

**CONTRACT #2**  
**RFS 359.10-10197**  
**Edison # 42713**

**Department of Children's  
Services**

**VENDOR:**  
**Group Effort Foundations**



STATE OF TENNESSEE

DEPARTMENT OF CHILDREN'S SERVICES

Bill Haslam  
Governor

James M. Henry  
Commissioner

MEMORANDUM

To: Leni Chick, Contract and Audit Coordinator  
Fiscal Review Committee

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

Date: December 18, 2014

Subject: **MBH of Gallatin, LLC**

Please find as accompaniments to this summary memo the various supporting materials necessary for the review of the Special Delegated Authority (SDPA) #42713 for out-of-home residential care and treatment services. The SDAP was developed as the result of a Request for Qualifications (RFQ), a competitive process overseen by the Central Procurement Office (CPO).

This request seeks a name change for Group Effort Foundation. Group Effort Foundation is being acquired by MBH of Gallatin, LLC.

~~The [redacted] within the 30-day period. However, FRC staff is aware and has agreed to place this item on the FRC agenda on January 26, 2015.~~

Your consideration of this request is appreciated.



Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Special Delegated Authority – Residential Services	*Contact Phone:	615-741-0581		
*Presenter's name(s):	Douglas Swisher and/or Suzanne White				
Edison Contract Number: <i>(if applicable)</i>	42713	RFS Number: <i>(if applicable)</i>	35910-10197		
*Original or Proposed Contract Begin Date:	07/01/2014	*Current or Proposed End Date:	06/30/2017		
Current Request Amendment Number: <i>(if applicable)</i>	1				
Proposed Amendment Effective Date: <i>(if applicable)</i>	March 01, 2015				
*Department Submitting:	Department of Children's Services (DCS)				
*Division:	Contracts Management Unit				
*Date Submitted:	December 18, 2014				
*Submitted Within Sixty (60) days:	<input checked="" type="checkbox"/> Yes				
<i>If not, explain:</i>	[REDACTED]				
*Contract Vendor Name:	Special Delegated Authority				
*Current or Proposed Maximum Liability:	\$660,000,000.00				
*Estimated Total Spend for Commodities:	None				
*Current or Proposed Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>					
FY:2015	FY:2016	FY:2017	FY:	FY	FY
\$220,000,000.00	\$220,000,000.00	\$220,000,000.00	\$	\$	\$
*Current Total Expenditures by Fiscal Year of Contract:					

Supplemental Documentation Required for  
Fiscal Review Committee

<i>(attach backup documentation from Edison)</i>					
FY:2015	FY:	FY:	FY:	FY	FY
\$79,489,237.10	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:		N/A			
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		N/A			
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		N/A			
<b>*Contract Funding Source/Amount:</b>					
State:	\$270,600,000.00	Federal:	\$39,600,000.00		
Interdepartmental:	\$349,800,000.00	Other:			
If "other" please define:		N/A			
If "interdepartmental" please define:		TennCare			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>			

Supplemental Documentation Required for  
Fiscal Review Committee

Method of Original Award: <i>(if applicable)</i>	Request for Qualifications (RFQ)
<p><b>*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?</b></p>	<p>\$660,000,000.00 Cost was based on historic expenditures, the trend in the number of children/youth in custody and the level of care delivered by corresponding rate of care.</p>
<p><b>*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.</b></p>	<p>26</p>

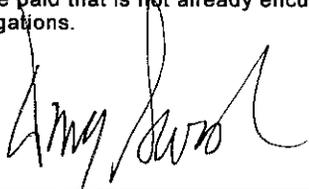


9/18/2014	2	225	\$	450.00	Level 3	GROUP EFFORT OF TENNESSEE	10/15/2014 PAID	Mid Cumberland Region	September 16 thru 30-14	10/8/2014
9/18/2014	1	225	\$	225.00	Level 3	GROUP EFFORT OF TENNESSEE	10/15/2014 PAID	Mid Cumberland Region	September 16 thru 30-14	10/8/2014
9/25/2014	1	225	\$	225.00	Level 3	GROUP EFFORT OF TENNESSEE	10/15/2014 PAID	Mid Cumberland Region	September 16 thru 30-14	10/8/2014
9/15/2014	12	225	\$	2,700.00	Level 3	GROUP EFFORT OF TENNESSEE	9/29/2014 PAID	Mid Cumberland Region	Sept 1 thru Spept 15	9/24/2014
9/15/2014	15	225	\$	3,375.00	Level 3	GROUP EFFORT OF TENNESSEE	9/29/2014 PAID	Mid Cumberland Region	Sept 1 thru Spept 15	9/24/2014
9/15/2014	15	225	\$	3,375.00	Level 3	GROUP EFFORT OF TENNESSEE	9/29/2014 PAID	Mid Cumberland Region	Sept 1 thru Spept 15	9/24/2014
9/1/2014	1	225	\$	225.00	Level 3	GROUP EFFORT OF TENNESSEE	9/29/2014 PAID	Mid Cumberland Region	Sept 1 thru Spept 15	9/24/2014
7/30/2014	1	225	\$	225.00	Level 3	GROUP EFFORT OF TENNESSEE	9/15/2014 PAID	Mid Cumberland Region	July Invoice	9/8/2014
7/30/2014	2	225	\$	450.00	Level 3	GROUP EFFORT OF TENNESSEE	9/15/2014 PAID	Mid Cumberland Region	July Invoice	9/8/2014
7/9/2014	2	225	\$	450.00	Level 3	GROUP EFFORT OF TENNESSEE	9/15/2014 PAID	Mid Cumberland Region	July Invoice	9/8/2014
7/8/2014	1	225	\$	225.00	Level 3	GROUP EFFORT OF TENNESSEE	9/15/2014 PAID	Mid Cumberland Region	July Invoice	9/8/2014
7/24/2014	3	225	\$	675.00	Level 3	GROUP EFFORT OF TENNESSEE	9/15/2014 PAID	Mid Cumberland Region	July Invoice	9/8/2014
7/27/2014	4	225	\$	900.00	Level 3	GROUP EFFORT OF TENNESSEE	9/15/2014 PAID	Mid Cumberland Region	July Invoice	9/8/2014
7/20/2014	5	225	\$	1,125.00	Level 3	GROUP EFFORT OF TENNESSEE	9/15/2014 PAID	Mid Cumberland Region	July Invoice	9/8/2014
7/29/2014	5	225	\$	1,125.00	Level 3	GROUP EFFORT OF TENNESSEE	9/15/2014 PAID	Mid Cumberland Region	July Invoice	9/8/2014
7/17/2014	3	225	\$	675.00	Level 3	GROUP EFFORT OF TENNESSEE	9/15/2014 PAID	Mid Cumberland Region	July Invoice	9/8/2014
8/31/2014	31	225	\$	6,975.00	Level 3	GROUP EFFORT OF TENNESSEE	9/15/2014 PAID	Mid Cumberland Region	August 2014	9/8/2014
8/13/2014	2	225	\$	450.00	Level 3	GROUP EFFORT OF TENNESSEE	9/15/2014 PAID	Mid Cumberland Region	August 2014	9/8/2014
8/20/2014	2	225	\$	450.00	Level 3	GROUP EFFORT OF TENNESSEE	9/15/2014 PAID	Mid Cumberland Region	August 2014	9/8/2014
8/31/2014	10	225	\$	2,250.00	Level 3	GROUP EFFORT OF TENNESSEE	9/15/2014 PAID	Mid Cumberland Region	August 2014	9/8/2014
8/31/2014	3	225	\$	675.00	Level 3	GROUP EFFORT OF TENNESSEE	9/15/2014 PAID	Mid Cumberland Region	August 2014	9/8/2014
11/30/2014	2	225	\$	450.00	Level 3	GROUP EFFORT OF TENNESSEE	SENTTOEDISON	Northwest Region	November Billing Missing Youth	12/30/2014
11/30/2014	30	225	\$	6,750.00	Level 3	GROUP EFFORT OF TENNESSEE	12/17/2014 PAID	Northwest Region	November 1, 2014 thru November 30, 2014	12/11/2014
11/30/2014	30	225	\$	6,750.00	Level 3	GROUP EFFORT OF TENNESSEE	12/17/2014 PAID	Northwest Region	November 1, 2014 thru November 30, 2014	12/11/2014
10/31/2014	31	225	\$	6,975.00	Level 3	GROUP EFFORT OF TENNESSEE	11/26/2014 PAID	Northwest Region	October 1, 2014 and October 31, 2014	11/19/2014
10/12/2014	3	225	\$	675.00	Level 3	GROUP EFFORT OF TENNESSEE	11/26/2014 PAID	Northwest Region	October 1, 2014 and October 31, 2014	11/19/2014
10/31/2014	17	225	\$	3,825.00	Level 3	GROUP EFFORT OF TENNESSEE	11/26/2014 PAID	Northwest Region	October 1, 2014 and October 31, 2014	11/19/2014
9/30/2014	15	225	\$	3,375.00	Level 3	GROUP EFFORT OF TENNESSEE	10/15/2014 PAID	Northwest Region	September 16 thru 30-14	10/8/2014
9/15/2014	15	225	\$	3,375.00	Level 3	GROUP EFFORT OF TENNESSEE	9/29/2014 PAID	Northwest Region	Sept 1 thru Spept 15	9/24/2014
7/31/2014	8	225	\$	1,800.00	Level 3	GROUP EFFORT OF TENNESSEE	9/15/2014 PAID	Northwest Region	July Invoice	9/8/2014
8/31/2014	31	225	\$	6,975.00	Level 3	GROUP EFFORT OF TENNESSEE	9/15/2014 PAID	Northwest Region	August 2014	9/8/2014
11/30/2014	7	225	\$	1,575.00	Level 3	GROUP EFFORT OF TENNESSEE	SENTTOEDISON	Smoky Mountain Region	November Billing Missing Youth	12/30/2014
10/25/2014	12	225	\$	2,700.00	Level 3	GROUP EFFORT OF TENNESSEE	11/26/2014 PAID	South Central Region	October 1, 2014 and October 31, 2014	11/19/2014
11/6/2014	6	225	\$	1,350.00	Level 3	GROUP EFFORT OF TENNESSEE	12/17/2014 PAID	Southwest Region	November 1, 2014 thru November 30, 2014	12/11/2014
10/31/2014	31	225	\$	6,975.00	Level 3	GROUP EFFORT OF TENNESSEE	11/26/2014 PAID	Southwest Region	October 1, 2014 and October 31, 2014	11/19/2014
9/30/2014	15	225	\$	3,375.00	Level 3	GROUP EFFORT OF TENNESSEE	10/15/2014 PAID	Southwest Region	September 16 thru 30-14	10/8/2014
9/15/2014	15	225	\$	3,375.00	Level 3	GROUP EFFORT OF TENNESSEE	9/29/2014 PAID	Southwest Region	Sept 1 thru Spept 15	9/24/2014
7/31/2014	15	225	\$	3,375.00	Level 3	GROUP EFFORT OF TENNESSEE	9/15/2014 PAID	Southwest Region	July Invoice	9/8/2014
8/31/2014	31	225	\$	6,975.00	Level 3	GROUP EFFORT OF TENNESSEE	9/15/2014 PAID	Southwest Region	August 2014	9/8/2014
11/17/2014	17	225	\$	3,825.00	Level 3	GROUP EFFORT OF TENNESSEE	12/17/2014 PAID	TN Valley Region	November 1, 2014 thru November 30, 2014	12/11/2014
10/31/2014	31	225	\$	6,975.00	Level 3	GROUP EFFORT OF TENNESSEE	11/26/2014 PAID	TN Valley Region	October 1, 2014 and October 31, 2014	11/19/2014
9/30/2014	15	225	\$	3,375.00	Level 3	GROUP EFFORT OF TENNESSEE	10/15/2014 PAID	TN Valley Region	September 16 thru 30-14	10/8/2014
9/15/2014	15	225	\$	3,375.00	Level 3	GROUP EFFORT OF TENNESSEE	9/29/2014 PAID	TN Valley Region	Sept 1 thru Spept 15	9/24/2014
7/31/2014	8	225	\$	1,800.00	Level 3	GROUP EFFORT OF TENNESSEE	9/15/2014 PAID	TN Valley Region	July Invoice	9/8/2014
8/31/2014	31	225	\$	6,975.00	Level 3	GROUP EFFORT OF TENNESSEE	9/15/2014 PAID	TN Valley Region	August 2014	9/8/2014
11/30/2014	5	225	\$	1,125.00	Level 3	GROUP EFFORT OF TENNESSEE	12/17/2014 PAID	Upper Cumberland Region	November 1, 2014 thru November 30, 2014	12/11/2014
10/2/2014	2	225	\$	450.00	Contract Residen	GROUP EFFORT OF TENNESSEE	12/12/2014 PAID	Knox Region	TMP 20141107 KNOX GROUP EFFORTS	12/4/2014
10/28/2014	3	225	\$	675.00	Contract Residen	GROUP EFFORT OF TENNESSEE	12/12/2014 PAID	South Central Region	TMP SC 11102014 GEF	12/5/2014
		\$		295,200.00						





