enrolled in the TennCare program ("TennCare members") or relating to individuals who may be potentially enrolled in the TennCare program, which is provided to or obtained 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.

Consumer Direction of HCBS – The opportunity for a CHOICES member assessed to need specified types of HCBS including attendant care, personal care, homemaker, in-home respite, companion care and/or any other service specified in TennCare rules and regulations 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).

Consumer-Directed Worker (Worker) – An individual who has been hired by a CHOICES member participating in consumer direction of HCBS or his/her representative to provide one or more eligible HCBS to the member. Worker does not include an employee of an agency that is being paid by an MCO to provide HCBS to the member.

Contract Provider – A provider that is employed by or has signed a provider agreement with the MCO to provide covered services.

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

Electronic Visit Verification (EVV) System – An electronic system into which provider staff and Consumer-Directed Workers can check-in at the beginning and check-out at the end of each period of service delivery to monitor member receipt of HCBS and which may also be utilized for submission of claims.

Eligible HCBS – Attendant care, personal care, homemaker, in-home respite, companion care services and/or any other services 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) 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).

Employee – The worker hired by the CHOICES member to deliver eligible HCBS.

Employer of Record – The member participating in consumer direction of HCBS or a representative designated by the member to assume the consumer direction of HCBS functions on the member's behalf.

Fiscal Employer Agent (Contractor) – An entity contracting with the State and/or an MCO that helps CHOICES members participating in consumer direction of HCBS. The Contractor provides both Financial Administration and Supports Brokerage functions for CHOICES members participating in consumer direction of HCBS. This term is used by the IRS to designate an entity operating under Section 3504 of the IRS code, Revenue Procedure 70-6 and Notice 2003-70 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 HCBS authorized and provided.

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

Home and Community-Based Services (HCBS) – Services not covered by Tennessee's Title XIX state plan that are provided as an alternative to long-term care institutional services in a nursing facility or an Intermediate Care Facility for the Mentally Retarded (ICF/MR). HCBS does not include home health or private duty nursing services.

Managed Care Organization (MCO) – An HMO that participates in the TennCare program.

Member – A TennCare enrollee who enrolls in the MCO under the provisions of the MCO's Contractor Risk Agreement with TennCare.

Provider – An institution, facility, agency, physician, health care practitioner, or other entity that is licensed or otherwise authorized to provide any of the covered services in the state in which they are furnished. Provider does not include Consumer-Directed Workers (See Consumer-Directed Worker); nor does provider include the Contractor (Fiscal Employer Agent).

Provider Agreement – An agreement, using the provider agreement template approved by TDCI, between the MCO and a provider or between the MCO's subcontractor and a provider that describes the conditions under which the provider agrees to furnish covered services to the MCO's members.

Regulatory Requirements - Any requirements imposed by applicable federal, state or local laws, rules, regulations, court orders and consent decrees, a program contract, or otherwise imposed by TennCare in connection with the operation of the program or the performance required by either party under this agreement.

Representative – In general, for CHOICES members, a person who is at least eighteen (18) years of age and is authorized by the member to participate in care planning and implementation and to speak and make decisions on the member's behalf, including but not limited to identification of needs, preference

regarding services and service delivery settings, and communication and resolution of complaints and concerns. As it relates to consumer direction of HCBS, 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. The representative for consumer direction of HCBS must also: be at least 18 years of age; have a personal relationship with the member and understand his/her support needs; know the members 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 CHOICES member electing consumer direction of HCBS who has a representative direct and manage the consumer's worker(s) and the member's representative that specifies the roles and responsibilities of the member and the member's representative.

Risk Agreement – An agreement signed by a member who will receive HCBS (or his/her representative) that includes, at a minimum, identified risks to the member of residing in the community and receiving HCBS, the consequences of such risks, strategies to mitigate the identified risks, and the member's decision regarding his/her acceptance of risk. For members electing to participate in Consumer Direction, the Risk Agreement must include any additional risks associated with the member's decision to act as the employer of record, or to have a Representative act as the employer of record on his/her behalf.

Safeguarding Enrollee Information – To maintain reasonable and appropriate administrative, technical and physical safeguards, ensure the integrity and confidentiality, and protect against any reasonably anticipated threats or hazards to the security or integrity or unauthorized uses or disclosures of information regarding a TennCare member.

Self-Direction of Health Care Tasks – A decision by a CHOICES member participating in Consumer Direction to direct and supervise a paid worker delivering eligible 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 CHOICES member participating in Consumer Direction may elect to have performed by a Consumer-Directed Worker as part of the delivery of eligible HCBS s/he is authorized to receive.

Service Agreement – The agreement between a CHOICES member electing consumer direction of HCBS (or the member's representative) and the member's Consumer-Directed Worker that specifies the roles and responsibilities of the member (or the member's representative) and the member's worker.

