

CONTRACT #12
RFS # 359.10-10072
FA # 13-1819
Edison # 35141

Children's Services

VENDOR:
Tennessee Alliance for Legal
Services (TALS)



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: February 06, 2013

Subject: Tennessee Alliance for Legal Services (TALS)

Please find as accompaniments to this summary memo the various supporting materials necessary to review the Non-Competitive request for Tennessee Alliance for Legal Services for the period July 01, 2013 through June 30, 2018 in the amount of \$750,000.00. Services are to provide legal representation to children in matters of TnCare service appeals.

The request for the non-competitive services was submitted within the sixty (60) day timeframe as required as services are slated to begin July 01, 2013.

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Suzanne G. White	*Contact Phone:	615-741-0581		
*Original Contract Number:	35141	*Original RFS Number:	35910-10072		
Edison Contract Number: <i>(if applicable)</i>	35141	Edison RFS Number: <i>(if applicable)</i>	N/A		
*Original Contract Begin Date:	July 1, 2013	*Current End Date:	June 30, 2018		
Current Request Amendment Number: <i>(if applicable)</i>	N/A				
Proposed Amendment Effective Date: <i>(if applicable)</i>	N/A				
*Department Submitting:	Children's Services				
*Division:	Contracts Management				
*Date Submitted:	2/6/13				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	Tennessee Alliance for Legal Services				
*Current Maximum Liability:	\$750,000.00				
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY:2013	FY:2014	FY:2015	FY:2016	FY:2017	FY
\$150,000.00	\$150,000.00	\$150,000.00	\$150,000.00	\$150,000.00	
*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:					
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:					
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:					
*Contract Funding	State:	\$27,375.00	Federal:		

**Supplemental Documentation Required for
Fiscal Review Committee**

Source/Amount:			
Interdepartmental:	\$722,625.00	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>	
Method of Original Award: <i>(if applicable)</i>		Non Competitive Request	
*What were the projected costs of the service for the entire term of the contract prior to contract award?		\$750,000.00	

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:2014	FY:2015	FY:2016	FY:2017
Legal Services	\$150,000.00	\$150,000.00	\$150,000.00	\$150,000.00	\$150,000.00

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:	FY:	FY:	FY:	FY:

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

Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

Special 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.agsprs@tn.gov.

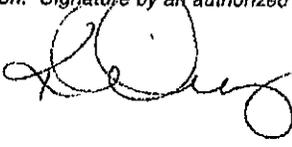
APPROVED



Chief Procurement Officer

Request Tracking #	35910-10072
1. Contracting Agency	Department of Children's Services (DCS)
2. Type of Contract	<input checked="" type="checkbox"/> Non-Competitive <input type="checkbox"/> No Cost <input type="checkbox"/> Revenue
3. Requestor Contact Information	Lisa Love, 615-532-2255, Lisa.Love@tn.gov
4. Date Requested	December 6, 2012
5. Brief Service Caption	Appeals Service for TennCare Svcs.
6. Proposed Contractor	Tennessee Alliance for Legal Services (TALS)
7. Proposed Contract Period – with ALL options to extend exercised The proposed contract start date shall follow the approval date of this request.	60 months
8. Maximum Contract Cost – with ALL options to extend exercised	\$ 750,000.00
9. Office for Information Resources Endorsement – Information technology (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
10. eHealth Initiative Support – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. Human Resources Support – state employee training	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
12. Has the contracting agency procured the subject service before?	
<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, it was procured by...Tennessee Alliance for Legal Services <input type="checkbox"/> RFP <input checked="" type="checkbox"/> Non-Competitive Negotiation <input type="checkbox"/> Another Competitive Method	
13. Will the State incur any substantial cost as a result of the subject agreement? (For No Cost or Revenue Contracts only)	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES <input type="checkbox"/> Not Applicable
14. Will the State also contract with other parties interested in	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES

Request Tracking #	35910-10072
entering substantially the same agreement?	
15. Description of Product/Services Contractor Will Provide: The Contractor will provide Legal Services for children in the custody of DCS regarding appeals for TennCare Services.	
16. Is this product/service currently available on a statewide contract? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES	
If YES, please explain why the current statewide contract is not being used for this procurement.	
17. Summary of State Responsibilities Under Proposed Contract (For No Cost and Revenue Contracts <u>only</u>)	
18. Explanation of Need for or Requirement Placed on the State to Acquire the Service: Pursuant to the <u>Grier</u> Consent Decree filed with the Federal Court, the Department of Children's Services is mandated to provide legal representation for custody children regarding TennCare Services. Services include the assessment of appeals of adverse action for merit and may, in certain cases, consist solely of assessment. Adverse action is any delay, denial, reduction, suspension, termination or any other act or omission that impairs the quality, timeliness or availability of TennCare benefits. Custody children are defined as any child who was in the legal custody of the state of Tennessee, as granted by a court of competent jurisdiction, during the time the services, which are being appealed, were received or should have been received. Section III.A. of the Detailed Plan and Implementation Timetable of the <u>Grier</u> Consent Decree specifically provides that "DCS will contract with the Tennessee Alliance for Legal Services ('TALS') to provide representation for custody children at administrative hearings...." The Attorney General's Office has determined that "DCS is expressly and specifically required to contract with TALS. There is no current provision that would allow contracting with a different entity."	
19. Proposed Contract Impact on Current State Operations None	
20. Justification -- Specifically explain why the procurement method being requested is required. The Attorney General's Office has determined that DCS is expressly and specifically required to contract with TALS. There is no current provision that would allow contracting with a different entity.	
21. Contractor Selection Process and Efforts to Identify Reasonable, Competitive, Procurement Alternatives The Attorney General's Office has determined that DCS is expressly and specifically required to contract with TALS. There is no current provision that would allow contracting with a different entity.	
22. Name & Address of the Contractor's Principal Owner(s) -- NOT required for a TN state education institution Erik Cole, Executive Director Tennessee Alliance for Legal Services 50 Vantage Way, Suite 250 Nashville, TN 37228	
23. Evidence of Contractor's Experience & Length Of Experience Providing the Service: The Contractor has been the sole provider of this service for DCS since January 24, 1999.	
24. Was there an initial government estimate?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES
25. Cost Determination Used- How did agency arrive at the price? The fees were determined in accordance to the lawsuit, "The <u>Grier</u> Consent Decree" filed with the Federal Court.	