## DELEGATED AUTHORITY AMENDMENT

<b>Agency Tracking #</b> 35910-10197	<b>Edison ID</b> 42713	<b>Delegated Authority #</b> 42713	<b>Amendment #</b> 1		
<b>Amendment Purpose &amp; Effect(s)</b> Name Change from Group Effort Foundations to MBH of Gallatin, LLC					
<b>TOTAL Maximum Liability INCREASE or DECREASE per this Amendment (zero if N/A):</b> <span style="float: right;"><b>\$ 0</b></span>					
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Maximum Liability</b>
2015	90,200,000.00	13,200,000.00	116,600,000.00		220,000,000.00
2016	90,200,000.00	13,200,000.00	116,600,000.00		220,000,000.00
2017	90,200,000.00	13,200,000.00	116,600,000.00		220,000,000.00
<b>TOTAL:</b>	<b>270,600,000.00</b>	<b>39,600,000.00</b>	<b>349,800,000.00</b>		<b>660,000,000.00</b>
<b>Budget Officer Confirmation:</b> 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.  			<b>OCR USE</b>		
<b>Speed Chart (optional)</b>		<b>Account Code (optional)</b>			

**AMENDMENT ONE  
TO DELEGATED AUTHORITY  
RESIDENTIAL OUT-OF-HOME CARE & TREATMENT  
42713**

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This application to amend the above-referenced delegated authority, if approved as required by professional service contacting regulations, shall revise the delegated authority as follows.

Delete Attachment 1 and replace with Attachment 1 to add MBH of Gallatin, LLC and delete Group Effort Foundation.

**Required Approvals.** This Amendment shall be valid only upon approval by the contracting agency head and appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this delegated authority, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

**Amendment Effective Date.** The revisions set forth herein shall be effective March 01, 2015. All other terms and conditions of this delegated authority not expressly amended herein shall remain in full force and effect.

**IN WITNESS WHEREOF:**

  
James M. Henry, Commissioner

  
DATE

**RFQ 35910-11178 for Residential and Foster Care Out-of-Home Treatment Services**

Only those 26 vendors qualified via this RFQ process will be allowed to be paid from this Delegated Authority.

1. Camelot Care Center Inc.
2. Centerstone of Indiana
3. Chambliss Center
4. Childhelp
5. Florence Crittenden
6. Free Will Baptist Ministries
7. Frontier Health
8. G4S Youth Services
9. Goodwill Homes
10. Group Effort Foundation
11. Helen Ross McNabb
12. Holston United
13. **MBH of Gallatin, LLC**
14. King's Daughters' School
15. Memphis Recovery Center
16. Meritan
17. Monroe Harding
18. Omni Visions, Inc.
19. Partnership For Families Children & Adults
20. Porter Leath
21. Rescare (Alternative Youth Services DBA Magnolia Academy)
22. Tennessee Children's Home
23. Tennessee MENTOR
24. Wayne's Halfway House
25. Youth Town of Tennessee
26. Youth Villages

# MBH of Gallatin, LLC

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December 9, 2014

To Whom It May Concern:

Please be advised that MBH of Gallatin, LLC intends to purchase the assets of Group Effort located at 220 Hickory Ave S, Gallatin, TN 37066 with an anticipated closing date of March 15, 2015 pending DCS approval. Please feel free to contact me should you require any additional information.

Sincerely,



Dawn Steinberg, Esq.

Vice President

MBH of Gallatin, LLC

*Corporate Office*  
19821 NW 2<sup>nd</sup> Ave, Suite 396 Miami Gardens, Florida 33169  
Tel: 855-777-MBHS (6247)/ Fax: 855-847-7647

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Business Services Online > Find and Update a Business Record > Business Entity Detail

## Business Entity Detail

<b>Available Entity Actions</b>	<a href="#">File Annual Report (after 12/01/2014)</a>	Entity details cannot be edited. This detail reflects the current state of the filing in the system.  Return to the <a href="#">Business Information Search</a> .
	<a href="#">Certificate of Existence</a>	
	<a href="#">Modify Mailing Address</a>	

<b>000775842: Limited Liability Company - Foreign</b>		<a href="#">Printer Friendly Version</a>						
<p align="center"><b>Name:</b> MBH of Gallatin, LLC</p> <p><b>Foreign Name:</b></p> <p><b>Status:</b> Active</p> <p><b>Formed in:</b> DELAWARE</p> <p><b>Fiscal Year Close:</b> December</p> <p><b>Term of Duration:</b> Perpetual</p> <p><b>Principal Office:</b> 19821 NW 2ND AVE STE 396 MIAMI GARDENS, FL 33169-3341 USA</p> <p><b>AR Exempt:</b> No</p> <p><b>Managed By:</b> Member Managed</p>								
<p><b>Initial Filing Date:</b> 10/23/2014</p> <p><b>Delayed Effective Date:</b></p> <p><b>AR Due Date:</b> 04/01/2015</p> <p><b>Inactive Date:</b></p>		<p><b>Obligated Member Entity:</b> No</p> <p><b>Number of Members:</b> 1</p>						
<table border="1"> <tr> <td><b>Assumed Names</b></td> <td><a href="#">History</a></td> <td><a href="#">Registered Agent</a></td> </tr> </table>	<b>Assumed Names</b>	<a href="#">History</a>	<a href="#">Registered Agent</a>					
<b>Assumed Names</b>	<a href="#">History</a>	<a href="#">Registered Agent</a>						
<table border="1"> <thead> <tr> <th>Name</th> <th>Status</th> <th>Expires</th> </tr> </thead> <tbody> <tr> <td colspan="3">No Assumed Names Found...</td> </tr> </tbody> </table>	Name	Status	Expires	No Assumed Names Found...				
Name	Status	Expires						
No Assumed Names Found...								

