

CONTRACT #25
RFS # 359.10-30044
FA # Pending
Edison # 30630

**Department of Children's
Services**

VENDOR:
Omni Visions, Inc.



State of Tennessee
Department of Children's Services
Cordell Hull State Office Building, 7th Floor
436 Sixth Avenue North
Nashville, Tennessee 37243-3000

MEMORANDUM

To: Leni Chick, Contact & Audit Coordinator
Fiscal Review Committee

From: Suzanne G. White, Director of Contracts Management *SW*

Date: May 31, 2012

Subject: Omni Visions, Inc.

Please find as accompaniments to this summary memo the various supporting materials necessary to review the Non-Competitive request for residential out-of-home services for Omni Visions, Inc. for Fiscal Year 2013 in the amount of \$54,585,000.00.

The request for the non-competitive services was submitted within the sixty (60) day timeframe as required but was recently adjusted because of a projected increase in the maximum liability of the contract.

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Suzanne White	*Contact Phone:	615-741-8425		
*Original Contract Number:	30630	*Original RFS Number:	35910-30044		
Edison Contract Number: <i>(if applicable)</i>	30630	Edison RFS Number: <i>(if applicable)</i>	N/A		
*Original Contract Begin Date:	July 01, 2012	*Current End Date:	June 30, 2013		
Current Request Amendment Number: <i>(if applicable)</i>					
Proposed Amendment Effective Date: <i>(if applicable)</i>		July 01, 2012			
*Department Submitting:		Department of Children's Services (DCS)			
*Division:		Contracts Management			
*Date Submitted:		April 18, 2012			
*Submitted Within Sixty (60) days:		Yes			
<i>If not, explain:</i>					
*Contract Vendor Name:		Omni Visions, Inc.			
*Current Maximum Liability:		\$54,585,000.00			
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY: 2013	FY:	FY:	FY:	FY	FY
\$54,585,000.00	\$	\$	\$	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			N/A		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			N/A		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			N/A		
*Contract Funding	State:	\$21,834,000.00	Federal:	\$3,275,100.00	

Supplemental Documentation Required for
Fiscal Review Committee

Source/Amount:			
Interdepartmental:	\$29,475,900.00	Other:	
If "other" please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
None			
Method of Original Award: <i>(if applicable)</i>			
*What were the projected costs of the service for the entire term of the contract prior to contract award?		\$54,585,000.00	

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.

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

Deliverable description:	FY:2013	FY:	FY:	FY:	FY:
See attached contract	\$54,585,000.00				

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.

Deliverable description:	FY:2013	FY:	FY:	FY:	FY:
Residential/Resource Homes Out-of-home care	None				

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.

Proposed Vendor Cost: (name of vendor)	FY:2013	FY:	FY:	FY:	FY:
Omni Visions, Inc.	N/A				
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

Non-Competitive Contract Request

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

Route a completed request, as one file in PDF format, via e-mail attachment sent to: AgSprs.Agspr@sate.tn.us

APPROVED

COMMISSIONER OF FINANCE & ADMINISTRATION

Request Tracking #	35910-30052	
1. Contracting Agency	Department of Children's Services	
2. Proposed Contractor	Omni Visions, Inc.	
3. Proposed Contract Period – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	12 months	
4. Maximum Contract Cost – with ALL options to extend exercised	\$ 54,585,000.00	
5. Office for Information Resources Endorsement – information technology (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
6. eHealth Initiative Support – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
7. Human Resources Support – state employee training	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
8. Has the contracting agency bought the subject service before?	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, it was procured by... <input type="checkbox"/> RFP <input checked="" type="checkbox"/> Another Competitive Method <input type="checkbox"/> Non-Competitive Negotiation	
9. Service Description – brief <u>summary</u> only – do NOT restate the proposed scope of service	<p align="center">Performance Based Residential Care and Treatment</p>	
10. Explanation of Need for or Requirement Placed on the State to Acquire the Service	<p>The Tennessee Department of Children's Services (DCS), as authorized by T.C.A. § 37- 5-102, is the state's source for providing services to children entering state custody. DCS has responsibility for protecting children from abuse and neglect, providing temporary care for children who cannot safely remain in their own homes, providing permanent homes for those children who are legally free for adoption, and rehabilitating delinquent children through residential treatment programs. The focus of the services is to preserve the relationship between the child and the family by providing whenever possible, services in the community where the child lives and by providing the services in a setting which is the least restrictive and yet, the most beneficial. DCS is mandated by T.C.A. § 37- 5-102 to provide timely, appropriate and cost-effective services for children in state custody. DCS must provide Residential Care and Treatment services to children that were adjudicated by the courts and placed in the custody of DCS.</p> <p><i>Legal Requirements: Brian A. Civil Action No. 3-00-0445</i></p> <p>Pursuant to the Brian A. Civil Action No. 3-00-0445 the Department of Children's Services (DCS) is mandated to</p>	

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implement and execute the tenants of the agreement as detailed in the document located at:
<http://www.state.tn.us/youth/dcsquide/settlement.pdf>

Section XII. Supervision of Contract Agencies of the Brian A. action states the following:

- A. Contract agencies which provide placements or services to children in the plaintiff class shall only do so pursuant to annual performance-based contracts issued by DCS. Such contracts shall be developed by DCS within 90 days after the approval of this Settlement Agreement. These contracts shall be entered into in the next contracting cycle.
- B. DCS shall only contract with those agencies that meet the provisions of this Settlement Agreement that specifically apply to those agencies and that meet state standards governing the operation of child care facilities. These state standards shall reflect reasonable professional standards. DCS shall not contract with any agency that has not been licensed by the State to provide placements for children in the plaintiff class.

Federal Requirements: Department of Health and Human Services (HHS), the Administration for Children and Families (ACF) and Child & Family Service Review (CFSR)

Social Security Act amendments enacted in 1994 require that HHS promulgate regulations for the review of child welfare systems in each state under Title IV-B (Sub-parts 1 & 2) and Title IV-E. These Child and Family Service Reviews (CFSR) are implemented by the Children's Bureau housed in HHS' Administration for Children and Families. The CFSR is federally mandated and seeks to evaluate and monitor child welfare systems to ensure the proper and effective utilization of federal funding drawn down by each state's child welfare agency, in this case Tennessee's Department of Children's Service's (DCS).

The CFSR assesses state performance with regard to its substantial conformity with seven child and family outcomes and seven systemic factors. Each outcome incorporates one or more of 23 items included in the review. Depending on item ratings, an outcome can be "Substantially Achieved", "Partially Achieved" or "Not Achieved". In order for a state to be in substantial conformity with a particular outcome, 95% of the cases reviewed must be rated as having substantially achieved the outcome.

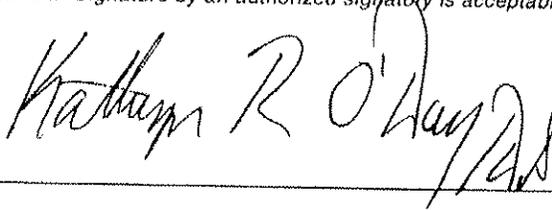
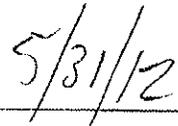
The key CFSR outcomes related to Safety, Permanency and Well-Being are detailed below:

Safety Outcome 1:	Children are, First and Foremost, Protected from Neglect
Safety Outcome 2:	Children are Safely Maintained In Their Homes When Possible and Appropriate
Permanency Outcome 1:	Children Have Permanency and Stability in Their Living Situations
Permanency Outcome 2:	The Continuity of Family Relationships and Connections is Preserved for Children
Well-Being Outcome 1:	Families Have Enhanced Capacity to Provide for Their Children's Needs
Well-Being Outcome 2:	Children Receive Appropriate Services to Meet Their Educational Needs
Well-Being Outcome 3:	Children Receive Adequate Services to Met Their Physical and Mental Health Needs

In accordance with the mandates of the Brian A standards as well to address the CFSR federal initiatives detailed above, DCS has developed an infrastructure of performance-based contracting (PBC) providers that focuses on outcomes for children and families within the context of their community. Those outcomes are: safety, permanency, stability and well-being. Provider agencies are an integral partner in the Department's effort to achieve its overarching objectives.