Request Tracking #	35910-10072
26. Documentation of Discussions with Contractor- How did agency document discussions with Contractor? The <u>Grier</u> Consent Decree and instruction from Finance and Administration to use this vendor were used as documentation. This contract will be a continuation of services.	
27. Explanation of Fair and Reasonable Price- Explain why price is fair and reasonable under the circumstances The vendor is a non-profit organization established to assist the needy and indigent with legal services. The price is reasonable and fair with the volume of services needed and the Scope of Services of the vendor.	
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>  12/11/12	

Rule Exception Request

Route completed request, as one file in PDF format, via e-mail attachment sent to: Agsprrs.Agsprsr@state.tn.us

APPROVED

Jessica Robertson / HF

~~COMMISSIONER OF FINANCE & ADMINISTRATION~~ *CPO*

Request Tracking #	35910-10072		
1. Contract #	35141		
2. Service Caption	Legal Services for Grier Lawsuit		
3. Contractor	Tennessee Alliance for Legal Services (TALS)		
4. Contract Period <i>(with ALL options to extend exercised)</i>	60 months		
5. Contract Maximum Liability <i>(with ALL options to extend exercised)</i>	\$ 750,000.00		
6. Rule <i>(for which the exception is requested)</i>	<input checked="" type="checkbox"/> 0620-3-3-.03(2)(a) OR 0620-3-3-.05 requiring compliance with relevant model guidelines (only if required by oversight authorities) <input type="checkbox"/> 0620-3-3-.05(5) requiring the prescribed Nondiscrimination contract provision <input type="checkbox"/> 0620-3-3-.07(5) prohibiting a contract term greater than five (5) years <input type="checkbox"/> 0620-3-3-.07(8) prohibiting a contract with a former state employee in within six (6) months of termination <input type="checkbox"/> 0620-3-3-.07(22) requiring contractor travel reimbursement in accordance with state travel regulations <input type="checkbox"/> OTHER <i>(cite the relevant rule below)</i>		
7. Explanation of Rule Exception Requested	The Department of Children's Services (DCS) is requesting to use the clauses listed in Attachment 1 of this document. The clauses will be a part of the contract with TALS for the Grier lawsuit.		
8. Justification	DCS is required to contract with TALS for this service by the Department of Finance and Administration (F&A). The language changes are a result of the agreement between TALS and DCS to include language required of DCS by state law.		

Request Tracking #	35910-10072
Agency Head Signature and Date <i>(contracting agency head or authorized signatory)</i> Kathryn R O'Day 1/30/13	

ATTACHMENT 1

C.3.b.* Notice, C.3.e., C.3.f., C.3.g., C.3.h., C.3.i. C.3.j.

- 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	Amount (per compensable increment)
Attorney Services	\$ 85.00/hour
Paralegal Services	\$ 50.00/hour

* 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 quarter 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. The Contractor shall not be compensated for travel time to the primary location of service provision.
- d. A "day" shall be defined as a minimum of eight (8) hours of service. If the Contractor provides fewer than eight hours of service in a standard twenty-four hour day, the Contractor shall bill *pro rata* for only those portions of the day in which service was actually delivered. The Contractor shall not bill more than the daily rate even if the Contractor works more than eight hours in a day.
- e. Services Billed at Attorney Hourly Rate: Services billed at the attorney rate must be services which can only be performed by a licensed attorney, or which due to the nature or complexity of the case require the expertise of an attorney. Services traditionally performed by support staff, clerical or administrative staff, or paralegal staff shall not be billed at the attorney hourly rate. Such services include but are not limited to sending/receiving faxes, calling to obtain a fax number or verify fax sent successfully, making copies, and filing, organizing, or mailing documents. The State reserves the right to not compensate Contractor at the Attorney hourly rate for services which could have been performed by someone other than a licensed attorney. In such instances, Contractor will be reimbursed at the Paralegal hourly rate unless Contractor provides an acceptable written explanation as to why those services required a licensed attorney.
- f. Minimum Billable Unit: Contractor shall bill the State at a minimum billable unit of one-tenth of an hour, or six minute increments.
- g. Expert and Related Services. DCS will pay for expert fees for medical professional review of record, or provision of deposition or testimony for proof at or for the hearing or other legal proceeding. Allowable rates for these fees are set out below:
 1. Expert Witness Fees:

Description: Fees paid professionals as witness in depositions, hearings or courts (T.C.A. 12-4-109).

Rate: Up to a maximum of One Thousand Dollars (\$1,000.00) per diem plus travel expenses in accordance with prevailing state regulations.

2. Expert Evaluations, Expert Consultation, Expert Witness Review and Preparation Fees and Utilization Review and Preparation Fees:

Description: Fees paid professionals as reviewers and advisors for case investigation, utilization or preparation (T.C.A. 12-4-109).

Rate: Up to a maximum of One Thousand Dollars (\$1,000.00) per diem plus travel expenses in accordance with prevailing state regulations.

h. Certified Copies of Legal Documents:

Description: Certified copies of legal documents such as indictments, Convictions judgments, etc., from other state courts or agencies.

Rates: Will be reimbursed at actual costs.

i. Court Reporters. Services rendered as follows:

A. **Description:** Hearings and Depositions.

Rates: One Hundred Eighty Dollars (\$180.00) per day maximum appearance fee. Ninety dollars (\$90.00) per half day.

B. **Description:** Transcription.

Rates: Will be reimbursed at actual costs and shall not exceed the maximum rates specified.

1. Regular Delivery

- a. Original Copy - \$4.00/per page (pp)
- b. Carbon Copy - \$2.50/pp

2. Expedited Delivery

- a. Original Copy - \$5.00/pp
- b. Carbon Copy - \$2.50/pp

3. Overnight Delivery

- a. Original Copy - \$6.00/ pp
- b. Carbon Copy - \$3.50/ pp

- j. The Contractor shall submit quarterly invoices for completed work, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Invoices must be complete at the time of submission, listing all services for which compensation is requested for that quarter. The state reserves the right to not make payment for any services for which the invoice is submitted more than thirty (30) days after the end of the quarter within which that service was provided.

- C.5. Invoice Requirements. The Contractor agrees that the timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum 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:

C.5.a.

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly). Invoices may be submitted monthly, (Attachment A), but no more than once a month, and/or at least quarterly.