Division of Business Services  
312 Rosa L. Parks Avenue, Snodgrass Tower, 6th Floor  
Nashville, TN 37243  
615-741-2286

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# Special Contract Request

This form should be utilized to facilitate contract and procurement requests that require the Chief Procurement Officer's prior approval and that of the Comptroller of the Treasury, as applicable.

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.

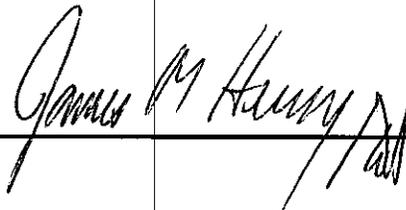
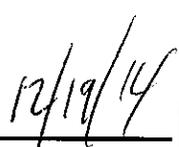
<b>APPROVED</b>		<b>APPROVED</b>
CHIEF PROCUREMENT OFFICER	DATE	COMPTROLLER OF THE TREASURY
		DATE

Request Tracking #		35910-10197
1. Contracting Agency		Department of Children's Services
2. Type of Contract or Procurement Method		<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input checked="" type="checkbox"/> RFQ
3. Requestor Contact Information		Suzanne G. White <a href="mailto:Suzanne.g.white@tn.gov">Suzanne.g.white@tn.gov</a> 615-741-0581
4. Brief Goods or Services Caption		Residential Care & Treatment
5. Description of the Goods or Services to be Acquired		Delivery of direct out-of-home residential care and treatment for children and youth remanded to the custody of the state adjudicated neglect, unruly or delinquent.
6. Proposed Contractor		Special Delegated Authority (42713)
7. Name & Address of the Contractor's principal owner(s) <i>- NOT required for a TN state education institution</i>		N/A
8. Proposed Contract Period <i>- with ALL options to extend exercised</i> <i>The proposed contract start date shall follow the approval date of this request.</i>		36 months
9. Office for Information Resources Pre-Approval Endorsement Request <i>- information technology (N/A to THDA)</i>		<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached

<b>Request Tracking #</b>		<b>35910-10197</b>
<b>10. eHealth Pre-Approval Endorsement Request</b> – health-related professional, pharmaceutical, laboratory, or imaging		<input checked="" type="checkbox"/> <b>Not Applicable</b> <input type="checkbox"/> <b>Attached</b>
<b>11. Human Resources Pre-Approval Endorsement Request</b> – state employee training		<input checked="" type="checkbox"/> <b>Not Applicable</b> <input type="checkbox"/> <b>Attached</b>
<b>12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.</b>		<input checked="" type="checkbox"/> <b>NO</b> <input type="checkbox"/> <b>YES,</b>
<b>13. Maximum Contract Cost</b> – with ALL options to extend exercised		<b>\$ 660,000,000.00</b>
<b>14. Was there an initial government estimate? If so, what amount?</b>		<input type="checkbox"/> <b>NO</b> <input checked="" type="checkbox"/> <b>YES, \$660,000,000.00</b>
<b>15. Cost Determination Used-</b> How did agency arrive at the estimate of expected costs?		<b>Based on historic costs and utilization of contracts over several years.</b>
<b>16. Explanation of Fair and Reasonable Price-</b> Explain how agency determined that price is fair and reasonable		<b>Residential service providers are reimbursed based on the level of services and the rates established for that level of care. Rates were established through time and cost studies and approval from TennCare</b>
<b>17. Documentation of Discussions with Contractor-</b> How did agency document discussions with Contractor? Attach documentation to this request as applicable.		<b>Communications through e-mail, phone and personal face-to-face contacts.</b>

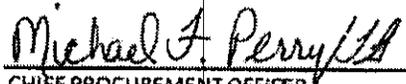
Request Tracking #		35910-10197
18. Explanation of Need for or requirement placed on the State to acquire the goods or services		<p>The Tennessee Department of Children's Services (DCS), as authorized by T.C.A. § 37- 5-102, is the state's source for providing services to children entering state custody. DCS has responsibility for protecting children from abuse and neglect, providing temporary care for children who cannot safely remain in their own homes, providing permanent homes for those children who are legally free for adoption, and rehabilitating delinquent children through residential treatment programs. The focus of the services is to preserve the relationship between the child and the family by providing whenever possible, services in the community where the child lives and by providing the services in a setting which is the least restrictive and yet, the most beneficial.</p> <p>DCS has developed a system that focuses on outcomes for children and families within the context of their community. Those outcomes are safety, permanency, and well-being. Provider agencies are an integral partner in the Department's effort to achieve its overarching objectives. It is the Department's view that the reform agenda can be advanced by aligning better the outcomes it seeks with the mechanisms it uses to purchase services from its partners. The performance based contracting system initiative is one step in this direction. It should also be noted that this initiative is in compliance with the terms and conditions of the Brian A. Settlement Agreement.</p>
19. Proposed contract impact on current State operations		Ability to deliver services in accordance with the mandates of T.C.A. § 37- 5-102 as the oversight body for custodial children/youth.

Request Tracking #		35910-10197
20. <b>Justification</b> – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.		<p><b><u>Name Change Request:</u></b></p> <p>Twenty-Six (26) providers were selected to be the pool of network providers eligible to deliver out-of-home residential care and treatment for custodial children/youth. One of the selected vendors is Group Effort Foundation. Group Effort Foundation is being acquired by MBG of Gallatin, LLC.</p> <p>MBH of Gallatin, LLC was evaluated by the Department to ensure all the qualifications, experience and mandatory requirements have been met by the entity. Based on that evaluation, the Department has determined that MBH of Gallatin, LLC has met all the requirements that will allow the acquisition.</p> <p>This special request seeks to amend the Special Delegated Authority to change the name of Group Effort Foundation to MBH of Gallatin, LLC effective March 01, 2015</p>
<b>For No Cost and Revenue Contracts Only</b>		
21. What costs will the State incur as a result of this contract? If any, please explain.		
22. What is the total estimated revenue that the State would receive as a result of this contract?		
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.		<input type="checkbox"/> NO <input type="checkbox"/> YES
24. Summary of State responsibilities under proposed contract		
<b>For Sole Source and Proprietary Procurements Only</b>		
25. Explanation of Need for or requirement placed on the State to acquire the goods or services		<p>The Tennessee Department of Children's Services (DCS), as authorized by T.C.A. § 37-5-102, is the state entity responsible for ensuring the clinical treatment, safety, health and well-being of children entering state custody. DCS has responsibility for protecting children from abuse and neglect, providing temporary care for children who cannot safely remain in their own homes, providing permanent homes for those children who are legally free for adoption, and rehabilitating delinquent children through residential treatment programs.</p>

Request Tracking #		35910-10197
26. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.		Providers were selected through the Request for Qualifications (RFQ) competitive process. Vendors selected were evaluated on their experience and qualifications to deliver residential care and treatment services.
27. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.		<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, Method: Special Delegated Authority Name/Address: N/A
28. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives		The Request for Qualifications (RFQ) process was utilized to procure the services. Rates for residential care and treatment are established by the Department of Children's Services in collaboration with TennCare and are non-negotiable. Time and Cost Study analyses are conducted periodically to determine the viability of the current rate structure.
<b>Signature Required for all Special Contract Requests</b>		
<b>Agency Head Signature and Date</b> – <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 circumstance</i>		
Signature:		
	Date: 	

# Rule Exception Request

Route completed request, as one file in PDF format, via e-mail attachment sent to: [ARSDRS.ARSDRS@tn.gov](mailto:ARSDRS.ARSDRS@tn.gov)

**APPROVED**  
  
**Michael A. Perry**  
 CHIEF PROCUREMENT OFFICER  
 (Required for all Rule Exception Requests)

**APPROVED**  
  
**Joshua B. Wilson**  
 COMPTROLLER OF THE TREASURY  
 (ONLY for applicable statutorily required approvals e.g., records, annual report and audit, or monitoring provisions)

<b>Request Tracking #</b>	35910-42713
<b>1. Contract #</b>	42713
<b>2. Goods or Services Caption</b>	Residential Care & Treatment
<b>3. Contractor</b>	Twenty-Six Vendors (see Attachment 1)
<b>4. Contract Period (with ALL options to extend exercised)</b>	36 months
<b>5. Contract Maximum Liability (with ALL options to extend exercised)</b>	\$ 660,000,000
<b>6. Rule(s) (for which the exception is requested)</b>  Please include citation and written explanation of Rule(s) to be excepted.	<b>Rule 0690-03-01-.17:</b>  The purpose of this Rule is to prescribe the necessary and prohibited contract clauses for contracts subject to these Rules. The form and content of all contract clauses shall be established by Central Procurement Office Policy. This Rule shall also prescribe a procedure for approving exceptions or modifications to contract clauses prescribed or prohibited by this Rule or Central Procurement Office Policy.
<b>7. Explanation of Rule Exception Requested</b>	The Department of Children's Services, through the Central Procurement Office (CPO), issued a Request for Qualifications (RFQ) on April 04, 2014. Through this competitive evaluation process twenty-six (26) vendors were selected as the pool of network providers eligible to deliver out-of-home residential care and treatment.  The mechanism through which payments are to be made will be through a Special Delegated Purchase Authority (DPA). The use of the DPA necessitates modifications to the standard DPA template language to more accurately reflect the process employed to procure the services.