It is the Department's view that the reform agenda can be advanced by aligning better the outcomes it seeks with the mechanisms it uses to purchase services from its partners. The PBC initiative is one step in this direction. It should also be noted that this initiative is in compliance with the terms and conditions of the Brian A. Settlement Agreement as well as federal requirements. Many of these federal requirements stipulate that we address the issue of placement stability and ensure that appropriate placement is maintained throughout the child or youth's custody episode. This mandated stability can only be consistently perpetuated through the continuity of care provided by a seamless contractual relationship between the Department and its primary care providers. Having to open these services to the Request for Proposal (RFP) process on an ongoing basis would seriously jeopardize our ability to adequately meet the above-mentioned requirements. This would lead to federal sanctions as well as findings of non-

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compliance with the Brian A Settlement Agreement.	
<p>11. Name & Address of the Contractor's Principal Owner(s) <i>- NOT required for a TN state education institution</i></p> <p>Omni Visions, Inc. 301 S. Perimeter Park Drive Suite 210 Nashville, TN 37211</p>	
<p>12. Evidence Contractor's Experience & Length Of Experience Providing the Service</p> <p>Omni Visions, Inc. began in 1991 to meet the needs of families and children in Tennessee. The program initially focused on training families to provide treatment foster care and adoption to children who were placed out of state and in long-term psychiatric and residential treatment. A network of specially trained and supported foster and adoptive homes was developed to successfully meet the needs of these children and families. In 1996, Omni Visions moved to providing level two (2) and level three (3) continuum of care services for the State of Tennessee. Under the continuum model, children and their families receive an array of individualized services through residential treatment facilities, treatment foster homes, and intensive in-home services. Omni Visions offers a statewide network of out of home placements, including over seven hundred fifty (750) treatment foster and adoptive homes and fifteen (15) collaborating Residential Treatment Facilities. Each facility is credentialed by a national accrediting agency, operates a Department of Education approved school, and has specialized mental health professionals to meet the individual needs of children and their families. Omni Visions also has a statewide network of licensed therapists, mentors, tutors, behavioral specialists, and other supporting staff to help families and youth meet their highest potential with local, individualized resources.</p> <p>In 2007, Omni Visions formed a partnership with Foothills Care, expanding in-home support services, case management and outpatient treatment services to adults, children and families throughout Tennessee. These services include: FAST TRACKS short-term case management; relative caregiver program, transitional living program, outpatient services, and school based intervention services.</p>	
<p>13. Efforts to Identify Reasonable, Competitive, Procurement Alternatives</p> <p>DCS has made no efforts to identify reasonable, competitive procurement alternatives. Rates for the services are pre-established by the Department and TnCare. In addition, Finance & Administration and the Office of the Comptroller recommended this non-competitive methodology.</p>	
<p>14. Justification – specifically explain why non-competitive negotiation is in the best interest of the state</p> <p>Based on federal, Brian A and other mandates DCS cannot risk the possible displacement of over 1,000 children through the utilization of a competitive procurement process. It is also not psychologically and emotionally in the best interest of children to be displaced from their current placements.</p> <p>It is in the best interest of the state to continue the non-competitive procurement of these services to maintain stability of each child's current placement, preserve the consistency of care and experience in delivering residential services, and avoid the mass transition of hundreds of children from one provider to another. Opening these services to a competitive process would seriously jeopardize the Department's ability to adequately meet the above-mentioned requirements and return children to their home and community expeditiously. Failure to meet the requirements set forth would lead to federal sanctions as well as findings of non-compliance with the Brian A Settlement Agreement.</p> <p>The Department firmly believes it is in the best interest of children to continue the contractual relationship with Omni Visions, Inc. in the provision of out-of-home residential treatment and services.</p>	

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Agency Head Signature and Date – <i>MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances</i>  	



CONTRACT

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

Begin Date	End Date	Agency Tracking #	Edison Record ID
07/01/2012	06/30/2013	35910-30044	30630

Contractor Legal Entity Name	Edison Vendor ID
Omni Visions, Inc.	80286

Service Caption (one line only)
Residential Treatment Services

Subrecipient or Vendor	CFDA #
<input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	93.658

Funding —

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2013	21,834,000.00	3,275,100.00	29,475,900.00		54,585,000.00
TOTAL:	21,834,000.00	3,275,100.00	29,475,900.00		54,585,000.00

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

Ownership/Control

<input type="checkbox"/> African American	<input type="checkbox"/> Asian	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Native American	<input type="checkbox"/> Female
<input type="checkbox"/> Person w/Disability	<input type="checkbox"/> Small Business	<input type="checkbox"/> Government	<input checked="" type="checkbox"/> NOT Minority/Disadvantaged	
<input type="checkbox"/> Other:				

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

<input type="checkbox"/> RFP	The procurement process was completed in accordance with the approved RFP document and associated regulations.
<input type="checkbox"/> Competitive Negotiation	The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.
<input type="checkbox"/> Alternative Competitive Method	The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.
<input checked="" type="checkbox"/> Non-Competitive Negotiation	The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.
<input type="checkbox"/> Other	The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."

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.

Ang Swob 5/31/12

OCR USE - FA

Speed Chart (optional)	Account Code (optional)

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF CHILDREN'S SERVICES
AND
OMNI VISIONS, INC**

This Contract, by and between the State of Tennessee, Department of Children's Services, hereinafter referred to as the "State" and Omni Visions, Inc., hereinafter referred to as the "Contractor," is for the provision of residential treatment services, as further defined in the "SCOPE OF SERVICES."

The Contractor is for-profit corporation.

Contractor Place of Incorporation or Organization: Tennessee

Contractor Edison Registration ID # 621456150

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Contractor shall provide residential treatment services as more fully described in the DCS Provider Policy Manual, which is incorporated herein by reference including any changes or additions that may subsequently be made thereto.
- A.3. The Contractor must maintain appropriate licensure required to provide the services covered by this contract. The Contractor must notify the DCS Contracts and Procurement Division immediately, in writing, of any change in licensure status.
- A.4. The DCS shall evaluate each contract annually to ensure accountability, cost-effectiveness of service provision, and achievement of positive outcomes for children and families as evidenced by both qualitative as well as quantitative performance measurement as defined by DCS.
- A.5. DCS shall evaluate the Contractor in the following areas as detailed in the DCS Provider Policy Manual including any changes or additions that may subsequently be made:
 - 1. Child Safety
 - 2. Movement
 - 3. Permanency/Successful Program Completion
 - 4. Family Involvement
 - 5. Reporting and Compliance
- A.6. The Contractor will work in compliance with the system DCS is developing for continuous quality improvement, which includes, but is not limited to, the Quality Service Review, the DCS Balanced Scorecard, and the ongoing monitoring and evaluation of performance.
- A.7. The Contractor must request a Child & Family Team Meeting (CFTM) from the DCS Home County Family Service Worker (FSW) prior to the move of a child. Notification of Emergency moves must be in accordance with the DCS Provider Policy Manual and reported the next business day with an immediate request for a CFTM.

A move is any change in placement (internal and external to the agency) location except for temporary breaks in service as further defined in the DCS Provider Policy Manual and incorporated herein by reference.
- A.8. The Contractor must report the movement of all children within 24-hour hours of the move occurrence in the DCS's system of record or any alternative method developed by the Department to report placement moves.
- A.9. If resource home services are provided as a part of this contract, the Contractor will place children only in resource homes that are in full compliance with the safety requirements detailed in the DCS and Provider Policy Manuals.