C.5.c

Contractors must submit Quarterly Invoices that contain the following information in addition to C.5.b. above and which adheres to the following fiscal year schedule.

INVOICE QUARTER	INVOICE PERIOD	INVOICE DUE DATE
First Quarter	July through September	Due by October 30
Second Quarter	October through December	Due by January 30
Third Quarter	January through March	Due by April 30
Fourth Quarter	April through June	Due by July 30

C.5.d.1-6.

In order for such invoices to be acceptable to the State in form and substance, said Quarterly invoices shall contain the following listing of the services provided to each child by that attorney or paralegal and shall be attached to or included in said invoice that shall, at a minimum, include:

1. The name, social security number, and date of birth of the child;
2. the date of referral for legal representation;
3. the name of each individual providing legal services and the individual's job title;
4. specific dates of service;
5. time billed for each date; and
6. a brief notation of work performed on each date. (e.g. legal research, interviewed client, phone call, hearing, deposition, etc.).

C.5.e

A summary invoice containing the total number of hours being billed by the contractor, each attorney and each paralegal.

C.5.f

Quarterly invoices are due within thirty (30) days after the end of the quarter and invoices submitted after that time may not be paid.

D.3.

Termination for Convenience. The Contract may be terminated by either party by giving written notice to the other, at least ninety (90) days before the effective date of termination. Should the State exercise this provision, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Should the Contractor exercise this provision, the State shall have no liability to the Contractor except for those units of service which can be effectively used by the State. The final decision as to what these units of service are, shall be determined by the State. In the event of disagreement, the Contractor may file a claim with the Tennessee Claims Commission to seek redress.

E.5.

Insurance. Adequate liability insurance coverage for legal work performed by qualified attorneys under this contract must be maintained.

- a. The Contractor shall maintain, at minimum, the following insurance coverage:

Professional Malpractice Liability with a limit of not less than one million dollars (\$1,000,000.00) per claim and two million dollars (\$2,000,000.00) 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.15.

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, and as amended.

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 PHI; and
4. Timely Reporting of Privacy and/or Security Incidents.

The 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.

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.

Knowing and willful disclosure of PHI in violation of procedures for determining eligibility for exchange participation, premium tax credits and reduced cost-sharing, and individual responsibility exemptions, per person or entity, per use or disclosure may result in Liquidated Damages as set forth in Attachment D.

- E.16. As a party to this Contract, 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. In accordance with HIPAA/HITECH regulations, the Contractor shall, at a minimum:
- a. 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;
 - b. Transmit/receive from/to its providers, subcontractors, clearinghouses and TennCare 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 TennCare so long as TennCare direction does not conflict with the law;
 - c. Agree that if it is not in compliance with all applicable standards defined within the transactions and code sets, privacy, security and all subsequent HIPAA/HITECH standards, that it will be in breach of this Contract 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 TennCare 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, TennCare may terminate this Contract in accordance with the Business Associate Agreement ancillary to this Contract;
 - d. Ensure that Protected Health Information (PHI) exchanged between the Contractor and TennCare 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;
 - e. Report to TennCare's Privacy Office immediately upon becoming aware of any use or disclosure of PHI in violation of this Contract by the Contractor, its officers, directors, employees, subcontractors or agents or by a third party to which the Contractor disclosed PHI;
 - f. Specify in its agreements with any agent or subcontractor that will have access to PHI that such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Contractor pursuant to this Section;
 - g. Make 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;

- h. Make an enrollee's PHI accessible to TennCare immediately upon request by TennCare;
- i. 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;
- j. 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:
- k. Agree to ensure that any agent, including a subcontractor, to whom it provides PHI that was created, received, maintained, or transmitted on behalf of TennCare agrees to use reasonable and appropriate safeguards to protect the PHI.
- l. 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 Contract. 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;
- m. 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 Contract and, including, but not limited to, privacy, security and confidentiality requirements in 45 CFR Parts 160 and 164;
- n. 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;
- o. 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;
- p. 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;
- q. Track training of Contractor staff and employees and maintain signed acknowledgements by staff and employees of the Contractor's HIPAA/HITECH policies;
- r. Be allowed to use and receive information from TennCare where necessary for the management and administration of this Contract and to carry out business operations where permitted under the regulations;
- s. Be permitted to use and disclose PHI for the Contractor's own legal responsibilities;

- t. 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;
- u. Continue to protect and secure PHI AND personally identifiable information relating to enrollees who are deceased;
- v. Be responsible for informing its enrollees of their privacy rights in the manner specified under the regulations;
- w. Make available PHI in accordance with 45 CFR 164.524;
- x. Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR 164.526; and
- y. Obtain a third (3rd) party certification of their HIPAA transaction compliance ninety (90) calendar days before the start date of operations.

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.

- E.17. Information Holders. TennCare 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 TennCare 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 TennCare's express written approval. The Contractor shall notify TennCare's Privacy Office immediately upon becoming aware of any security incident that would constitute a "breach of the security of the system" as defined in TCA 47-18-2107.

- E.18. Notification of Breach and Notification of Provisional Breach - The Contractor shall notify

TennCare'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.

Medicaid and CHIP – Verification of Income and Eligibility - The Contractor must provide safeguards that restrict the use or disclosure of information concerning applicants and beneficiaries to purposes directly connected with the administration of the plan:

- i. Purposes directly related to the administration of Medicaid and CHIP include:
- a. establishing eligibility;
 - b. determining the amount of medical assistance;
 - c. providing services for beneficiaries; and,

d. conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to Medicaid or CHIP administration.

ii. The Contractor must have adequate safeguards to assure that--

a. Information is made available only to the extent necessary to assist in the valid administrative purposes of those receiving the information, and information received under 26 USC section 6103(i) is exchanged only with parties authorized to receive that information under that section of the Code; and,

b. the information is adequately stored and processed so that it is protected against unauthorized disclosure for other purposes.

iii. The Contractor must have criteria that govern the types of information about applicants and beneficiaries that are safeguarded. This information must include at least--

(a) Names and addresses;

(b) Medical services provided;

(c) Social and economic conditions or circumstances;

(d) Contractor evaluation of personal information;

(e) Medical data, including diagnosis and past history of disease or disability; and

(f) Any information received for verifying income eligibility and amount of medical assistance payments, including income information received from SSA or the Internal Revenue Service,

(g) Any information received for verifying income eligibility and amount of medical assistance payments

(h) Income information received from SSA or the Internal Revenue Service must be safeguarded according to Medicaid and CHIP requirements

(i) Any information received in connection with the identification of legally liable third party resources.