8. Justification

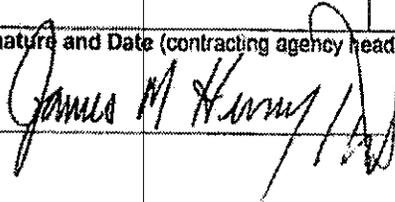
In order to use the DPA certain language changes are necessary to more accurately reflect the RFQ 35910-10197 process and procedures that were used to procure out-of-home residential care and treatment.

The changes are as follows:

- Add a term period as the RFQ allowed for a three year term (July 01, 2014 through June 30, 2017). Procuring the provider network is a time intensive process, and a longer time frame allows the vendor community to properly adjust to working with DCS.
- F.3.a was modified to more accurately reflect the method by which the services were competitively procured to "In strict accordance with the results of the Request for Qualifications (RFQ) # 35910-10197 issued on April 04, 2014 for the vendors identified in Attachment 1 ; and".
- The full execution of this contract has been delayed for a myriad of reasons which necessitates the predating of the authority with an effective date beginning 7/1/2014.

The Department had no recourse but to continue network operations as the health and welfare of approximately 3,500 children were at risk. The twenty-six (26) providers comprising the current network pool continued to deliver services uninterrupted. The only mechanism available to DCS to effectuate reimbursement for services rendered is through this DA with an effective date of 7/1/2014.

Agency Head Signature and Date (contracting agency head or authorized signatory)

 7/10/14

**ATTACHMENT 1**

**RFQ 35910-11178 for Residential and Foster Care Out-of-Home Treatment Services**

Only those 26 vendors qualified via this RFQ process will be allowed to be paid from this Delegated Authority.

1. Camelot Care Center Inc.
2. Centerstone of Indiana
3. Chambliss Center
4. Childhelp
5. Florence Crittenden
6. Free Will Baptist Ministries
7. Frontier Health
8. G4S Youth Services
9. Goodwill Homes
10. Group Effort Foundation
11. Helen Ross McNabb
12. Holston United
13. Key Group Holdings
14. King's Daughters' School
15. Memphis Recovery Center
16. Meritan
17. Monroe Harding
18. Omni Visions, Inc.
19. Partnership For Families Children & Adults
20. Porter Leath
21. Rescare (Alternative Youth Services DBA Magnolia Academy)
22. Tennessee Children's Home
23. Tennessee MENTOR
24. Wayne's Halfway House
25. Youth Town of Tennessee
26. Youth Villages



# SPECIAL DELEGATED AUTHORITY



<b>Agency Tracking #</b> 35910-10197	<b>Edison Record ID</b> 42713	<b>Begin</b> 7/1/2014	<b>End</b> 6/30/2017
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<b>Edison Record ID of Prior, Similar DA (if any)</b> 35470	<b>Last Possible End Date of Authorized Agreements</b> 6/30/2017
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**Subject Service**  
Residential Out-of-Home Care & Treatment

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Maximum Liability
2015	90,200,000.00	13,200,000.00	116,600,000.00		220,000,000.00
2016	90,200,000.00	13,200,000.00	116,600,000.00		220,000,000.00
2017	90,200,000.00	13,200,000.00	116,600,000.00		220,000,000.00
<b>TOTAL:</b>	<b>270,600,000.00</b>	<b>39,600,000.00</b>	<b>349,800,000.00</b>		<b>660,000,000.00</b>

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

**Authorized agreements will establish the following relationship:**  SUBRECIPIENT  VENDOR

**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.

*[Handwritten Signature]*

OCR USE - DA

<b>Speed Chart (optional)</b>	<b>Account Code (optional)</b>
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**SPECIAL DELEGATED AUTHORITY**



This application for delegated authority, if approved as required by professional service contacting regulations, shall authorize the applicant state agency (referenced herein as the "Contracting Agency") to make agreements or payments for the specified program without individual, independent approval review, PROVIDED THAT all such agreements and payments are within the limits, guidelines, and conditions specified herein.

<b>Contracting Agency:</b>	<b>Department of Children's Services</b>	
<b>Subject Program:</b>	<b>Residential Services</b>	
<b>A. What is the specific purpose of the delegated authority?</b>		
<p>The Tennessee Department of Children's Services (DCS), as authorized by T.C.A. § 37-5-102, is the state's source for providing services to children entering state custody. DCS has responsibility for protecting children from abuse and neglect, providing temporary care for children who cannot safely remain in their own homes, providing permanent homes for those children who are legally free for adoption, and rehabilitating delinquent children through residential treatment programs. The focus of the services is to preserve the relationship between the child and the family by providing whenever possible, services in the community where the child lives and by providing the services in a setting which is the least restrictive and yet, the most beneficial. DCS is mandated by T.C.A. § 37-5-102 to provide timely, appropriate and cost-effective services for children in state custody. DCS must provide Residential Care and Treatment services to children that were adjudicated by the courts and placed in the custody of DCS.</p> <p>DCS has developed a system that focuses on outcomes for children and families within the context of their community. Those outcomes are safety, permanency, and well-being. Provider agencies are an integral partner in the Department's effort to achieve its overarching objectives. It is the Department's view that the reform agenda can be advanced by aligning better the outcomes it seeks with the mechanisms it uses to purchase services from its partners. The performance based contracting system initiative is one step in this direction. It should also be noted that this initiative is in compliance with the terms and conditions of the Brian A. Settlement Agreement.</p>		
<b>B. Why is the delegated authority necessary (as opposed to fee-for-service contracts)?</b>		
<p>Neither the location nor the specific needs of children that are to be placed in the custody of DCS can be determined in advance as children coming into custody have an array of needs and requirements that are capricious and dependent on each child's unique circumstance. Services are based upon an assessment of each child's needs, the Plan of Care (POC) developed for that child, as well as the county in which the child was placed. Pursuant to the Brian A. Settlement Agreement "all children shall be placed within their own region or within a seventy-five (75) mile radius of the home through which the child entered custody (Section C.1., page 14)." While specific needs cannot be determined in advance, DCS has established a standardized rate system for Performance-Based Residential Care and Treatment services. The standardized rate system establishes the rates for the various levels of service. The Federal Government and TennCare approve the standardized rates established for residential services. All Service Providers willing to provide services to children placed in DCS' custody are obligated to accept the rates as defined.</p>		
<b>C. TERM OF THE DELEGATED AUTHORITY</b>	<b>July 01, 2014 to June 30, 2017</b>	
<b>D. What will be the maximum amount of an individual agreement or payment?</b>	<b>\$ 70,000,000.00</b>	
<b>E. What is the maximum liability of the requested delegated authority?</b>	<b>\$660,000,000.00</b>	
<b>F. CONTRACTING AGENCY DECLARATION:</b>		
<b>1. Each of the following is true and applicable to the procurement situation described</b>		



herein.

- a) The program needs and general categories of services are such that adequate guidelines can be developed to direct the agency in competitively or impartially making each authorized agreement or payment.
  - b) The procurement terms, conditions, and criteria to be followed by the contracting agency in making each authorized agreement or payment will be of such uniformity that individual, independent, and prior approval is unnecessary.
  - c) Each individual, authorized agreement or payment will be of such uniformity, volume that the individual, independent, and prior approval of each is unnecessary and impractical.
2. The summary cover correctly records the requested delegated authority period in which every agreement or payment must be entered as well as the relationship (as defined by *F&A Policy 22, Subrecipient Monitoring*) that all shall create.
  3. The Contracting agency will make each agreement or payment:
    - a) in strict accordance with the results of the Request for Qualifications (RFQ) # 35910-10197 issued on April 04, 2014 for the vendors identified in Attachment 1 ; and
    - b) by means of a document drafted in compliance with the template detailed at Attachment 2.
  4. The Contracting agency will ensure that every agreement or payment made pursuant to the delegated authority is compliant with the following requirements.
    - a) Funding shall be budgeted and sufficient funds available.
    - b) Each shall be consistent with state of Tennessee and program policy, rules, and regulations, including all applicable federal laws, rules, regulations, and requirements.
    - c) NONE shall create an employer/employee relationship as prohibited by the Rules of the Department of Finance and Administration, Chapter 0620-3-3.
    - d) NONE shall procure goods, materials, supplies, equipment, or services EXCEPT as provided herein and for the program specified.
    - e) NONE shall provide for the payment of any amount directly or indirectly to an employee or official of the state of Tennessee.
  5. The Contracting agency will retain records to document that each agreement or payment pursuant to the delegated authority has been made in accordance with the limits, guidelines, and conditions specified herein.
  6. The Contracting agency will provide all such reports and information relating to the execution of this delegated authority as may be requested by the state officials who approve the delegated authority.