- A.10. The Contractor will incorporate and accept the Child & Adolescent Needs and Strengths (CANS) assessment analysis for establishing a level of care recommendation upon implementation by DCS.
- A.11. The Contractor shall utilize the Department's established system of record to document information pertaining to the child and family in accordance with the DCS and Provider Policy Manuals.
- A.12. The Contractor shall report all face-to-face (F2F) contact information on every child currently placed with the Contractor into the DCS's system of record as outlined in the DCS Provider Policy Manual. The F2F contact information must be submitted to DCS through the F2F web application and must include child specific identifying information related to the following:
 - a. The number of face-to-face contact between custodial child and siblings;
 - b. The number of face-to-face contacts with parent(s) or adults identified as potential permanency placement on permanency plan;
 - c. The number of children and families involved in service planning;
 - d. The number of face-to faces contacts between custodial child and Contractor Case Manager; and
 - e. The number of face-to face contacts between custodial child on a trial home visit and Contractor Case Manager.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning 07/01/2012, and ending on 06/30/2013. 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.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed fifty-four million, five hundred & eighty five thousand dollars (\$54,585,000.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor 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 (See Provider Policy Manual for detailed scope of services)	Amount (per compensable increment)
Foster Care	\$ 48.70 per child per day
Medically Fragile Foster Care	\$ 99.45 per child per day
Level 2 Continuum	\$ 96.00 per child per day
Level 3 Continuum Special Needs	\$ 200.00 per child per day

* NOTICE: The amount(s) per compensable increment detailed above shall be contingent upon the State's receipt of an invoice (as required in section C.5., below) for said service(s) within thirty (30) days after the end of the calendar month in which the service(s) were rendered. At the sole discretion of the State, the amount per compensable increment of any service for which the State receives an invoice later than prescribed herein shall be subject to a reduction in amount of up to 100%. In the case of an untimely invoice, before any payment will be considered by the State, the Contractor must submit a written request regarding the untimely invoice, which shall detail the reason the invoice is untimely as well as the Contractor's plan for submitting all future invoices no later than prescribed herein, and it must be signed by an individual empowered to bind the Contractor to this Contract.

- c. A "day" shall be defined as any period of time in the 24-hour period of a calendar day. The Contractor shall be paid the full rate per day per client placed with the Contractor, EXCEPT the Contractor shall NOT be paid any amount for the day that the client is removed from the placement with the Contractor.

Reinvestment Methodology. The State shall reinvest state dollar savings with the Contractor based on the achievement of outcomes. The percentage of state dollar savings to be reinvested with the Contractor and the Contractor paybacks for failure to achieve outcomes are defined in the following table:

YEAR TWO FORWARD NOTE: Negative percentages reflect Contractor Reinvestments of State Dollar Expenditure incurred by providers above baseline care days.		Contractor Reinvestment of State Dollar Expenditure	State Reinvestment of State Dollar Savings	
		Care Days Equal to or Greater than Baseline	Care Days Less than Baseline	Care Days Equal to or Less than Target
10	Exits to permanency less than baseline and re-entries greater than baseline	-100%	80%	90%
11	Exits to permanency less than baseline and re-entries less than baseline range and greater than targeted re-entries	-90%	90%	100%
12	Exits to permanency less than baseline and re-entries less than or equal to targeted re-entries	-85%	95%	105%
13	Exits to permanency greater than baseline and less than targeted exits to permanency and re-entries greater than baseline range	-90%	90%	100%
14	Exits to permanency greater than baseline and less than targeted exits to permanency and re-entries less than baseline range and greater than targeted re-entries	-80%	100%	110%
15	Exits to permanency greater than baseline and less than targeted exits to permanency and re-entries less than or equal to targeted re-entries	-75%	105%	115%
16	Exits to permanency greater than targeted exits to permanency and re-entries equal to or greater than baseline range	-90%	90%	100%
17	Exits to permanency equal to or greater than targeted exits to permanency and re-entries less than baseline range and greater than targeted re-entries	-75%	105%	115%
18	Exits to permanency greater than targeted exits to permanency and re-entries equal to or less than targeted re-entries	-70%	110%	120%

Performance will be evaluated semi-annually and compensation for reinvestment dollars will be paid to the Contractor annually. Contractor paybacks will be netted against payments.

All performance (Exits, Care Days and Re-entries) will continue to be monitored throughout the term of the contract. Performance expectations will continue to be based on historical performance of the original base line population.

Performance Based Reinvestment Definitions

In-Care Population - The In-Care population consists of all children and youth being served by the Contractor as of the first day (July 1st) of the initial fiscal year of operation under a performance-based contract. This is a fixed population and at such time as the final In-Care child or youth exits care, outcomes for this population are then concluded. Children who were receiving services in their home at the start of the initial fiscal year of operation under a performance-based contract are not included in the In-Care counts, nor in the performance targets.

Fourth Year In Care and Admit Population – Those youth *remaining* in a provider's care from their original in-care population as well as their first year admissions population, and any subsequent admission population entering its fourth fiscal year, will not be eligible for the banking of care days in prospective years beginning in the fourth year of a provider's participation under a performance-base contract.

Beginning in the fourth contract year, new baselines for this group will be set utilizing the expected performance for existing populations. Although these youth are not eligible for the banking of care days, providers **will** be able to generate re-investment funds as well as incur financial penalties relative to performance just as with any other population.

Baseline - The baseline expresses how the Contractor would be expected to perform (i.e., achieve safety and permanency for children) under a "business as usual" scenario. The baseline is created using historical TNKIDS data and reflects the traditional or normal pattern of out-of-home care utilization for a specific provider.

Baseline Admissions - The expected number of children admitted to the Contractor during the fiscal year, based on the historical number of annual admissions.

Baseline Care Days –The expected number of bed days a Contractor would be anticipated to use within one fiscal year, based on the number of children in the in care population, the number of admissions, and the average placement duration for the children in the in care and admission populations. The initial baseline care days will be based on the number of children in the in care population, the historical number of admissions and the historical average of care days. This baseline will be adjusted at the end of each fiscal year to reflect actual admissions and actual average care days.

Baseline Exits to Permanency – The number and percent of children, from the corresponding in care and admission populations, a Contractor would be expected to exit from out-of-home care, within one fiscal year, to permanency (as defined in this section).

Baseline Re-entries – The number and percent of children discharged to permanency who may be expected to return to care, given historical performance. For purposes of estimating the reentry to care, return to out-of-home care means any child who returns to out of home care from a permanent exit, whether the foster home is supervised by DCS, or a Contractor. For purposes of calculating the re-entry rate, the base includes children discharged to permanency from either the in care or admission population within the fiscal year, who returns to care with one year of their discharge to permanency. Reentries (as defined above) will continue to be tracked against the historical performance in the next fiscal year.

Baseline Re-entries Range – A plus or minus range built around the baseline reentry rate that captures variation in the reentry rate observed at the agency level. The range is intended to reflect the fact that factors beyond the control of an agency (e.g., sibling groups) may influence the reentry rate.

Refreshing Baselines – Initial baselines for performance are calculated utilizing a provider's last three (3) full fiscal year's worth of data regarding the outcomes of permanent exits, care days used and re-entry into care.

Beginning with the 2009-10 fiscal year, baselines for performance were "refreshed" and will be refreshed again every three (3) years hereafter in order to more accurately reflect the expectations attached to certain fixed populations. This refreshing consists of dropping the oldest year of the three (3) initial baseline performance years data from the calculation and adding the most recent full fiscal year of performance. The window for the baselines will remain an aggregate of three (3) full fiscal years but will be refreshed in this way every subsequent three (3) years. The next refreshing of baselines will be applicable to the 2012-13 fiscal year contracts.

This refreshing of baselines is only ever applicable to prospective populations and does not affect the treatment of prior existing in-care or admissions populations.

Targeted Care Days –The total number of out-of-home care days a Contractor is expected to provide given improvements in outcomes for children (i.e., safety and permanency). The difference between the target care days and the baseline care days, expressed as a percentage, is the performance improvement for purposes of calculating the reimbursement.