(j) Social Security Numbers.

iv. The Contractor must have criteria approved by the State specifying the conditions for release and use of information about applicants and beneficiaries:

(b) Access to information concerning applicants or beneficiaries must be restricted to persons or Contractor representatives who are subject to standards of confidentiality that are comparable to those of the State.

(c) The Contractor shall not publish names of applicants or beneficiaries.

(d) The Contractor shall obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility and the amount of medical assistance payment to an authorized individual or entity;

(e) If, because of an emergency situation, time does not permit obtaining consent before release, the Contractor shall notify the State, the family or individual immediately after supplying the information.

(f) The Contractor's policies must apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials.

(i.) The Contractor shall notify the State of any requests for information on applicants or beneficiaries by other governmental bodies, the courts or law enforcement officials ten (10) days prior to releasing the requested information.

(g) If a court issues a subpoena for a case record or for any Contractor representative to testify concerning an applicant or beneficiary, the Contractor must notify the State at least ten (10) days prior to the required production date so the State may inform the court of the applicable statutory provisions, policies, and regulations restricting disclosure of information, effective until Jan. 1, 2014.

(h) The Contractor shall not request or release information to other parties to verify income, eligibility and the amount of assistance under Medicaid or CHIP, prior to express approval from the State.

E.19. Social Security Administration (SSA) Required Provisions for Data Security. The Contractor shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. § 3541, *et seq.*), and related National Institute of Standards and Technology guidelines. In addition, the Contractor shall have in place administrative, physical, and technical safeguards for data.

- a. The Contractor shall not duplicate in a separate file or disseminate, without prior written permission from TennCare, the data governed by the Contract for any purpose other than that set forth in this Contract for the administration of the TennCare program. Should the Contractor propose a redisclosure of said data, the Contractor must specify in writing to TennCare the data the Contractor proposes to redisclose, to whom, and the reasons that justify the redisclosure. TennCare will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the TennCare program.
- b. The Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Contract.
- c. The Contractor shall provide a current list of the employees of such contractor with access to SSA data and provide such lists to TennCare.
- d. The Contractor shall restrict access to the data obtained from TennCare to only those authorized employees who need such data to perform their official duties in connection with purposes identified in this Contract. The Contractor shall not further duplicate, disseminate, or disclose such data without obtaining TennCare's prior written approval.
- e. The Contractor shall ensure that its employees:
 - (1) properly safeguard PHI/PII furnished by TennCare under this Contract from loss, theft or inadvertent disclosure;

- (2) understand that they are responsible for safeguarding this information at all times, regardless of whether or not the Contractor employee is at his or her regular duty station;
- (3) ensure that laptops and other electronic devices/ media containing PHI/PII are encrypted and/or password protected;
- (4) send emails containing PHI/PII only if encrypted or if to and from addresses that are secure; and,
- (5) limit disclosure of the information and details relating to a PHI/PII loss only to those with a need to know.

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

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

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

- g. TennCare may immediately and unilaterally suspend the data flow under this Contract, or terminate this Contract, if TennCare, in its sole discretion, determines that the Contractor has: (1) made an unauthorized use or disclosure of TennCare SSA-supplied data; or (2) violated or failed to follow the terms and conditions of this Contract.
- h. In order to meet certain requirements set forth in the State's Computer Matching and Privacy Protection Act Agreement (CMPPA) with the SSA, the Parties acknowledge that this Section shall be included in all agreements executed by or on behalf of the State. The Parties further agree that FISMA and NIST do not apply in the context of data use and disclosure under this Agreement as the Parties shall neither use nor operate a federal information system on behalf of a federal executive agency. Further, NIST is applicable to federal information systems; therefore, although encouraged to do so, the State, its contractors, agents and providers are not required to abide by the NIST guidelines.
- i. This Section further carries out Section 1106(a) of the Act (42 U.S.C. 1306), the regulations promulgated pursuant to that section (20 C.F.R. Part 401), the Privacy of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget ("OMB") guidelines, the Federal Information Security Management Act of 2002 ("FISMA") (44 U.S.C. 3541 et seq.), and related National Institute of Standards and Technology ("NIST") guidelines, which provide the requirements that the SSA stipulates that the Contractor must follow with regard to use, treatment, and safeguarding data in the event data is exchanged with a federal information system.

i. Definitions

- (1) "SSA-supplied data" – information, such as an individual's social security number, supplied by the Social Security Administration to TennCare to determine entitlement or eligibility for federally-funded programs (CMPPA between SSA and F&A; IEA between SSA and TennCare).
- (2) "Protected Health Information/Personally Identifiable Information" (PHI/PII) (45 C.F.R. 160.103; OMB Circular M-06-19) – Protected health information means individually identifiable health information that is: (i) Transmitted by electronic media; (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.
- (3) "Individually Identifiable Health Information" – information that is a subset of health information, including demographic information collected from an individual, and: (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
- (4) "Personally Identifiable Information" – any information about an individual maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as their name, Social Security Number, date and place of birth, mother's maiden name, biometric records, including any other personal information which can be linked to an individual.

E.20

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/pro-mcos.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.



STATE OF TENNESSEE
DEPARTMENT OF CHILDREN'S SERVICES

Office of General Counsel
7th Floor, Cordell Hull Building
436 6th Avenue North
Nashville, TN 37243
(615) 741-7236
Fax: (615)-532-2348

January 31, 2013

Mr. Shay Oliphant
Central Procurement Office
William R. Snodgrass/Tennessee Tower
312 Rosa L. Parks Avenue
Nashville, TN 37243-1102

RE: Contract #35141 with Tennessee Alliance for Legal Services (TALS)

Dear Mr. Oliphant,

I have reviewed contract #35141 with Tennessee Alliance for Legal Services (TALS). Specifically, I have reviewed the compensation rate schedule, invoice requirements, termination for convenience clause, insurance requirements, and updated HIPAA and HITECH provisions. I believe that these provisions are appropriate and that their inclusion is beneficial to the State of Tennessee.

Please feel free to contact me if you have any questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Britany J. Binkowski".