IN WITNESS WHEREOF, and by signature below, I affirm, certify, and assure that all information detailed herein is, to the best of my knowledge, accurate and represents the limits, guidelines, conditions, and procedures that the Contracting agency staff shall follow in making each agreement or payment hereunder:

*James M. Henry*

James M. Henry, Commissioner

7/10/14

Date



**RFQ 35910-11178 for Residential and Foster Care Out-of-Home Treatment Services**

Only those 26 vendors qualified via this RFQ process will be allowed to be paid from this Delegated Authority.

1. Camelot Care Center Inc.
2. Centerstone of Indiana
3. Chambliss Center
4. Childhelp
5. Florence Crittenden
6. Free Will Baptist Ministries
7. Frontier Health
8. G4S Youth Services
9. Goodwill Homes
10. Group Effort Foundation
11. Helen Ross McNabb
12. Hoiston United
13. Key Group Holdings
14. King's Daughters' School
15. Memphis Recovery Center
16. Meritan
17. Monroe Harding
18. Omni Visions, Inc.
19. Partnership For Families Children & Adults
20. Porter Leath
21. Rescare (Alternative Youth Services DBA Magnolia Academy)
22. Tennessee Children's Home
23. Tennessee MENTOR
24. Wayne's Halfway House
25. Youth Town of Tennessee
26. Youth Villages

**CONTRACT PBC00567  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF CHILDREN'S SERVICES  
AND  
GROUP EFFORT FOUNDATIONS**

This Contract, by and between the State of Tennessee, Department of Children's Services (DCS), hereinafter referred to as the "State" and Group Effort Foundations, hereinafter referred to as the "Contractor," is for the provision of residential care & treatment, as further defined in the "SCOPE OF SERVICES."

The Contractor is a For-Profit Corporation .  
Contractor Place of Incorporation or Organization: Tennessee  
Contractor Edison Registration ID # 208325210

**A. SCOPE OF SERVICES:**

- A.1. The Contractor shall provide all service and deliverables as required, described and detailed herein and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Contractor shall maintain appropriate licensure required to provide the services covered by this contract. The Contractor must notify the Department of Children's Services (DCS) Contracts and Grants Management Division immediately, in writing, of any change in licensure status.
- A.3. The DCS shall evaluate each contract on a \*tri-annual (at the close of every third year of performance) basis to ensure accountability, cost-effectiveness of service provision and achievement of positive outcomes for children and families as evidenced by both qualitative as well as quantitative performance measurement as defined by DCS.

- \* Note: For the purposes of the FY 2013-14 contract only, outcomes relative to those youth already in care with the Contractor on 07/01/13 will be evaluated at the close of the 2014-15 fiscal year (a two [2] year performance window). All children and youth admitted in FY 2013-14 and in subsequent fiscal years will be evaluated using the three (3) year performance window. It should be noted that after the second year of performance evaluation there will be an annual review. However, only admission cohorts for which at least three (3) fiscal years of activity can be observed will be under review at that time.

It should also be noted that any Contractor having no previous history of service to DCS custodial youth as a primary Contractor shall only be held responsible for PBC outcomes relative to their FY 2014-15 (and subsequent fiscal years') admissions. Each fiscal year's admissions population will be subject to PBC evaluation at the end of that individual population's third fiscal year of service. Any PBC financial calculation regarding those individual populations will be made at the close of that population's three-year evaluation period.

- A.4. DCS shall evaluate the Contractor in the following areas as detailed in the DCS Provider Policy Manual (PPM) including any changes or additions that may subsequently be made:
- a. Child Safety
  - b. Movement
  - c. Permanency/Successful Program Completion
  - d. Family Involvement
  - e. Reporting and Compliance
- A.5. The Contractor shall work in compliance with the system DCS is developing for continuous quality improvement, which includes, but is not limited to, the Quality Service Review, the DCS Balanced

Scorecard and all other mechanisms established for the ongoing monitoring and evaluation of Contractor performance.

- A.6. The Contractor must request a Child & Family Team Meeting (CFTM) from the DCS Home County Family Service Worker (FSW) prior to the move of a child. Notification of emergency moves must be in accordance with the DCS PPM and reported the next business day with an immediate request for a CFTM.
- A move is considered any change in placement (internal and external to the agency) location, with the exception of temporary breaks in service, as further defined in the DCS PPM and incorporated herein by reference.
- A.7. The Contractor must report the movement of all children within 24 hours of the move occurrence in the DCS's system of record or any alternative method developed by the Department to report placement moves.
- A.8. If resource home services are provided as a part of this contract, the Contractor will place children only in resource homes that are in full compliance with the safety requirements detailed in the DCS PPM.
- A.9. The Contractor shall incorporate and accept the Child & Adolescent Needs and Strengths (CANS) assessment analysis for establishing a level of care recommendation.
- A.10. The Contractor shall utilize the Department's established system of record to document information pertaining to the child and family in accordance with the DCS PPM.
- A.11. The Contractor shall be required to identify for each child served the proper International Classification of Diseases code, 10<sup>th</sup> Version (ICD 10).
- A.12. The Contractor shall report all face-to-face (F2F) contact information on every child currently placed with the Contractor into the DCS system of record as outlined in the DCS PPM. The F2F contact information must be submitted to DCS through the system of record and must include child specific identifying information related to the following:
- a. The numbers of F2F contact between custodial child and siblings;
  - b. The numbers of F2F contacts with parent(s) or adults identified as potential permanency placement on permanency plan;
  - c. The numbers of children and families involved in service planning;
  - d. The numbers of F2F contacts between custodial child and Contractor Case Manager; and,
  - e. The numbers of F2F contacts between custodial child on a trial home visit and Contractor Case Manager.
- A.13. kidcentraltn
- a. Under the guidance of their Gatekeeper, Contractor/Grantee shall create and maintain an agency program profile in the designated state services directory located at [www.kidcentraltn.com](http://www.kidcentraltn.com). Contractor/Grantee may have more than one service which is appropriate for the directory. The Gatekeeper will provide instructions for which services should be included in the directory. Contractor/Grantee shall update its agency program profile(s) in the designated state services directory at least every six months. In addition, Contractor/Grantee shall update its agency program profile(s) within ten (10) business days of any change in information.
- For the purposes of this section, Gatekeeper shall be the person designated by State to do the following tasks: 1)invite Contractor/Grantee to create a profile; 2)review, approve, and publish program profiles created by Contractor/Grantee; and 3)monitor update activity.

- b. If Contractor/Grantee has a website, they must link to [www.kidcentraltn.com](http://www.kidcentraltn.com) from an appropriate section of that website. If Contractor/Grantee would like to link to specific features of the kidcentral tn website such as the My Profile, Mobile App, Facebook, or State Services Directory features, State can provide specific copy, links, and images for those features.

If Contractor/Grantee uses State funds to develop or distribute materials (print or electronic) intended for parents, families, children, or professionals working directly with children or families, Contractor/Grantee must place the kidcentral tn logo on those materials. Examples of covered materials would include brochures, flyers, posters, and promotional postcards or mailers. State provides the kidcentral tn logo at the following link <http://tn.gov/generalserv/ba09p/>. If Contractor/Grantee would like to apply the full kidcentral tn brand to print materials such as brochures, flyers, posters, or postcards, State also provides those templates at the following link <http://tn.gov/generalserv/ba09p/>.

This kidcentral tn logo requirement does not apply to materials that have already been printed or designed. This kidcentral tn logo requirement does not apply to materials that originate from the federal government, national organizations, or other groups where Contractor/Grantee serves as a pass through of those materials. The kidcentral tn logo should not be applied to individualized correspondence or individualized materials which are intended for a single family or professional and should not be applied to materials where the subject is purely administrative, such as materials about rules, sanctions, regulations, or enforcement.