Targeted Exits to Permanency – The number and percent of children for whom a Contractor can be projected to achieve a permanent exit, given improvement in performance.

Targeted Re-entries – The number and percentage of returns to out of home care after a successful exit to permanency within one fiscal year.

Re-entry to Custody – Any child that has a permanent exit from care and returns to custody within one (1) year.

Exits to Permanency – All exits that are intended to provide the child with a stable, permanent family: reunification, guardianship and adoption.

Primary Treatment Center (PTC) & Enhanced Services – The approach for handling the fiscal calculation for these youth (at any provider offering PTC services or enhanced services) will be as follows:

Primary Treatment Centers: In their first (admission) year, the baselines and actuals are calculated using the current PTC rate. For those youth remaining with that provider into the next fiscal year (and for the original in-care population) the calculation will be made as follows:

- The calculation for actuals will use the rate associated with the contract type on which the youth was placed following their stay in the PTC; and,
- The baselines will be calculated using a method that applies a weighted distribution to the projected baseline population that reflects where PTC youth in the admission population were actually placed following the PTC stay.

Example: An admission cohort includes 25 Level II Continuum spells, 25 Level III Continuum spells and 50 PTC spells.

Upon completion of their PTC stay, 10 youth were placed in the provider's Level III Continuum and the remaining 40 went to their Level II Continuum. In this scenario the baselines will be calculated assuming 35% Level III Continuum and 65% Level II Continuum (this is done within strata).

Enhanced Services: Certain enhanced services have been designed with a time-limited stay in order to more effectively apply those services and to allow for more rapid movement of youth through the system.

Those youth leaving service from an enhanced contract and transferring to another provider will be dropped altogether from that provider's PBC outcomes. They will not, from a PBC standpoint, appear as ever having been served by the enhanced services provider. Youth

leaving service from an enhanced contract and being placed on another of the enhanced provider's contracts **will** be a part of that provider's PBC outcomes.

In their first (admission) year, the baselines and actuals are calculated using the current enhanced contract rate. For those remaining with that provider into the next fiscal year (and for the original in-care population) the calculation will be made utilizing the rate associated with the contract type on which the youth was placed following their stay in the enhanced program.

- 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 present said invoices no more often than monthly, with all necessary supporting documentation, to:

Department of Children's Services
7th Floor Cordell Hull Building
436 6th Avenue North
Nashville, TN 37243-1290

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice Number (assigned by the Contractor)
 - (2) Invoice Date
 - (3) Contract Number (assigned by the State)
 - (4) Customer Account Name: Department of Children's Services, Child Placement and Private Providers Division
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
 - (6) Contractor Name
 - (7) Contractor Federal Employer Identification, Social Security, or Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
 - (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)
 - (9) Contractor Remittance Address
 - (10) Description of Delivered Service
 - (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
 - v. Total Amount Due for the invoice period
- b. The Contractor understands and agrees that an invoice 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) only be submitted for completed service and shall not include any charge for future work;
 - (3) not include sales tax or shipping charges; and
 - (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.

- C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment 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. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.
- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, 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).
 - b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The 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 thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to 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, each 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.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

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

D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, 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 A, 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 *Tennessee Code Annotated*, Section 12-4-124, *et seq.* 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.
 - 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:

Susan Mitchell, Executive Director of Network Development
Tennessee Children's Department of Children's Services
8th Floor, Cordell Hull Building
436 6th Avenue North
Nashville, TN 37243
Susan.Mitchell@tn.gov
Telephone # 615-741-0461
FAX # 615-532-5723

The Contractor:

Trisha Galbreath, Comptroller
Omni Visions, Inc.
301 S Perimeter Park Drive, Suite 210
Nashville, TN 37211
Tgalbreath@omnivisions.com
Telephone # 800-851-6108
FAX # 615-726-3632

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, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.
- a. The Contractor shall maintain, at minimum, the following insurance coverage:
- (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
 - (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
 - (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.
 - (4) Professional Malpractice Liability with a limit of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.
- b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.
- E.6. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information

in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

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

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

- E.7. HIPAA and HITECH Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH) under the American Recovery and Reinvestment Act of 2009 (ARRA) and their accompanying regulations.
- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and HITECH and their accompanying regulations, and shall comply with all applicable HIPAA and HITECH requirements in the course of this Contract including but not limited to the following:
 1. Compliance with the Privacy Rule, Security Rule, Notification Rule;
 2. The creation of and adherence to sufficient Privacy and Security Safeguards and Policies;
 3. Timely Reporting of Violations in the Access, Use and Disclosure of protected health information (PHI); and
 4. Timely Reporting of Privacy and/or Security Incidents.
- Failure to comply may result in Contractor's payment of actual damages that the State incurs as a result of the breach.
- b. Contractor warrants that it shall cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and HITECH and their accompanying regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA and HITECH.
 - c. The State and the Contractor shall sign documents, including but not limited to business associate agreements, as required by HIPAA and HITECH and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA and HITECH. 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.
 - d. As a party to this Agreement, the CONTRACTOR hereby acknowledges its designation as a covered entity and/or business associate under the HIPAA regulations and agrees to comply with all applicable HIPAA and HITECH (hereinafter "HIPAA/HITECH") regulations.
 - e. In accordance with HIPAA/HITECH regulations, the CONTRACTOR shall, at a minimum:

1. Comply with requirements of the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH), including, but not limited to, the transactions and code sets, privacy, security, and identifier regulations, by their designated compliance dates. Compliance includes meeting all required transaction formats and code sets with the specified data sharing agreements required under the regulations;
2. Transmit/receive from/to its providers, subcontractors, clearinghouses and the State all transactions and code sets required by the HIPAA/HITECH regulations in the appropriate standard formats, utilizing appropriate and adequate safeguards, as specified under the law and as directed by the State so long as the State's direction does not conflict with the law;
3. Agree that if it is not in compliance with all applicable standards defined within the transactions and code sets, privacy, security and all subsequent HIPAA/HITECH standards, that it will be in breach of this Agreement and will then take all reasonable steps to cure the breach or end the violation as applicable. Since inability to meet the transactions and code sets requirements, as well as the privacy and security requirements can bring basic business practices between the State and the CONTRACTOR and between the CONTRACTOR and its providers and/or subcontractors to a halt, if for any reason the CONTRACTOR cannot meet the requirements of this Section, the State may terminate this Agreement in accordance with the Business Associate Agreement ancillary to this Agreement;
4. Ensure that Protected Health Information (PHI) exchanged between the CONTRACTOR and the State is used only for the purposes of treatment, payment, or health care operations and health oversight and its related functions. All PHI not transmitted for these purposes or for purposes allowed under the federal HIPAA/HITECH regulations shall be de-identified to secure and protect the individual enrollee's PHI;
5. Report to the State's Privacy Office immediately upon becoming aware of any use or disclosure of PHI in violation of this Agreement by the CONTRACTOR, its officers, directors, employees, subcontractors or agents or by a third party to which the CONTRACTOR disclosed PHI;
6. Specify in its agreements with any agent or subcontractor that will have access to PHI that such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the CONTRACTOR pursuant to this Section;
7. Make available to TENNCARE enrollees the right to amend their PHI in accordance with the federal HIPAA regulations. The CONTRACTOR shall also send information to enrollees educating them of their rights and necessary steps in this regard;
8. Make an enrollee's PHI accessible to the State immediately upon request by the State;
9. Make its internal policies and procedures, records and other documentation related to the use and disclosure of PHI available to the U.S. Secretary of Health and Human Services for the purposes of determining compliance with the HIPAA/HITECH regulations upon request;
10. Create and adopt policies and procedures to periodically audit adherence to all HIPAA/HITECH regulations, and for which CONTRACTOR acknowledges and promises to perform, including but not limited to, the following obligations and actions:
11. Agree to ensure that any agent, including a subcontractor, to whom it provides PHI that was created, received, maintained, or transmitted on behalf of the State agrees to use reasonable and appropriate safeguards to protect the PHI.