Britany J. Binkowski
Assistant General Counsel



CONTRACT

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

Begin Date July 1, 2013	End Date June 30, 2018	Agency Tracking # 35910-10072	Edison Record ID 35141
Contractor Legal Entity Name Tennessee Alliance for Legal Services (TALS)			Edison Vendor ID 78524

Service Caption (one line only)
Legal Services for Grier Lawsuit

Subrecipient or Vendor
 Subrecipient Vendor
 CFDA #

Funding — FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2013	5,475.00	0.00	144,525.00	0.00	150,000.00
2014	5,475.00	0.00	144,525.00	0.00	150,000.00
2015	5,475.00	0.00	144,525.00	0.00	150,000.00
2016	5,475.00	0.00	144,525.00	0.00	150,000.00
2017	5,475.00	0.00	144,525.00	0.00	150,000.00
TOTAL:	27,375.00	0.00	722,625.00	0.00	750,000.00

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

Ownership/Control

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

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

RFP The procurement process was completed in accordance with the approved RFP document and associated regulations.
 Competitive Negotiation The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.
 Alternative Competitive Method The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.
 Non-Competitive Negotiation The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.
 Other The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with all interested parties or all 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.	OCR USE - FA
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Speed Chart (optional)	Account Code (optional)
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**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF CHILDREN'S SERVICES
AND
TENNESSEE ALLIANCE FOR LEGAL SERVICES**

This Contract, by and between the State of Tennessee, Department of Children's Services (DCS), hereinafter referred to as the "State" and Tennessee Alliance for Legal Services (TALS), hereinafter referred to as the "Contractor," is for the provision of legal services to TennCare eligible and enrolled children in DCS custody; solely for the representation of children in matters of TennCare service appeals, as further defined in the "SCOPE OF SERVICES."

The Contractor is a Non-Profit Corporation.
Contractor Place of Incorporation or Organization: Tennessee
Contractor Edison Registration ID # 78524

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 Tennessee Alliance for Legal Services shall:

- a. Provide legal representation for custody children regarding appeals for TennCare Services. The term legal representation as used in this Contract includes the assessment of appeals of adverse action for merit and may, in cases where the Contractor determines that further pursuit of the appeal is without merit, consist solely of assessment. Legal representation under this contract also includes following the case through all stages of the case and levels of appeal available, as deemed legally appropriate and meritorious, in accordance with Rule 11 of the Tennessee Rules of Civil Procedure. The term "custody children" as used in this Contract is defined as any TennCare eligible and enrolled child who was in the legal custody of the state of Tennessee, as granted by a court of competent jurisdiction, during the time the TennCare services which are being appealed were received or should have been received. The term "adverse action" as used in this Contract is defined as any delay, denial, reduction, suspension, or termination of TennCare services.
- b. Receive referrals for representation from the Department of Children's Services (DCS). In the event that the Contractor receives a request for representation of a custody child from a source other than DCS, the Contractor shall immediately, but no later than forty-eight (48) hours, notify DCS of the request for representation and DCS shall make a referral to the Contractor for such cases whenever the Contractor notifies DCS of such request. In cases where the Contractor receives a request for representation from a source other than DCS and the Contractor does not notify DCS within forty-eight (48) hours of the request, the Contractor may not be paid for legal representation that results from that request.
- c. Begin representation upon receiving from DCS a notice of denial in accordance with the provisions of paragraph A.3.c. below. When the Contractor or subcontractor's attorney receives the referral, the following threshold determinations must be made, to confirm that the case is within the scope of the contract:
 1. Whether child is enrolled in TennCare;
 2. Whether service being appealed is a TennCare covered service; and
 3. Whether child is in DCS custody, or was the child in DCS custody when the service being appealed was or should have been received.

If the attorney determines that the referral is outside the scope of the contract because the above criteria are not met, the attorney must notify DCS within twenty-four (24) hours. If the attorney provides representation on such a case or any case or matter that is

outside the scope of this contract, the Contractor will not be paid for said legal representation or other services rendered on the case.

- d. Maintain confidentiality of the records of custody children pursuant to state and federal laws, rules and regulations, and the professional standards set forth in the Tennessee Code of Professional Responsibility. Obtain any necessary signed releases, consents, or authorizations to obtain information from the health care providers of custody children, if such information is necessary for the legal representation of the child on the TennCare appeal.
- e. Make qualified attorneys available for the legal representation of children in DCS custody on a statewide basis, and provide to DCS the contact information for such attorneys. Attorneys providing services under this contract must have knowledge and experience with applicable laws, rules, and regulations that govern Medicaid, TennCare, and administrative proceedings. Referrals for legal representation may be made by DCS that require immediate attention of an attorney and the Contractor will coordinate the availability of such representation.
- f. Provide a quarterly summary of all cases to DCS. Said summary will consist of client names, type of appeal Managed Health Care Organization (MCO), Behavioral Health Organization (BHO), or DCS, reason for the appeal (delay, denial, reduction, suspension, or termination), case status, and the outcome, if any, of all cases handled during the last quarter.
- g. Terminate legal services provided pursuant to this contract within twenty (20) business days after resolution of the appeal as defined herein. "Resolution of the appeal" for purposes of terminating legal services under this contract means that either the child has received the service(s) at issue in the appeal or the pursuit of legal remedies available under Grier has ended. For a service(s) or treatment which is ongoing in nature, such as psychotherapy or counseling, the child is considered to have received the service once that service or treatment has started. At Contractor's written request for an exception, the State may consider reimbursing Contractor for legal services provided more than twenty (20) business days after resolution of the appeal. For such exceptions, Contractor must provide acceptable written explanation as to why legal services on the resolved appeal could not be completed within twenty (20) business days after resolution of the appeal.

A.3. The State Shall:

- a. DCS shall, in a timely manner, make available to the Contractor and its subcontractors, medical records, assessment records, and any other documents related to the appeal, including those related to the child's needs which gave rise to the appeal, as reasonably needed for the representation of the child at hearing. The Contractor is responsible for informing DCS staff what documents and records the Contractor needs. Contractor is responsible for getting any necessary signed releases or consents necessary to obtain information directly from health care providers, including parental consent or authorization
- b. DCS shall make reasonable good faith efforts to facilitate the appearance of DCS staff at hearings and depositions as needed by the Contractor for the representation of custody children, and otherwise facilitate the cooperation of DCS with the Contractor. The Contractor must give timely notice to DCS staff and legal counsel if DCS staff is needed at hearings or depositions.
- c. DCS shall notify the Contractor when representation is needed for custody children. DCS shall notify the Contractor and the appropriate local subcontractor immediately, or no later than twelve (12) hours, of DCS receiving notice of denial of an appeal from the TennCare Solutions Unit or when DCS becomes aware of an urgent appeal, including appeals that result from the action or inaction of a MCO, BHO, or a DCS-administered service. The notification from DCS shall include the location of and contact information for the child who

needs legal representation in a TennCare appeal and any available information that DCS has about the appeal.