State – The State of Tennessee, including, but not limited to, any entity or agency of the state, such as the Tennessee Department of Finance and Administration, the Office of Inspector General, the Bureau of TennCare, the Tennessee Bureau of Investigation, Medicaid Fraud Control Unit, the Tennessee Department of Mental Health and Developmental Disabilities, the Tennessee Department of Children's Services, the Tennessee Department of Health, the Tennessee Department of Commerce and Insurance, and the Office of the Attorney General.

Supports Broker – An individual assigned by the Contractor to each member who assists the member/representative in performing employer functions including but not limited to: developing job descriptions, locating, recruiting, interviewing, scheduling, monitoring and evaluating workers. The supports broker collaborates with, but does not duplicate, the functions of the member's care coordinator. The supports broker does not have authority or responsibility for consumer direction. The member or member's representative must retain authority and responsibility for consumer direction.

TENNCARE – TENNCARE shall have the same meaning as "State."

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.

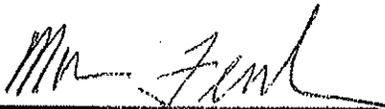
TennCare CHOICES in Long-Term Care (CHOICES) – A program in which all nursing facility services and home and community based long-term care services for elders and/or adults with physical disabilities are integrated into TennCare's managed care delivery system.

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.

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

| | |
|--|------------------------|
| SUBJECT CONTRACT NUMBER: | FA-10-30695-DD |
| CONTRACTOR LEGAL ENTITY NAME: | Public Partnership LLC |
| FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number) | 04-3468852 |

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



CONTRACTOR SIGNATURE

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

Marc Fenton, President

PRINTED NAME AND TITLE OF SIGNATORY

January 25, 2010

DATE OF ATTESTATION

**Attachment C
Liquidated Damages**

| | PROGRAM ISSUE | DAMAGE |
|------------|--|--|
| A.1 | Failure to obtain written approval of any written member materials including outreach materials prior to using such materials as outlined in Sections A.4 and A.24. of this Contract when such failure is due to negligence, actions, failures or omissions on the CONTRACTOR's part | \$250 per member or outreach 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 |
| A.2 | Failure to obtain a unique federal employer identification number (FEIN) prior to initiating Consumer Direction of HCBS for the member as outlined in Section A.3. of this Contract when such failure is due to negligence, actions, failures or omissions on the CONTRACTOR's part | \$500 per member for which a unique federal employer identification number (FEIN) was not obtained prior to initiating Consumer Direction of HCBS for the member |
| A.3 | Failure to complete all required employer paperwork, including but not limited to IRS Forms SS-4, 2678, and 8821, for the member or his/her representative, as applicable prior to initiating Consumer Direction of HCBS for the member as outlined in Section A.3. of this Contract when such failure is due to negligence, actions, failures or omissions on the CONTRACTOR's part | \$500 per member for which all required employer paperwork is not completed prior to initiating Consumer Direction of HCBS for the member |
| A.4 | Failure to ensure that each Consumer Directed worker completes all required employee paperwork, including an abbreviated Medicaid agreement, and obtains a Medicaid provider ID number prior to authorizing the worker to deliver Consumer Directed services for a member as outlined in Sections A.29 and 32 of this Contract when such failure is due to negligence, actions, failures or omissions on the CONTRACTOR's part | \$500 per worker for which all required employee paperwork was not completed prior to authorizing the worker to deliver Consumer Directed services for a member |

| | PROGRAM ISSUE | DAMAGE |
|------------|--|---|
| A.5 | Failure to ensure that each Consumer Directed worker completes all training requirements prior to authorizing the worker to deliver Consumer Directed services as outlined in A.35, 36, and 37 of this Contract when such failure is due to negligence, actions, failures or omissions on the CONTRACTOR's part | \$500 per worker for which all training requirements were not completed prior to authorizing the worker to deliver Consumer Directed services for a member |
| A.6 | Failure to ensure that each Consumer Directed worker completes a background check as outlined in Section A.29 of this Contract, maintains documentation of such background check, and permits a worker who has failed his/her background check to provide Consumer Directed services only as permitted pursuant to Section A.29 of this Contract. when such failure is due to negligence, actions, failures or omissions on the CONTRACTOR's part | \$1,000 per worker for which a background check was not completed prior to authorizing the worker to deliver Consumer Directed services for a member or for which documentation was not maintained, or for each worker who failed a background check that was permitted to provide Consumer Directed services except as permitted pursuant to Section A.29 of this Contract |
| A.7 | Failure to obtain a signed Service Agreement for each Consumer Directed worker prior to such worker authorizing the worker to deliver Consumer Directed services, 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 outlined in Sections A.17 and A.29 of this Contract when such failure is due to negligence, actions, failures or omissions on the CONTRACTOR's part | \$1,000 per worker for which a Service Agreement was not signed prior to authorizing the worker to deliver Consumer Directed services 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 |
| A.8 | 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 of HCBS and at least annually as outlined in Section A.13 of this Contract when such failure is due to negligence, actions, failures or omissions on the CONTRACTOR's part | \$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 of HCBS and at least annually |