## **B. CONTRACT PERIOD:**

This Contract shall be effective for the period beginning July 01, 2014 and ending on June 30, 2017. 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 the authorized number of children/youth served times the number of days services were provided times the level of service rate (youth served X number of days X rate). 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:

<b>Service Description</b>	<b>Amount (Per Child Per Day)</b>
Primary Treatment Center (PTC)	\$153.67
Foster Care	\$48.70
Medically Fragile	\$99.45
Independent Living	\$50.04
Level 2 Continuum	\$106.00
Level 2 Group Care	\$108.00
Level 2 Special Population	\$116.50
Level 2 A&D Enhanced	\$150.00
Level 2 Continuum Special Needs (JJ)	\$150.00
Level 3 Continuum	\$175.00
Level 3 Special Needs Continuum	\$200.00
Level 3 Enhanced Sex Offender	\$275.00
Level 3 Enhanced A&D	\$275.00
Level 3	\$225.00
Level 3 Continuum Services Enhanced	\$300.00
Level 4	\$340.00
Level 4 Special Needs	\$482.50

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

later than prescribed herein, and it must be signed by an individual empowered to bind the Contractor to this Contract.

- c. A "day" shall be defined as any period of time in the 24-hour period of a calendar day. The Contractor shall be paid the full rate per day per client placed with the Contractor, EXCEPT the Contractor shall NOT be paid any amount for the day that the client is removed from the placement with the Contractor.
- d. Re-Investment Methodology. The State shall re-invest state dollar savings with the Contractor based on the achievement of pre-established outcomes. The percentage of State dollar savings to be re-invested with the Contractor and any Contractor remittance of DCS expended funds back to the State for unsuccessful outcomes are defined in the following table:

NOTE: Negative percentages reflect Contractor remittance of DCS expended funds back to the State due to overutilization of care days relative to baseline.		Contractor remittance of DCS expended funds back to the State	State Re-Investment of State Dollar Savings	
			Care Days Less than Baseline	Care Days Equal to or Less than Target
		Care Days Equal to or Greater than Baseline		
10	Exits to permanency less than baseline and re-entries greater than baseline	-100%	80%	90%
11	Exits to permanency less than baseline and re-entries less than baseline range and greater than targeted re-entries	-90%	90%	100%
12	Exits to permanency less than baseline and re-entries less than or equal to targeted re-entries	-85%	95%	105%
13	Exits to permanency greater than baseline and less than targeted exits to permanency and re-entries greater than baseline range	-90%	90%	100%
14	Exits to permanency greater than baseline and less than targeted exits to permanency and re-entries less than baseline range and greater than targeted re-entries	-80%	100%	110%
15	Exits to permanency greater than baseline and less than targeted exits to permanency and re-entries less than or equal to targeted re-entries	-75%	105%	115%
16	Exits to permanency greater than targeted exits to permanency and re-entries equal to or greater than baseline range	-90%	90%	100%

17	Exits to permanency equal to or greater than targeted exits to permanency and re-entries less than baseline range and greater than targeted re-entries	-75%	105%	115%
18	Exits to permanency greater than targeted exits to permanency and re-entries equal to or less than targeted re-entries	-70%	110%	120%

Performance-Based Contracting (PBC) outcomes will be evaluated at the close of a three (3) year performance window for each admissions co-hort. The exception is the 2013-14 In-Care population. Treatment of the 2013-14 In-Care population is described above in item A.3.

Effective from the opening of the 2013-14 fiscal year (07/01/13), baseline performance under which PBC providers will be evaluated will be separated into the three (3) Grand Regions of the state: East, Middle and West. This will allow for a more accurate evaluation of service provision within these three distinct geographic areas. Each provider will have, for their reference, their own agency-specific baselines constructed for each Grand Region based on the children and youth that individual provider has served from those areas.

The schedule for PBC Grand Regional performance evaluation will take place at the time intervals outlined in Section A.3.

PBC baselines for this Grand Regional configuration were constructed utilizing the following geographic boundaries:

East Grand Region – East Region, Knox Region, Northeast Region, Smoky Mountain Region, Tennessee Valley Region.

Middle Grand Region – Mid-Cumberland Region, Davidson Region, Upper Cumberland Region, South Central Region.

West Grand Region – Shelby Region, Southwest Region, Northwest Region.

Compensation for re-investment dollars will be paid to the Contractor at the close of any given performance window. Contractor remittance of DCS expended funds back to the State will be netted against payments.

All PBC performance outcomes (Exits, Care Days and Re-entries) will continue to be monitored throughout the term of the contract. Performance expectations will continue to be based on historical performance relative to the Contractor's established Grand Regional PBC baselines.

#### **Commonly Used Performance-Based Contracting Definitions:**

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

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

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

**Baselines** - Baselines express how the Contractor would be expected to perform (i.e., achieve safety and permanency for children) under a “business as usual” scenario. The baselines are created using historical data taken from the system of record and reflect the traditional or normal pattern of out-of-home care utilization for a specific provider.

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

**Baseline Care Days** –The average number of expected bed days a Contractor would be anticipated to use for any one given youth within a three fiscal year window according to assigned Strata and Grand Regional affiliation. This three year window begins during the child’s initial year of admission. This window ends at the close of the third fiscal year from the child’s original admissions year.

**Baseline Exits to Permanency** – The number and percent of children, from the corresponding in care and admission populations, a Contractor would be expected to exit from out-of-home care, within a three fiscal year window according to assigned Strata and Grand Regional affiliation, to permanency (as defined in this section).

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

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

**Refreshing Baselines** – Baselines for performance are periodically “refreshed”. This refreshing consists of dropping the oldest year of the initial baseline performance years data from the calculation and adding the most recent full fiscal year of performance. The window for the baselines will remain an aggregate of three (3) full fiscal years but will be refreshed in this way every subsequent three (3) years hereafter in order to more accurately reflect the expectations attached to certain fixed populations.

Initial baselines for performance are calculated utilizing a provider’s last three (3) full fiscal year’s worth of data regarding the outcomes of permanent exits, care days used and re-entry into care. This refreshing of baselines is only ever applicable to prospective populations and does not affect the treatment of prior existing in-care or admissions populations.

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

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

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

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

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

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

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

The calculation for actuals will use the rate associated with the contract type on which the youth was placed following their stay in the PTC; and,

The baselines will be calculated using a method that applies a weighted distribution to the projected baseline population that reflects where PTC youth in the admission population were actually placed following the PTC stay.

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

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

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

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

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

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in section C.3, above, and present said invoices no more often than monthly, with all necessary supporting documentation, to:

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

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice Number (assigned by the Contractor)
  - (2) Invoice Date
  - (3) Contract Number (assigned by the State)
  - (4) Customer Account Name: Department of Children's Services, Network Development

- (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

b. The Contractor understands and agrees that an invoice under this Contract shall:

- (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
- (2) only be submitted for completed service and shall not include any charge for future work;
- (3) not include sales tax or shipping charges; and
- (4) initiate the timeframe for payment (and any discounts) only when the State is in receipt of the invoice, and the invoice meets the minimum requirements of this section C.5.

C.6. Payment of Invoice. A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or matter in relation thereto. A payment by the State shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.

C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.

C.8. Deductions. The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee any amounts, which are or shall become due and payable to the State of Tennessee by the Contractor.

C.9. Prerequisite Documentation. The Contractor shall not invoice the State under this Contract until the State has received the following documentation properly completed.

- a. The Contractor shall complete, sign, and present to the State an "Authorization Agreement for Automatic Deposit (ACH Credits) Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once said form is received by the State, all payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH).
- b. The Contractor shall complete, sign, and present to the State a "Substitute W-9 Form" provided by the State. The taxpayer identification number detailed by said form must agree with the Contractor's Federal Employer Identification Number or Tennessee Edison Registration ID referenced in this Contract.

**D. STANDARD TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of *Tennessee Code Annotated*, Section 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to

supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment A, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of *Tennessee Code Annotated*, Section 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401, *et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

**E. SPECIAL TERMS AND CONDITIONS:**

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.

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

The State:

Susan Mitchell, Executive Director Network Development  
 Tennessee Department of Children's Services  
 8th Floor, Cordell Hull Building  
 436 6th Avenue North  
 Nashville, TN 37243  
[Susan.Mitchell@tn.gov](mailto:Susan.Mitchell@tn.gov)  
 Phone: 615-741-0461  
 Fax: 615-532-1130

The Contractor:

Towan Siler, Executive Director  
 Group Effort Foundations, Inc.  
 P.O. Box 1113  
 Gallatin, TN 37606  
[t.siler@geffort.com](mailto:t.siler@geffort.com)  
 Telephone # 615-230-2937 EXT: 224  
 FAX # 615-528-3411

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. Tennessee Department of Revenue Registration. The Contractor shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

**E.6 Insurance.** The Contractor shall carry adequate liability and other appropriate forms of insurance.

- a. The Contractor shall maintain, at minimum, the following insurance coverage:
- (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
  - (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
  - (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.
  - (4) Professional Malpractice Liability with a limit of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.
- b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

**E.7. 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.8. HIPAA Compliance.** The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract.

- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.9. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.
- This Contract document with any attachments or exhibits (excluding the items listed at subsections b. through d., below);
  - The Brian A. Modified Settlement Agreement;
  - The Department of Children's Services Policy;
  - The document entitled "DCS Provider Policy Manual" including any changes or additions that may subsequently be made, herein attached by reference.
- E.10. 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.11. 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.12. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
- E.13. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- No federally appropriated funds have been paid or will be paid, by or on behalf of the 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.14. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

E.15. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

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

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

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

- (1) In event of a Breach by Contractor, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity.
- (2) **Liquidated Damages**— In the event of a Breach, the State may assess Liquidated Damages. The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced, Attachment B and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or other section of this Contract.