B. CONTRACT PERIOD:

This Contract shall be effective for the period beginning July 1, 2013, and ending on June 30, 2018. 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 Seven Hundred Fifty Thousand Dollars (\$750,000.00). 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	Amount (per compensable increment)
Attorney Services	\$ 85.00/hour
Paralegal Services	\$ 50.00/hour

* 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 quarter 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. The Contractor shall not be compensated for travel time to the primary location of service provision.
- d. A "day" shall be defined as a minimum of eight (8) hours of service. If the Contractor provides fewer than eight hours of service in a standard twenty-four hour day, the Contractor shall bill *pro rata* for only those portions of the day in which service was actually delivered. The Contractor shall not bill more than the daily rate even if the Contractor works more than eight hours in a day.
- e. Services Billed at Attorney Hourly Rate: Services billed at the attorney rate must be services which can only be performed by a licensed attorney, or which due to the nature or complexity of the case require the expertise of an attorney. Services traditionally performed by support staff, clerical or administrative staff, or paralegal staff shall not be billed at the attorney hourly rate. Such services include but are not limited to sending/receiving faxes, calling to obtain a fax number or verify fax sent successfully, making copies, and filing, organizing, or mailing documents. The State reserves the right to not compensate Contractor at the Attorney hourly rate for services which could have been performed by someone other than a licensed attorney. In such instances, Contractor will be reimbursed at the Paralegal hourly rate unless Contractor provides an acceptable written explanation as to why those services required a licensed attorney.
- f. Minimum Billable Unit: Contractor shall bill the State at a minimum billable unit of one-tenth of an hour, or six minute increments.
- g. Expert and Related Services. DCS will pay for expert fees for medical professional review of record, or provision of deposition or testimony for proof at or for the hearing or other legal proceeding. Allowable rates for these fees are set out below:
 - 1. Expert Witness Fees:
Description: Fees paid professionals as witness in depositions, hearings or courts (T.C.A. 12-4-109).

Rate: Up to a maximum of One Thousand Dollars (\$1,000.00) per diem plus travel expenses in accordance with prevailing state regulations.
 - 2. Expert Evaluations, Expert Consultation, Expert Witness Review and Preparation Fees and Utilization Review and Preparation Fees:
Description: Fees paid professionals as reviewers and advisors for case investigation, utilization or preparation (T.C.A. 12-4-109).

Rate: Up to a maximum of One Thousand Dollars (\$1,000.00) per diem plus travel expenses in accordance with prevailing state regulations.
- h. Certified Copies of Legal Documents:
Description: Certified copies of legal documents such as indictments, convictions judgments, etc., from other state courts or agencies.

Rates: Will be reimbursed at actual costs.
- i. Court Reporters. Services rendered as follows:
 - A. **Description:** Hearings and Depositions.
Rates: One Hundred Eighty Dollars (\$180.00) per day maximum appearance fee. Ninety dollars, (\$90.00) per half day.
 - B. **Description:** Transcription.
Rates: Will be reimbursed at actual costs and shall not exceed the maximum rates specified.

1. Regular Delivery
 - a. Original Copy - \$4.00/per page (pp)
 - b. Carbon Copy - \$2.50/pp
2. Expedited Delivery
 - a. Original Copy - \$5.00/pp
 - b. Carbon Copy - \$2.50/pp
3. Overnight Delivery
 - a. Original Copy - \$6.00/ pp
 - b. Carbon Copy - \$3.50/ pp

j. The Contractor shall submit quarterly invoices for completed work, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Invoices must be complete at the time of submission, listing all services for which compensation is requested for that quarter. The state reserves the right to not make payment for any services for which the invoice is submitted more than thirty (30) days after the end of the quarter within which that service was provided.

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

C.5. Invoice Requirements. The Contractor agrees that the timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum 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:

Mary Beth Franklyn
 TN Department of Children's Services
 8th Floor, Cordell Hull Bldg.
 436 6th Avenue North
 Nashville, TN 37243

a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly). Invoices may be submitted monthly, (Attachment A), but no more than once a month, and/or at least quarterly.

- (1) Invoice Number (assigned by the Contractor)
- (2) Invoice Date
- (3) Contract Number (assigned by the State)
- (4) Customer Account Name: DCS Medical Services
- (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
- (6) Contractor Name
- (7) Contractor 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
- vi. who performed the services

- 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. Contractors must submit Quarterly Invoices that contain the following information in addition to C.5.b. above and which adheres to the following fiscal year schedule.

INVOICE QUARTER	INVOICE PERIOD	INVOICE DUE DATE
First Quarter	July through September	Due by October 30
Second Quarter	October through December	Due by January 30
Third Quarter	January through March	Due by April 30
Fourth Quarter	April through June	Due by July 30

- d. In order for such invoices to be acceptable to the State in form and substance, said Quarterly invoices shall contain the following listing of the services provided to each child by that attorney or paralegal and shall be attached to or included in said invoice that shall, at a minimum, include:
 - 1. The name, social security number, and date of birth of the child;
 - 2. the date of referral for legal representation;
 - 3. the name of each individual providing legal services and the individual's job title;
 - 4. specific dates of service;
 - 5. time billed for each date; and
 - 6. a brief notation of work performed on each date. (e.g. legal research, interviewed client, phone call, hearing, deposition, etc.).
- e. A summary invoice containing the total number of hours being billed by the contractor, each attorney and each paralegal.
- f. Quarterly invoices are due within thirty (30) days after the end of the quarter and invoices submitted after that time may not be paid.