12. If feasible, return or destroy all PHI, in whatever form or medium (including any electronic medium) and all copies of any data or compilations derived from and allowing identification of any individual who is a subject of that PHI upon termination, cancellation, expiration or other conclusion of the Agreement, and in accordance with this Section of this Agreement. The CONTRACTOR shall complete such return or destruction as promptly as possible, but not later than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement. The CONTRACTOR shall identify any PHI that cannot feasibly be returned or destroyed. Within such thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement, the CONTRACTOR shall: (1) certify on oath in writing that such return or destruction has been completed; (2) identify any PHI which cannot feasibly be returned or destroyed; and (3) certify that it will only use or disclose such PHI for those purposes that make its return or destruction infeasible;
13. Implement all appropriate administrative, physical and technical safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Agreement and, including, but not limited to, privacy, security and confidentiality requirements in 45 CFR Parts 160 and 164;
14. Set up appropriate mechanisms to limit use or disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use or disclosure;
15. Create and implement policies and procedures to address present and future HIPAA/HITECH regulatory requirements as needed, including, but not limited to: use and disclosure of data; de-identification of data; minimum necessary access; accounting of disclosures; enrollee's right to amend, access, request restrictions; notice of privacy practices and right to file a complaint;
16. Provide an appropriate level of training to its staff and employees regarding HIPAA/HITECH-related policies, procedures, enrollee rights and penalties prior to the HIPAA/HITECH implementation deadlines and at appropriate intervals thereafter;
17. Track training of CONTRACTOR staff and employees and maintain signed acknowledgements by staff and employees of the CONTRACTOR's HIPAA/HITECH policies;
18. Be allowed to use and receive information from the State where necessary for the management and administration of this Agreement and to carry out business operations where permitted under the regulations;
19. Be permitted to use and disclose PHI for the CONTRACTOR's own legal responsibilities;
20. Adopt the appropriate procedures and access safeguards to restrict and regulate access to and use by CONTRACTOR employees and other persons performing work for the CONTRACTOR to have only minimum necessary access to PHI and personally identifiable data within their organization;
21. Continue to protect and secure PHI AND personally identifiable information relating to enrollees who are deceased;
22. Be responsible for informing its enrollees of their privacy rights in the manner specified under the regulations;
23. Make available PHI in accordance with 45 CFR 164.524;
24. Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR 164.526; and

25. Obtain a third (3rd) party certification of their HIPAA transaction compliance ninety (90) calendar days before the start date of operations.
 26. The CONTRACTOR shall track all security incidents as defined by HIPAA/HITECH, and, as required by the HIPAA/HITECH Reports. The CONTRACTOR shall periodically report in summary fashion such security incidents.
- f. The State and the CONTRACTOR are "information holders" as defined in TCA 47-18-2107. In the event of a breach of the security of CONTRACTOR's information system, as defined by TCA 47-18-2107, the CONTRACTOR shall indemnify and hold the State harmless for expenses and/or damages related to the breach. Such obligations shall include, but not be limited to, mailing notifications to affected enrollees. Substitute notice to written notice, as defined by TCA 47-18-2107(e)(2)and(3), shall only be permitted with the State's express written approval. The CONTRACTOR shall notify the State Privacy Office immediately upon becoming aware of any security incident that would constitute a "breach of the security of the system" as defined in TCA 47-18-2107.
 - g. NOTIFICATION OF BREACH & NOTIFICATION OF PROVISIONAL BREACH. The CONTRACTOR shall notify the State's Privacy Office immediately upon becoming aware of any incident, either confirmed or provisional, that represents or may represent unauthorized access, use or disclosure of encrypted or unencrypted computerized data that materially compromises the security, confidentiality, or integrity of enrollee PHI maintained or held by the CONTRACTOR, including any unauthorized acquisition of enrollee PHI by an employee or otherwise authorized user of the CONTRACTOR's system. This includes, but is not limited to, loss or suspected loss of remote computing or telework devices such as laptops, PDAs, Blackberrys or other Smartphones, USB drives, thumb drives, flash drives, CDs, and/or disks.
 - h. SOCIAL SECURITY ADMINISTRATION (SSA) REQUIRED PROVISIONS FOR DATA SECURITY:
 1. The CONTRACTOR shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. § 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. § 3541, *et seq.*), and related National Institute of Standards and Technology guidelines. In addition, the CONTRACTOR shall have in place administrative, physical, and technical safeguards for data.
 2. The CONTRACTOR shall not duplicate in a separate file or disseminate, without prior written permission from the State the data governed by the Contract for any purpose other than that set forth in this Contract for the administration of the TennCare program. Should the CONTRACTOR propose a redisclosure of said data, the CONTRACTOR must specify in writing to the State the data the CONTRACTOR proposes to redisclose, to whom, and the reasons that justify the redisclosure. The State will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the TennCare program.
 3. The CONTRACTOR agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Contract.
 4. The CONTRACTOR shall provide a current list of the employees of such CONTRACTOR with access to SSA data and provide such lists to the State.
 5. The CONTRACTOR shall restrict access to the data obtained from the State to only those authorized employees who need such data to perform their official duties in connection with purposes identified in this Contract. The CONTRACTOR shall not further duplicate, disseminate, or disclose such data without obtaining the State's prior written approval.

6. The CONTRACTOR shall ensure that its employees:
 - i. Properly safeguard PHI/PII furnished by the State under this Contract from loss, theft or inadvertent disclosure;
 - ii. Understand that they are responsible for safeguarding this information at all times, regardless of whether or not the CONTRACTOR employee is at his or her regular duty station;
 - iii. Ensure that laptops and other electronic devices/ media containing PHI/PII are encrypted and/or password protected;
 - iv. Send emails containing PHI/PII only if encrypted or if to and from addresses that are secure; and
 - v. Limit disclosure of the information and details relating to a PHI/PII loss only to those with a need to know.
 - vi. CONTRACTOR employees who access, use, or disclose State SSA-supplied data in a manner or purpose not authorized by this Contract may be subject to civil and criminal sanctions pursuant to applicable federal statutes.
 - vii. Loss or Suspected Loss of Data – If an employee of the CONTRACTOR becomes aware of suspected or actual loss of PHI/PII, he or she must immediately contact the State's Privacy Office **within one (1) hour** to report the actual or suspected loss. The CONTRACTOR will use the Loss Worksheet located at http://www.tn.gov/tennicare/forms/phi_piiworksheet.pdf to quickly gather and organize information about the incident. The CONTRACTOR must provide h the State's Privacy Office with timely updates as any additional information about the loss of PHI/PII becomes available.
 - viii. If the CONTRACTOR experiences a loss or breach of said data, The State's Privacy Office, in its sole discretion, will determine whether or not notice to individuals whose data has been lost or breached shall be provided and the CONTRACTOR shall bear any costs associated with the notice or any mitigation.
7. The State may immediately and unilaterally suspend the data flow under this Contract, or terminate this Contract, if the State, determines that the CONTRACTOR has: (1) made an unauthorized use or disclosure of State SSA-supplied data; or (2) violated or failed to follow the terms and conditions of this Contract.
8. Legal Authority - Federal laws and regulations giving SSA the authority to disclose data to the State and the State's authority to collect, maintain, use and share data with CONTRACTOR is protected under federal law for specified purposes:
 - Sections 1137, 453, and 1106(b) of the Social Security Act (the Act) (42 U.S.C. §§ 1320b-7, 653and 1306(b)) (income and eligibility verification data);
 - 26 U.S.C. § 6103(l)(7) and (8) (tax return. data);
 - Section 202(x)(3)(B)(iv) of the Act (42 U.S.C. § 401(x)(3)(B)(iv))(prisoner data);
 - Section 205(r)(3) of the Act (42, U.S.C. § 405(r)(3)) and Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. 108-458, 7213(a)(2) (death data);

- Sections 402, 412, 421, and 435 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104-193) (8 U.S.C. §§ 1612, 1622, 1631, and 1645) (August 22, 1996) (quarters of coverage data);
- Children's Health Insurance Program Reauthorization Act of 2009, (Pub. L. 111-3) (February 4, 2009) (citizenship data); and
- Routine use exception to the Privacy Act, 5 U.S.C. § 552a(b)(3)(data necessary to administer other programs compatible with SSA programs).
- This Section further carries out Section 1106(a) of the Act (42 U.S.C. § 1306), the regulation promulgated pursuant to that section (20 C.F.R. Part 401), the Privacy of 1974 (5 U.S.C. § 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget ("OMB") guidelines, the Federal Information Security Management Act of 2002 ("FISMA") (44 U.S.C. § 3541 *et seq.*), and related National Institute of Standards and Technology ("NIST") guidelines, which provide the requirements that the CONTRACTOR must follow with regard to use, treatment, and safeguarding data.