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

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

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

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

- (4) **Contract Termination**— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the



termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

- b. **State Breach**— In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.
- E.16. **Partial Takeover.** The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.17. **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.18. **Federal Funding Accountability and Transparency Act (FFATA).** This Contract requires the Contractor to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

- a. **Reporting of Total Compensation of the Contractor's Executives.**

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

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

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
- i. Salary and bonus.
  - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax qualified.
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
- c. If this Contract is amended to extend its term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the amendment to this Contract becomes effective.
- d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

The Contractor's failure to comply with the above requirements is a material breach of this Contract for which the State may terminate this Contract for cause. The State will not be

obligated to pay any outstanding invoice received from the Contractor unless and until the Contractor is in full compliance with the above requirements.

- E.19. Occupancy. The Contractor acknowledges that this is a fee-for-service Contract and that neither the State nor the Contractor can guarantee full occupancy.
- E.20. First Amendment. The Contractor does not waive its rights under the First Amendment to the United States Constitution.
- E.21. Drug-Free Workplace. The Contractor shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, 41 U.S.C. § 8103.
- E.22. Financial Information Required. The State must comply with the Office of Management and Budget Circular (OMB) A-87 to claim reimbursement for a portion of the cost of payments made under this Contract from the federal government under Title IV-E and/or Title XIX. Information will be periodically required to be submitted by the Contractor to enable the State to comply with OMB A-87 and facilitate the submission of claims to the federal government in accordance with DCS' federally approved cost allocation plan. The Contractor will be notified at the time documentation is requested of the date by which the submission is required. The Contractor shall complete a cost report using the best information available in accordance with the cost reporting instructions. The documentation to be submitted by the Contractor shall include, but is not limited to:
- Annual Contracted Providers Cost Report completing the forms and following the directions provided by the State;
  - Program description and two weekly schedules;
  - Most recently audited financial statement with audit opinion for the audited period;
  - Reconciliation of the Cost Report to the independent audit; and
  - Letter under separate cover from independent auditor addressing whether the cost allocation method used by the Contractor in the Cost Report appears to be reasonable.
- Failure to submit the above-stated documentation on the specified date shall be deemed a breach of the Contract and the State shall have the right to terminate the Contract for cause under Section D.4. of the Contract, or to consider such failure a Partial Default.
- E.23. Supplemental Conflict of Interest. The Contractor shall not have as any owner, member of the board of directors, or member of the board of trustees, a person who also holds any other position that may influence the placements provided to children in the plaintiff class of Brian A. v. Haslam. Such positions include, but are not limited to juvenile court judges, referees, or other court officers involved in the individual cases of children in foster care.
- E.24. Title VI of the Civil Rights Act of 1964. The Contractor shall adhere to the requirements of Title VI of the Civil Rights Act of 1964, as codified in 42 U.S.C. 2000d, which states that "No person in the United States shall, on the ground of race, color or national origin be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance." The Contractor shall have in place or available a process to assist qualified persons of the provided service who may be limited in their English proficiency (LEP).

The Contractor shall deliver to the State on or before July 31<sup>st</sup> of each fiscal year an implementation plan that describes the Contractor's long-range goals and objectives that will guide the Contractor's efforts to ensure compliance with Title VI of the Civil Rights Act of 1964 pursuant to the guidelines established by the Tennessee Human Rights Commission's Title VI Compliance Program. Title VI plans must be submitted no later than July 31<sup>st</sup> of each year to:

Director of the Office of Civil Rights

## Tennessee Department of Children's Services

- E.25. Supplemental Subcontracting. In accordance with the Brian A. Settlement Agreement (specifically, the Racial Disparities Study conducted by Dr. Ruth McRoy) the State is actively working toward decreasing the racial disparity between service providers and target service populations. To help correct this disparity, the State strongly recommends, in situations where subcontracts are necessary, that the Contractor subcontract for services with minority owned or operated subcontractors that can assist the Contractor in meeting the needs of the children and families that are served. The State requires the Contractor to support the State's commitment to achieving diversity and developing programs that reflect the diversity of the population served.
- E.26. Monitoring Sub-Contractors. The Contractor shall develop written procedures for monitoring all of its State-approved subcontractors. The procedures must clearly outline the process for assuring that all subcontractors are in compliance with the DCS and Provider Policy Manuals and the subcontracting guidelines detailed at the following web site:  
[http://www.state.tn.us/youth/providers/prov\\_policies.htm](http://www.state.tn.us/youth/providers/prov_policies.htm)  
 The Contractor shall have an established quality assurance/quality improvement plan for all subcontractors.  
 The Contractor shall also maintain an internal quality improvement process that assesses the overall quality and performance of its subcontractors.
- E.27. Working Capital. The Contractor must have a minimum of sixty (60) days working capital in the event payment to the Contractor is interrupted by an emergency or for reasons beyond the Contractor's control to ensure continuity of operations. Working capital must be documented by a review of the Contractor's balance sheet and income statement. Working capital is defined as current assets minus current liabilities. Current assets may include marketable securities as long as they have not been legally pledged against a long term equity interest. Credit lines are not working capital.  
 Working capital requirements shall be met at the time of initial contracting and maintained during subsequent contracting periods. In the event working capital declines below the sixty (60) day requirement, the Contractor shall be placed on probation and the Contract will be subject to cancellation at the discretion of the State.
- E.28. Financial Statements. The Contractor shall submit to the State independently audited financial statements containing an auditor's report reflecting the auditor's opinion that the statements are presented fairly and found to be in conformity with generally accepted accounting principles. The independent audit must have been performed by a certified public accounting firm in good standing with the American Institute of Certified Public Accountants (AICPA). The financial statements must be complete, and include all statements and notes to the statements as contained within the audit report. The financial statements and audit report shall be submitted within nine (9) months of the Contractor's reporting period to:  
 Department of Children's Services  
 Cordell Hull Building, 7<sup>th</sup> Floor Fiscal Division  
 436 6<sup>th</sup> Avenue North  
 Nashville, TN 37243-3000  
 The financial statements must represent the Contracting entity. Where the financial statements are for a parent company of the entity providing the service, the Contract must be in the name of the parent company and signed by an authorized representative of the parent company. The entity providing the service may be identified within the Contract as the service provider; however, financial responsibility will belong to the parent company.
- E.29. Contractor Gatekeeper Contact. The Contractor shall provide information to the Child Placement & Private Provider's Division (CPPP) relative to the Contractor's gatekeeper or representative empowered to make placement decisions on behalf of the Contractor to allow access to

placement 24 hours a day seven days a week to DCS. The information to be provided is as follows: gatekeeper/representative name(s); title; direct telephone number(s), cell phone number and/or pager number(s).

- E.30. Performance Standards. The Contractor hereby acknowledges and agrees that its performance under this Contract shall meet the standards set forth in Section A of this Contract, the DCS Provider Policy Manual (PPM), DCS Policy, the Brian A. Settlement Agreement, and the conditions set forth in this Contract. If the Contractor fails to meet these standards, the State, at its exclusive option, may allow up to six (6) months for the provider to achieve compliance with the standards. If performance deficiencies are not resolved to the satisfaction of the State within the prescribed time, and if no extenuating circumstances can be documented by the Contractor to the State's satisfaction, the State may cancel the Contract at the State's discretion.
- E.31. Notification of Closure. The Contractor shall notify the State of the closure of its agency or facility no less than thirty (30) days prior to the actual date of closure. Failure to provide the State thirty (30) days written notice of the Contractor's intent to close its operations or any part of its operation shall be considered a breach of this Contract.
- E.32. Closure Transition. Within thirty (30) days from the closure notification date, the Contractor shall work with the State to transition all custodial youth placed with the Contractor, shall reconcile all records, transfer case files to DCS, and complete the Contract transition.
- E.33. State Ownership of Case Files. The State shall have ownership, right, title, and interest in all case files created, designed, developed, derived, documented, installed, or maintained on behalf of the State pursuant to this Contract. The State shall have unlimited rights to all said case files. The Contractor shall furnish such information and data upon the request of the State, in accordance with this Contract and applicable State law.
- E.34. Permanent Education Records. The Contractor shall maintain educational records permanently. These records shall be cut off at discharge or graduation. If the Contractor's school ceases operation, or the State ceases to contract with the Contractor, the permanent educational records for students who have been in State custody shall be forwarded to the State by the Contractor. The Contractor shall bear all costs for the transfer of all records.

Both paper and electronic media shall be included. Records include, but are not limited to: institution academic transcripts, grade reports, records of grade changes, copies of GED Certificates or State issued diplomas/certificates of any kind, standardized examination reports, birth records, grade point average (GPA), class rank, letters of recommendation and related documentation and correspondence.