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 Contract may be terminated by either party by giving written notice to the other, at least ninety (90) days before the effective date of termination. Should the State exercise this provision, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Should the Contractor exercise this provision, the State shall have no liability to the Contractor except for those units of service which can be effectively used by the State. The final decision as to what these units of service are, shall be determined by the State. In the event of disagreement, the Contractor may file a claim with the Tennessee Claims Commission to seek redress.
- 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 B, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *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. 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.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. 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.13. 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.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. 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.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. 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.18. 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.19. 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.20. 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:

Mary Beth Franklyn, Director, Health Advocacy
Department of Children's Services
8th Floor, Cordell Hull Building
436 6th Avenue North
Nashville, TN 37243
Mary.Beth.Franklyn@tn.gov
Telephone # 615-253-4506
FAX # 615-741-7322

Susan Mitchell, Executive Director, Network Development
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 # 615-253-5723

The Contractor:

Erik Cole, Executive Director
Tennessee Alliance for Legal Services
50 Vantage Way, Suite 250
Nashville, TN 37228
ecole@tals.org
Telephone # 615-627-0956
888-395-9297
FAX # 615-627-0964

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. Adequate liability insurance coverage for legal work performed by qualified attorneys under this contract must be maintained.

a. The Contractor shall maintain, at minimum, the following insurance coverage:

Professional Malpractice Liability with a limit of not less than one million dollars (\$1,000,000.00) per claim and two million dollars (\$2,000,000.00) 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. 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.8. 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.9. 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.10. 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 offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or

local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

- c. are not presently indicted 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.11. 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.12. Disclosure of Personal Identity Information. The Contractor shall report to the State any instances of unauthorized disclosure of confidential information that come to the attention of the Contractor. Any such report shall be made by the Contractor within twenty-four (24) hours after the instance has come to the attention of the Contractor. The Contractor, at the sole discretion of the State, shall provide no cost credit monitoring services for individuals that are deemed to be part of a potential disclosure. The Contractor shall bear the cost of notification to individuals having personal identity information involved in a potential disclosure event, including individual letters and/or public notice.
- E.13. 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.14. 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, and as amended.

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 PHI; and
4. Timely Reporting of Privacy and/or Security Incidents.

The 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.

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.

Knowing and willful disclosure of PHI in violation of procedures for determining eligibility for exchange participation, premium tax credits and reduced cost-sharing, and individual responsibility exemptions, per person or entity, per use or disclosure may result in Liquidated Damages as set forth in Attachment D.

- E.15. As a party to this Contract, 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. In accordance with HIPAA/HITECH regulations, the Contractor shall, at a minimum:
- a. 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;
 - b. Transmit/receive from/to its providers, subcontractors, clearinghouses and TennCare 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 TennCare so long as TennCare direction does not conflict with the law;
 - c. Agree that if it is not in compliance with all applicable standards defined within the transactions and code sets, privacy, security and all subsequent HIPAA/HITECH standards, that it will be in breach of this Contract 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 TennCare 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, TennCare may terminate this Contract in accordance with the Business Associate Agreement ancillary to this Contract;
 - d. Ensure that Protected Health Information (PHI) exchanged between the Contractor and TennCare 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;
 - e. Report to TennCare's Privacy Office immediately upon becoming aware of any use or disclosure of PHI in violation of this Contract by the Contractor, its officers, directors, employees, subcontractors or agents or by a third party to which the Contractor disclosed PHI;
 - f. Specify in its agreements with any agent or subcontractor that will have access to PHI that such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Contractor pursuant to this Section;

- g. Make 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;
- h. Make an enrollee's PHI accessible to TennCare immediately upon request by TennCare;
- i. 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;
- j. 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:
- k. Agree to ensure that any agent, including a subcontractor, to whom it provides PHI that was created, received, maintained, or transmitted on behalf of TennCare agrees to use reasonable and appropriate safeguards to protect the PHI.
- l. 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 Contract. 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;
- m. 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 Contract and, including, but not limited to, privacy, security and confidentiality requirements in 45 CFR Parts 160 and 164;
- n. 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;
- o. 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;
- p. 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;
- q. Track training of Contractor staff and employees and maintain signed acknowledgements by staff and employees of the Contractor's HIPAA/HITECH policies;
- r. Be allowed to use and receive information from TennCare where necessary for the management and administration of this Contract and to carry out business operations where permitted under the regulations;
- s. Be permitted to use and disclose PHI for the Contractor's own legal responsibilities;
- t. 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;

- u. Continue to protect and secure PHI AND personally identifiable information relating to enrollees who are deceased;
- v. Be responsible for informing its enrollees of their privacy rights in the manner specified under the regulations;
- w. Make available PHI in accordance with 45 CFR 164.524;
- x. Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR 164.526; and
- y. Obtain a third (3rd) party certification of their HIPAA transaction compliance ninety (90) calendar days before the start date of operations.

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.

- E.16. Information Holders. TennCare 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 TennCare 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 TennCare's express written approval. The Contractor shall notify TennCare's Privacy Office immediately upon becoming aware of any security incident that would constitute a "breach of the security of the system" as defined in TCA 47-18-2107.

- E.17. Notification of Breach and Notification of Provisional Breach - The Contractor shall notify

TennCare'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.

Medicaid and CHIP – Verification of Income and Eligibility - The Contractor must provide safeguards that restrict the use or disclosure of information concerning applicants and beneficiaries to purposes directly connected with the administration of the plan:

- i. Purposes directly related to the administration of Medicaid and CHIP include:
 - a. establishing eligibility;
 - b. determining the amount of medical assistance;
 - c. providing services for beneficiaries; and,
 - d. conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to Medicaid or CHIP administration.
- ii. The Contractor must have adequate safeguards to assure that--
 - a. Information is made available only to the extent necessary to assist in the valid administrative purposes of those receiving the information, and information received under 26 USC section 6103(l) is exchanged only with parties authorized to receive that information under that section of the Code; and,
 - b. the information is adequately stored and processed so that it is protected against unauthorized disclosure for other purposes.
- iii. The Contractor must have criteria that govern the types of information about applicants and beneficiaries that are safeguarded. This information must include at least--