9. Definitions:

"SSA-supplied data" – information, such as an individual's social security number, supplied by the Social Security Administration to the State to determine entitlement or eligibility for federally-funded programs (Computer Matching and Privacy Protection Agreement, "CMPPA" between SSA and F&A; Individual Entity Agreement, "IEA" between SSA and the State).

"Protected Health Information/Personally Identifiable Information" (PHI/PII) (45 C.F.R. § 160.103; OMB Circular M-06-19 located at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2006/m06-19.pdf>) – Protected health information means individually identifiable health information that is: (i) Transmitted by electronic media; (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.

"Individually Identifiable Health Information" – information that is a subset of health information, including demographic information collected from an individual, and: (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

"Personally Identifiable Information" (PHI) – any information about an individual maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as their name, Social Security Number, date and place of birth, mother's maiden name, biometric records, including any other personal information which can be linked to an individual.

E.8. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.

- a. this Contract document with any attachments or exhibits (excluding the items listed at subsections b. through d., below);
- b. the Brian A. Modified Settlement Agreement;
- c. the Department of Children's Services Policy;
- d. The document entitled "DCS Provider Policy Manual" including any changes or additions that may subsequently be made, herein attached by reference.

E.9. 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.10. Public Accountability. If the Contractor is subject to Tennessee Code Annotated, Title 8, Chapter 4, Part 4 or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor shall display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this Contract, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

E.11. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

E.12. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

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

contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

- E.13. 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.14. 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 B 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.15. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, 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.16. Unencumbered Personnel. All persons assigned by the Contractor to perform services for the State under this Contract, whether they are employees, agents, subcontractors, or principals of the Contractor, shall not be subject to any employment contract or restrictive covenant provisions which would preclude those persons from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State. If the Contractor provides the State with the services of any person subject to a restrictive covenant or contractual provision in violation of this provision, any such restrictive covenant or contractual provision will be void and unenforceable, and the Contractor will pay the State and any person involved all of its expenses, including attorneys fees, caused by attempts to enforce such provisions.
- E.17. Occupancy. The Contractor acknowledges that this is a fee for service Contract and that neither the State nor the Contractor can guarantee full occupancy.
- E.18. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

- a. Reporting of Total Compensation of the Contractor's Executives.
- (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
- i. 80 percent or more of the Contractor's annual gross revenues from Federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

Executive means officers, managing partners, or any other employees in management positions.

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- i. Salary and bonus.
- ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

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

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

- E.19. First Amendment. The Contractor does not waive rights under the First Amendment to the United States Constitution.
- E.20. Drug Free Workplace. The Contractor shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F.
- E.21. Financial Information Required. The State must comply with the Office of Management and Budget Circular (OMB) A-87 to claim reimbursement for a portion of the cost of payments made under this contract from the federal government under Title IV-E and/or Title XIX. Information will

be periodically required to be submitted by the Contractor to enable DCS to comply with OMB A-87 and facilitate submission of claims to the federal government in accordance with DCS' federally approved cost allocation plan. Contractor will be notified at the time documentation is requested the date the submission is required. The Contractor shall complete a cost report using the best information available in accordance with the cost reporting instructions. The documentation to be submitted by the Contractor will include but not limited to:

- a. Annual Contracted Contractor Cost Report completing the forms and following the directions provided by the state;
- b. Program description and two weekly schedules;
- c. Most recently audited financial statement with audit opinion for the audited period;
- d. Reconciliation of the Cost Report to the independent audit; and
- e. Letter under separate cover from independent auditor on whether the cost allocation method used by the Contractor in the Cost Report appears to be reasonable.

Failure to submit the above-stated documentation on the specified date shall be deemed a breach of the Contract and the State shall have a right to terminate the contract for cause under Section D.4. of the Contract, or to consider such failure a Partial Default.

E.22. Supplemental Conflict of Interest. The Contractor shall not have any owner, member of the board of directors, or member of the board of trustees of that Contract Contractor who also holds any other position which may influence the placements provided to children in the plaintiff class of Brian A. v. Phil Bredesen. Such positions include, but are not limited to juvenile court judges, referees or other court officers involved in the individual cases of children in foster care.

E.23. Title VI of the Civil Rights Act of 1964. The Contractor shall develop and deliver to DCS on or before July 31st of each fiscal year an implementation plan that describes the Contractor's long-range goals and objectives that will guide the Contractor's efforts to ensure compliance with Title VI of the Civil Rights Act of 1964 pursuant to the guidelines established by the Tennessee Title VI Compliance Commission. Title VI plans must be submitted to the division below on or before the July 31st of each year:

Director of the Division of Diversity Initiatives
Tennessee Department of Children's Services
Division for Diversity Initiatives
7th Floor, Cordell Hull Bldg.
436 6th Avenue North
Nashville, TN 37243

E.24. Requirements of Bureau of TennCare.

- a. The Contractor, including but not limited to, its employees, agents, subcontractors, or anyone acting for or on behalf of the Contractor shall comply with the requirements as stipulated in the Interagency Contract among the Department of Children's Services (DCS), the Department of Health, Bureau of Health Services Administration (HSA), and the Department of Finance and Administration, Bureau of TennCare (TennCare) as the procuring State agency and as required by Code of Federal Regulations, Title 42, Part 455.100, *et seq.*: The Contractor shall submit an annual *Ownership and Financial Disclosure Form as shown in Attachment C hereto* (<http://www.tn.gov/tenncare/forms/disclosureownership.pdf>) to DCS. DCS shall collect and store its Contractor's ownership and disclosure forms and furnish them to TennCare upon request.
- b. Contractor Requirements: Participation in the TennCare program shall be limited to Contractors who:

1. Agree that the Contractor may not refuse to provide covered medically necessary or covered preventive services to a child under the age of twenty-one (21) or a TennCare Medicaid patient under this Contract for non-medical reasons. However, the Contractor shall not be required to accept or continue treatment of a patient with whom the Contractor feels he/she cannot establish and/or maintain a professional relationship.
2. Agree that emergency services be rendered without the requirement of prior authorization of any kind.
3. **Records Retention-** A TennCare record is any record, in whatever form, including, but not limited to medical records, billing records, financial records including 1099 forms, and/or any records related to services rendered, quality, appropriateness and timeliness of services and/or any records relevant to an administrative, civil and/or criminal investigation and/or prosecution. The CONTRACTOR as well as its subcontractor and providers shall maintain TennCare records necessary to demonstrate that covered services were provided in compliance with state and federal requirements. An adequate record system shall be maintained and that all records be maintained for five (5) years from the close of the provider agreement (behavioral health records shall be maintained at the provider level for ten (10) years after the termination of the provider agreement pursuant to TCA 33-3-101) or retained until all evaluations, audits, reviews or investigations or prosecutions are completed for recording enrollee services, servicing providers, charges, dates and all other commonly accepted information elements for services rendered to enrollees pursuant to the provider agreement (including but not limited to such records as are necessary for the evaluation of the quality, appropriateness, and timeliness of services performed under the provider agreement and administrative, civil or criminal investigations and prosecutions)
4. **TennCare Records-Access to :** TENNCARE, DHHS OIG, Office of the Comptroller of the Treasury, OIG, TBI MFCU, DOJ and their authorized agents, as well as any authorized state or federal agency or entity shall have the right to access through inspection, evaluation, review or request, whether announced or unannounced, or other means, any TennCare records pertinent to this Contract including, but not limited to medical records, billing records, financial records including 1099 forms, and/or any records related to services rendered, quality, appropriateness and timeliness of services and/or any records relevant to an administrative, civil and/or criminal investigation and/or prosecution. Such evaluation, inspection, review or request, and when performed or requested, shall be performed with the immediate cooperation of the provider, during normal business hours, except under special circumstances when after hour admission shall be allowed. Special circumstances shall be determined by the requesting agency. Upon request, the provider shall assist in such reviews including the provision of complete copies of medical records at no cost to the requesting agency. Contractor acknowledges that HIPAA does not bar disclosure of protected health information (PHI) to health oversight agencies, including, but not limited to TennCare, OIG, TBI MFCU, DHHS OIG and DOJ and their authorized agents. Any authorized state or federal agency or entity, including, but not limited to TENNCARE, OIG, TBI MFCU, DHHS OIG, DOJ, Office of the Comptroller of the Treasury, may use these records and information for medical audit, medical review, utilization review and administrative, civil or criminal investigations and prosecutions.
5. Agree that an adequate records system be maintained at the site where medical services are rendered. and that enrollees aged fourteen (14) and over and/or an enrollee's authorized representatives shall be given access to the enrollees' medical records to the extent and in the manner provided by T.C.A. Sections 63-2-101 and 63-2-102, and, subject to reasonable charges, be given copies thereof upon request.
6. Accept monitoring, whether announced or unannounced, of services rendered to enrollees sponsored by the Contractor.

7. Whether announced or unannounced, participate and cooperate in any internal and external Quality Management/Quality Improvement, utilization review, peer review and appeal procedures established by DCS and/or TennCare.
8. Initiate corrective action where necessary to improve quality of care, in accordance with that level of medical care which is recognized as acceptable professional practice in the respective community in which the Contractor practices and/or the standards established by TennCare.
9. Provide for submission of all reports and clinical information required by DCS;
10. Cooperate with all appropriate state and federal Agencies, including TBI MFCU and/or TN OIG, in investigating fraud and abuse. In addition, the Contractor shall fully comply with the provisions of T.C.A. Sections 71-5-2601 and 71-5-2603 in performance of its' obligations under this Contract, including:
 - (a) Fraud and abuse in the administration of the program. Suspected fraud and abuse in the administration of the program shall be reported to TBI MFCU and/or TN OIG, as well as to TennCare office of Program Integrity..
 - (b) Contractor fraud and abuse. All confirmed or suspected contractor fraud and abuse shall immediately be reported to TBI MFCU as well as to TennCare office of Program Integrity.
 - (c) Enrollee fraud and abuse. All confirmed or suspected enrollee fraud or abuse shall be reported immediately to TN OIG.
11. Secure all necessary liability and malpractice insurance coverage as is necessary to adequately protect the enrollees and DCS under this Contract. The Contractor shall provide such insurance coverage at all times during the Contract and upon execution of the Contractor Contract furnish DCS with written verification of the existence of such coverage.
12. The Contractor acknowledges that this Contract incorporates by reference all applicable federal and state laws, TennCare rules and regulations, policies or court orders, and revisions of such laws or regulations, policies and orders shall automatically be incorporated into the Contract, as they become effective or amended. In the event that changes in the Contract are needed as a result of revisions and applicable federal or state law materially affecting the position of either party, DCS and Contractor agree to negotiate such further amendments as may be necessary to correct any inequities.
13. The Contractor recognizes that in the event of termination of the Contract between DCS and TennCare for any reason, the Contractor shall immediately make available, to TennCare, or its designated representative, in a usable form, any or all TennCare Related Documents, whether medical or financial, related to the Contractor's activities undertaken pursuant to the DCS/Contractor Contract. The provision of such records shall be at no expense to TennCare.
14. The Contractor warrants that no part of the total Contract amount provided herein shall be paid directly, indirectly or through a parent organization, subsidiary or an affiliate organization to any state or federal officer or employee of the State of Tennessee or any immediate family member of a state or federal officer or employee of the State of Tennessee as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract unless disclosed to the Commissioner, Tennessee Department of Finance and Administration. For purposes of Section E.23. of this Contract, "immediate family member" shall mean a spouse or minor child(ren) living in the household.

Quarterly, by January 30, April 30, July 30, and October 30 each year, or at other times or intervals as designated by the Director of the Bureau of TennCare and communicated, in writing, to the Contractor by DCS, disclosure shall be made by the Contractor to DCS in writing and DCS shall forward the disclosure to the Director of the Bureau of TennCare, Department of Finance and Administration. The disclosure shall include, but not be limited to, the following:

- (a) A list of any state or federal officer or employee of the State of Tennessee as well as any immediate family member of a state or federal officer or employee of the State of Tennessee who receives wages or compensation from the Contractor; and
- (b) A statement of the reason or purpose for the wages or compensation.

The disclosures shall be made by the Contractor and reviewed by TennCare in accordance with Standard Operating Procedures and the disclosures shall be distributed to, amongst other persons, entities and organizations, the Commissioner, Tennessee Department of Finance and Administration, the Tennessee Ethics Commission, the TennCare Oversight Committee and the Fiscal Review Committee.

This Contract may be terminated by DCS and/or the Contractor may be subject to sanctions under this Contract if it is determined that the Contractor, its agents or employees offered or gave gratuities of any kind to any state or federal officials or employees of the State of Tennessee or any immediate family member of a state or federal officer or employee of the State of Tennessee if the offering or giving of said gratuity is in contravention or violation of state or federal law. It is understood by and between the parties that the failure to disclose information as required under Section E.23. of this Contract may result in termination of this Contract and the Contractor may be subject to sanctions in accordance with the provisions of this Contract. The Contractor certifies that no member of or delegate of Congress, the United States General Accounting Office, DHHS, Centers for Medicare and Medicaid Services (CMS), or any other federal agency has or will benefit financially or materially from this Contract.

- 15. Accept general and targeted education regarding emergency appeals, including when an emergency appeal is appropriate, and procedures for providing written certification thereof, and comply with the appeal process, including but not limited to, assisting an enrollee by providing appeal forms and contact information including the appropriate address for submitting appeals for state level review.
- 16. Display notices of the enrollee's right to appeal adverse action affecting services in public areas of their facility(ies) in accordance with TennCare rules and regulations, subsequent amendments, or any and all court orders. DCS shall ensure that Contractors have correct and adequate supply of public notices. DCS shall ensure that the Contractor will comply with the appeal process, including but not limited to the following:
 - (a) assisting an enrollee by providing appeal forms and contact information including the appropriate address for submitting appeals for state level review; and
 - (b) require, in advance, that the Contractor seek prior authorization, when s/he feels s/he cannot order a drug on the TennCare Preferred Drug List (PDL) as well as taking the initiative to seek prior authorization when contacted by an enrollee or pharmacy regarding denial of a pharmacy service due to system edits (i.e., therapeutic duplication, etc.)
- 17. Acknowledge that the Contractor has been informed of the package of benefits that Early and Periodic Screening, Diagnosis and Treatment (EPSDT TENNderCare) offers as set out in Section 2-3.u of the TennCare MCO Contractor Risk Agreement (CRA) and which

requires Contractors to make treatment decisions based upon children's individual medical and behavioral health needs. The Contractor further acknowledges that a copy of Section 2-3.u can be accessed on the TennCare web site shall be furnished to the Contractor upon request. The TennCare Web site is found at: tn.gov/tenncare/promcos.html.

18. Agree not to encourage or suggest, in writing or verbally, that TennCare children be placed into state custody in order to receive medical or behavioral services covered by TennCare.
19. Agree to follow DCS and TennCare procedures 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.
20. Agree that if any requirement in the Contractor's Contract with DCS is determined by TennCare to conflict with the Contract between TennCare and DCS, such requirement shall be null and void and all other provisions shall remain in full force and effect
21. Certify by signing this Contract, that the Contractor has not been excluded from participation in the Medicare and/or Medicaid programs pursuant to Sections 1128 or 1156 of the Social Security Act or who are otherwise not in good standing with the TennCare program.
22. Agree to provide hours of operation that are no less than the hours of operation offered to commercial enrollees.
23. Agree that the Contractor shall not enter into any subsequent agreements or subcontracts for any of the work contemplated under this Contract without approval of DCS.

E.25. Supplemental Subcontracting. In accordance with the Brian A. Settlement Agreement (specifically, the Racial Disparities Study conducted by Dr. Ruth McRoy) the Department is actively working towards decreasing the racial disparity between the service providers and the target service populations. To help correct this disparity, DCS strongly recommends, in situations where subcontracts are necessary, that the Contractor subcontract for services with minority owned or operated Contractor that can assist the Contractor in meeting the needs of the children and families that are served. DCS requires that the Contractor join the Department's commitment to achieving diversity and in developing programs that reflect the diversity of the population that we serve.

E.26. Monitoring Sub-Contractors. The Contractor shall develop written procedures for monitoring all of their DCS approved sub-contractors. The procedures must clearly outline the process for assuring that all sub-contractors are in compliance with the DCS and Provider Policy Manuals and the Sub-Contracting guidelines detailed at the following web site: http://www.state.tn.us/youth/providers/prov_policies.htm.

The Contractor shall have an established quality assurance/quality improvement plan for all sub-contractors.

The Contractor shall also maintain an internal quality improvement process that assesses the overall quality and performance of its sub-contractors.

E.27. Working Capital. The Contractor must have a minimum of sixty (60) days working capital in the event payment to the Contractor is interrupted for reasons beyond the Contractor's control or in an emergency, for continuity of operations. Working capital must be documented by a review of their balance sheet and income statement. Working capital is defined as current assets minus current liabilities. Current assets may include marketable securities as long as they have not been legally pledged against a long term equity interest. Credit lines do not count as working capital, as financial institutions have no obligation to honor a credit line upon request.

Working capital requirements must be met at time of initial contracting and must be maintained during subsequent contracting periods. In the event working capital declines below requirement in second or subsequent contracting years, the Contractor shall be placed on probation and the contract may become subject to cancellation at the discretion of the Department.

- E.28. Financial Statements. The Contractor must submit independently audited financial statements containing an auditor's report reflecting the auditor's opinion that the statements are presented fairly and found to be in conformity with generally accepted accounting principles. The independent audit must have been performed by a certified public accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA). The financial statements must be complete, including all statements and notes to the statements as contained within the audit report. The financial statements and audit report shall be submitted within nine months of the provider's reporting period.
- The financial statements must represent the contracting entity. Where the financial statements are for a parent company of the entity providing the service, the contract must be in the name of the parent company and signed by an authorized representative of the parent company. The entity providing the service may be identified within the contract as the service provider, however financial responsibility will be that of the parent company.
- E.29. Contractor Gatekeeper Contact. The Contractor shall provide information to the Child Placement & Private Provider's Division (CPPP) relative to the Contractor's gatekeeper or representative empowered to make placement decisions on behalf of the Contractor that would allow access 24 hours a day seven days a week to DCS. The information to be provided are as follows: gatekeeper/representative name(s); title; direct telephone number(s), cell phone number and/or pager number(s).
- E.30. Performance Standards. By executing of this contract the Contractor hereby acknowledges and agrees that its performance under this contract must meet the standards set forth in Section A of this contract, the DCS Provider Policy Manual (PPM), DCS Policy, and the Brian A. Settlement Agreement, and will be bound by the conditions set forth in this contract. If the Contractor fails to meet these standards, DCS, at its exclusive option, may allow up to six months for the provider to achieve compliance with the standards. If performance deficiencies are not resolved to the satisfaction of DCS within the prescribed time, and if no extenuating circumstances can be documented by the Contractor to DCS' satisfaction, DCS may cancel the contract with the Contractor. The determination of the extenuating or mitigating circumstances is the exclusive determination of DCS.
- E.31. Notification of Closure. The Contractor shall notify DCS of the closure of their agency or facility no less than thirty (30) days prior to the actual date of closure. Failure to provide DCS thirty (30) days written notice of a Contractor's intent to close its operations or any part of their operation shall be considered a violation of the terms of this contract and shall be subject to a payment recovery recommendation in the amount of five hundred dollars (\$500) per child for each day of violation of the thirty (30) day notice.
- E.32. Closure Transition. In the event that this contract is terminated the Contractor shall work in conjunction with DCS to transition out of the contract within thirty (30) days from the date of notification. This time period will allow the Contractor and DCS sufficient time to reconcile records, transfer case files and transition out of its contracts with DCS.
- E.33. State Ownership of Case Files. The State shall have all ownership right, title, and interest, in all case files created, designed, developed, derived, documented, installed, or maintained on behalf of DCS under this Contract. DCS shall have unlimited rights to all said case files. The Contractor shall furnish such information and data upon request of the DCS, in accordance with the Contract and applicable State law.
- E.34. Permanent Education Records. The Contractor shall maintain educational records permanently. These records are to be cut off at discharge or graduation. In the event that a DCS Contractor's

agency school ceases operation, or DCS no longer contracts with the Contractor, the permanent educational records for students who have been in state custody shall be forwarded to DCS by the Contractor. Both paper and electronic media shall be included. Records include but are not limited to: institution academic transcripts, grade reports, records of grade changes, copies of GED Certificates or state issued diplomas/certificates of any kind, standardized examination reports, birth records, grade point average (GPA), class rank, letters of recommendation and related documentation and correspondence. Records from closed agency schools should be forwarded to the DCS Records Management Division at least 5 business days prior to closure.

E.35. Safety Documentation Non-Compliance. DCS reserves the right to recoup costs from Contractors for failure to deliver services or components of services in accordance with this contract and the attached DCS and Provider Policy manuals. The Contractor shall be notified by letter and/or e-mail of non-compliance and the applicable recoupment of costs. The Contractor shall be monitored for compliance and possible penalties based on non-compliance as further detailed in the DCS and Provider Policy Manuals.

E.36. Mergers, Dissolutions, Partnerships & Joint Ventures. As would be the case with any agency dissolution, merger, or acquisition, the agency and the DCS have financial responsibilities requiring resolution.

In the event an agency is dissolved, the DCS maintains rights to assets (representing accounts payable/reinvestment due to DCS) as may be distributed voluntarily or by court action. Additionally, DCS acknowledges its responsibility for its liabilities (representing accounts payable/reinvestment due to AGENCY).

In the event an agency is merged or acquired by another agency/entity then the due to/from financial responsibilities shall be commensurate with the Articles to the Merger or Acquisition.

IN WITNESS WHEREOF,

OMNI VISIONS, INC.:

CONTRACTOR SIGNATURE

DATE

DEPARTMENT OF CHILDREN'S SERVICES:

KATHRYN R. O'DAY, COMMISSIONER

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Omni Visions, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	621456150

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

CONTRACTOR SIGNATURE

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

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

ATTACHMENT B

Liquidated damages are five hundred dollars (\$500.00) per day per child that is being served by the contract that has been breached, until the Contractor cures the breach, the State exercises its option to declare a partial default, or the State terminates the Contract. A breach is failure to perform any of the required services detailed in the "Provider Policy Manual" for said contract. Such amount represents the costs and efforts necessary to procure an alternate vendor(s) to provide the defaulted service; re-staff individual cases, provide or perform the contract requirements; and/or facilitate contract compliance by the Contractor.

DISCLOSURE FORM FOR PROVIDER ENTITIES