- (a) Names and addresses;
 - (b) Medical services provided;
 - (c) Social and economic conditions or circumstances;
 - (d) Contractor evaluation of personal information;
 - (e) Medical data, including diagnosis and past history of disease or disability; and
 - (f) Any information received for verifying income eligibility and amount of medical assistance payments, including income information received from SSA or the Internal Revenue Service,
 - (g) Any information received for verifying income eligibility and amount of medical assistance payments
 - (h) Income information received from SSA or the Internal Revenue Service must be safeguarded according to Medicaid and CHIP requirements
 - (i) Any information received in connection with the identification of legally liable third party resources.
 - (j) Social Security Numbers.
- iv. The Contractor must have criteria approved by the State specifying the conditions for release and use of information about applicants and beneficiaries:
- (b) Access to information concerning applicants or beneficiaries must be restricted to persons or Contractor representatives who are subject to standards of confidentiality that are comparable to those of the State.
 - (c) The Contractor shall not publish names of applicants or beneficiaries.
 - (d) The Contractor shall obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility and the amount of medical assistance payment to an authorized individual or entity;
 - (e) If, because of an emergency situation, time does not permit obtaining consent before release, the Contractor shall notify the State, the family or individual immediately after supplying the information.
 - (f) The Contractor's policies must apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials.
 - (i.) The Contractor shall notify the State of any requests for information on applicants or beneficiaries by other governmental bodies, the courts or law enforcement officials ten (10) days prior to releasing the requested information.
 - (g) If a court issues a subpoena for a case record or for any Contractor representative to testify concerning an applicant or beneficiary, the Contractor must notify the State at least ten (10) days prior to the required production date so the State may inform the court of the applicable statutory provisions, policies, and regulations restricting disclosure of information, effective until Jan. 1, 2014.
 - (h) The Contractor shall not request or release information to other parties to verify income, eligibility and the amount of assistance under Medicaid or CHIP, prior to express approval from the State.
- E.18. Social Security Administration (SSA) Required Provisions for Data Security. The Contractor shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. § 3541, *et seq.*), and related National Institute of Standards and Technology guidelines. In addition, the Contractor shall have in place administrative, physical, and technical safeguards for data.

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

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

- f. Loss or Suspected Loss of Data – If an employee of the Contractor becomes aware of suspected or actual loss of PHI/PII, he or she must immediately contact TennCare immediately upon becoming aware to report the actual or suspected loss. The Contractor will use the Loss Worksheet located at http://www.tn.gov/tenncare/forms/phi_piiworksheet.pdf to quickly gather and organize information about the incident. The Contractor must provide TennCare with timely updates as any additional information about the loss of PHI/PII becomes available.
 If the Contractor experiences a loss or breach of said data, TennCare will determine whether or not notice to individuals whose data has been lost or breached shall be provided and the Contractor shall bear any costs associated with the notice or any mitigation.
- g. TennCare may immediately and unilaterally suspend the data flow under this Contract, or terminate this Contract, if TennCare, in its sole discretion, determines that the Contractor has: (1) made an unauthorized use or disclosure of TennCare SSA-supplied data; or (2) violated or failed to follow the terms and conditions of this Contract.
- h. In order to meet certain requirements set forth in the State's Computer Matching and Privacy Protection Act Agreement (CMPPA) with the SSA, the Parties acknowledge that this Section shall be included in all agreements executed by or on behalf of the State.

The Parties further agree that FISMA and NIST do not apply in the context of data use and disclosure under this Agreement as the Parties shall neither use nor operate a federal information system on behalf of a federal executive agency. Further, NIST is applicable to federal information systems; therefore, although encouraged to do so, the State, its contractors, agents and providers are not required to abide by the NIST guidelines.

- i. This Section further carries out Section 1106(a) of the Act (42 U.S.C. 1306), the regulations promulgated pursuant to that section (20 C.F.R. Part 401), the Privacy of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget ("OMB") guidelines, the Federal Information Security Management Act of 2002 ("FISMA") (44 U.S.C. 3541 et seq.), and related National Institute of Standards and Technology ("NIST") guidelines, which provide the requirements that the SSA stipulates that the Contractor must follow with regard to use, treatment, and safeguarding data in the event data is exchanged with a federal information system.
- j. Definitions
 - (1) "SSA-supplied data" – information, such as an individual's social security number, supplied by the Social Security Administration to TennCare to determine entitlement or eligibility for federally-funded programs (CMPPA between SSA and F&A; IEA between SSA and TennCare).
 - (2) "Protected Health Information/Personally Identifiable Information" (PHI/PII) (45 C.F.R. 160.103; OMB Circular M-06-19) – Protected health information means individually identifiable health information that is: (i) Transmitted by electronic media; (ii) Maintained in electronic media; or (iii) Transmitted or maintained in any other form or medium.
 - (3) "Individually Identifiable Health Information" – information that is a subset of health information, including demographic information collected from an individual, and: (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
 - (4) "Personally Identifiable Information" – any information about an individual maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and information which can be used to distinguish or trace an individual's identity, such as their name, Social Security Number, date and place of birth, mother's maiden name, biometric records, including any other personal information which can be linked to an individual.

E.19. 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/pro-mcos.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.20. Contractor Disclosure. The Contractor must inform the client in writing that the Contractor is a private provider and not an employee of the Department of Children's Services.
- E.21. Notification of Charges. In the event that the Contractor's total charges to the State, during the Contract, equal eighty percent (80%) of the contract maximum liability detailed in Section C.1 of this contract, the Contractor shall immediately notify the State and provide the State with an estimate of the number of hours that will be required to complete work during the remaining period of the Contract. The State shall review the estimate and determine whether the estimated hours of service will be necessary and whether the State must increase the Contract maximum liability through a Contract amendment to provide for an adequate amount to compensate the Contractor in accordance with the rates detailed in Section C.3 of this contract.
- E.22. Conflicting Representation. The Contractor warrants that they and their subcontractors shall not represent any child in DCS custody for which a conflict of interest exists. This includes involvement in the dependency and neglect proceedings in juvenile court pursuant to Tennessee Code Annotated Title 37, which resulted in the child being placed in DCS custody and where Contractor or its subcontractor represented a party in the proceeding, other than the child. If a referral is made to the Contractor to represent such a child under this contract, the Contractor shall notify DCS of the conflict of interest and subcontract with another attorney or law firm that can represent the child without a conflict of interest.

IN WITNESS WHEREOF,

TENNESSEE ALLIANCE FOR LEGAL SERVICES:

ERIK COLE, EXECUTIVE DIRECTOR

DATE

DEPARTMENT OF CHILDREN'S SERVICES:

JAMES M. HENRY, INTERIM COMMISSIONER

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Tennessee Alliance for Legal Services
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	620979831

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