Records from closed Contractor schools shall be forwarded at least five (5) business days prior to closure to:

DCS Records Management  
Attn/ Records Officer  
460 Metroplex Drive, Suite 210  
Nashville, TN 37211

- E.35. Mergers, Dissolutions, Partnerships & Joint Ventures. As would be the case with any agency dissolution, merger, or acquisition, the agency and the State have financial responsibilities requiring resolution. The Contractor is required to provide ninety (90) days notification prior to any dissolution, merger, or acquisition.

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

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

- E.36. Prison Rape Elimination Act (PREA). The Contractor shall comply with the Prison Rape Elimination Act of 2003 (42 U.S.C. § 15601 *et seq.*), and with all applicable PREA standards and DCS policies related to PREA for preventing, detecting, monitoring, investigating, and eradicating any form of sexual abuse in facilities owned, operated or subcontracted by the Contractor. Contractor acknowledges that, in addition to self-monitoring requirements, DCS will conduct announced and unannounced on-site compliance monitoring. Failure to comply with PREA, PREA Standards, or relevant DCS policies may result in termination of the contract.
- E.37. HIPAA and HITECH Compliance. 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:
  1. 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.
  2. 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;
  3. 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;
  4. 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;
  5. 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;

6. 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;
  7. Track training of Contractor staff and employees and maintain signed acknowledgements by staff and employees of the Contractor's HIPAA/HITECH policies;
  8. 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;
  9. Be permitted to use and disclose PHI for the Contractor's own legal responsibilities;
  10. 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;
  11. Continue to protect and secure PHI AND personally identifiable information relating to enrollees who are deceased;
  12. Be responsible for informing its enrollees of their privacy rights in the manner specified under the regulations;
  13. Make available PHI in accordance with 45 CFR 164.524;
  14. Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 CFR 164.526; and
  15. 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.
- k. 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 B.

- E.38. 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.39. Notification of Breach and Notification of Provisional Breach - The Contractor shall notify DCS'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.
- E.40. 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.
  - ~~(g)~~ 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.
  - ~~(h)~~ 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.

 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.41. 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 DCS, 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 DCS upon request.
- 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 DCS 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 DCS 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](http://www.tn.gov/tenncare/forms/phi_piiworksheet.pdf) to quickly gather and organize information about the incident. The Contractor must provide DCS with timely updates as any additional information about the loss of PHI/PII becomes available.

- g. If the Contractor experiences a loss or breach of said data, DCS 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.
- h. DCS may immediately and unilaterally suspend the data flow under this Contract, or terminate this Contract, if DCS, in its sole discretion, determines that the Contractor has: (1) made an unauthorized use or disclosure of DCS SSA-supplied data; or (2) violated or failed to follow the terms and conditions of this Contract.

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.

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.

#### 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.42. 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.42 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.42 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 the TennCare 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 the CRA 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](http://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. Require Providers to screen their employees and contractors initially and on an ongoing monthly basis to determine whether any of them has been excluded from participation in Medicare, Medicaid, SCHIP, or any Federal health care programs (as defined in Section 1128B(f) of the Social Security Act) and not employ or contract with an individual or entity that has been excluded. The provider shall be required to immediately report to the MCO any exclusion information discovered. The provider shall be informed that civil monetary penalties may be imposed against providers who employ or enter into contracts with excluded individuals or entities to provide items or services to TennCare members.
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.
24. Nondiscrimination Compliance Requirements. In addition to the requirements of Section D.7 and E.23, the Contractor hereby agrees that it will comply with the following:
- (a) The Contractor shall comply with DCS's written policies and procedures that demonstrate nondiscrimination in the provision of services to TennCare enrollees.
  - (b) The Contractor shall have available copies of DCS's standardized discrimination complaint form to provide to an enrollee upon request. When a request for assistance with filing a complaint is made to the Contractor, the Contractor shall assist the complainant in accessing help from DCS. Assistance shall include obtaining a standardized complaint form, language assistance and assistance with communication in alternative formats.
25. Contractor understands that payment by TennCare is conditioned upon the invoice, claim or bill and the underlying transaction complying with Medicaid laws, regulations, and program instructions (including, but not limited to, the Federal anti-kickback statute, and the Stark law and federal requirements on disclosure, debarment and exclusion screening), and is conditioned on Contractor compliance with all applicable conditions of participation in Medicaid. Contractor understands and agrees that each invoice, claim or bill submitted by Contractor to TennCare constitutes a certification that Contractor has complied with all applicable Medicaid laws, regulations and program instructions (including, but not limited to, the Federal anti-kickback statute and the Stark law), in connection with payment and the services provided under this Agreement.
- Per 42 CFR 455.18: "I understand that payment and satisfaction of this claim will be from federal and state funds, and that any false claims, statements, documents, or concealment of a material fact, may be prosecuted under applicable federal and/or state laws." Acknowledgement by Contractor of this statement shall be made for all claims submitted by the Contractor by either an actual or electronic signature during either the claims submission or claims payment process.

- 26. In accordance with the Affordable Care Act and TennCare policy and procedures, the Contractor and its subcontractors and providers shall report overpayments and, when it is applicable, return overpayments within sixty (60) days from the date the overpayment is identified. Overpayments that are not returned within sixty (60) days from the date the overpayment was identified may result in a penalty pursuant to state or federal law.
- 27. The Contractor and its subcontractors and Providers shall comply with the provisions of 42 U.S.C. § 1396a(a)(68) *et seq.* as applicable, regarding policies and education of employees as regards the terms of the False Claims Act and whistleblower protections.

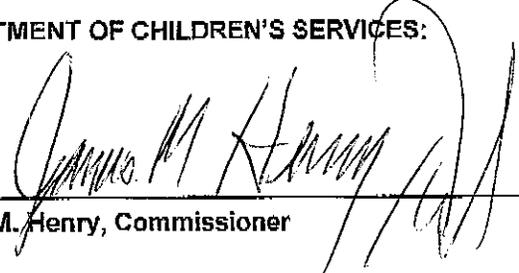
IN WITNESS WHEREOF,

GROUP EFFORT FOUNDATIONS :

 6-27-14  
\_\_\_\_\_  
CONTRACTOR SIGNATURE DATE

Towan E. Siler President 6-27-14  
\_\_\_\_\_  
PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF CHILDREN'S SERVICES:

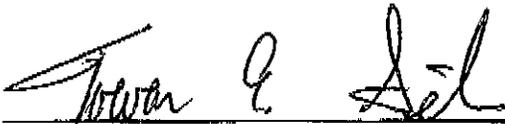
 7/1/14  
\_\_\_\_\_  
James M. Henry, Commissioner DATE

## ATTACHMENT A

## ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	PBC00567
CONTRACTOR LEGAL ENTITY NAME:	Group Effort Foundations
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	208325210

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.

Town E. Siler President

PRINTED NAME AND TITLE OF SIGNATORY

6-27-14

DATE OF ATTESTATION

ATTACHMENT B

LIQUIDATED DAMAGES

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

**DISCLOSURE FORM FOR PROVIDER ENTITIES**

**Directions:** Use this form if you are trying to get a new TennCare/Medicaid ID number for a **Provider Entity**, or if you are re-credentialing or re-contracting a **Provider Entity**, or if there have been significant changes to the information required on this form, for example an ownership change, the addition of a new managing employee or the change of your business location. A **Provider Entity** is a business entity, i.e. a partnership or corporation, that provides TennCare covered services to TennCare enrollees.

Please answer all questions as of the current date. If additional space is needed, please note on the form that the answer is being continued, and attach a sheet referencing the item number that is being continued. Return this form to the address on the application packet. Please retain a copy for your files. Completely answer the applicable questions. If a question is not applicable please respond N/A for that question. **NO QUESTIONS SHOULD BE LEFT BLANK.** The SSN must be provided. Tennessee Code Annotated § 4-4-125 creates an exception to the public records act by prohibiting state agencies from disclosing Social Security Numbers (SSN).

**I. IDENTIFYING INFORMATION**

Name of person Completing form	Phone number of person completing form
Towan Siler	615-230-2937

Provider Entity Name	Provider Entity DBA Name (if different from Provider Entity name)	Provider Entity Federal Tax Id number
Group Effort Foundations		203863476

Provider Entity NPI number (If you have one, if not indicate if applied for.)	Provider Entity TennCare/Medicaid ID number (If you have one, if not indicate if applied for.)	Provider Entity telephone Number
yes	1578887998	615-230-2937

Provider Entity Address- Must include at least one street address. (attach a separate sheet if needed).List all Practice locations	City	State	Zip
220 S. Hickory St.	Gallatin	TN	37066

**II. OWNER OR CONTROL INFORMATION**

**Directions:** An “Owner” is a person or business entity which owns 5% or more of the assets, stock or profits of the Provider Entity. This 5% may be Direct ownership or Indirect ownership i.e, an individual might own 50% of a company that owns the actual Provider Entity meaning their indirect ownership is 50%. In addition to ownership of stock, an Owner is also a person who owns a legal obligation like a mortgage or loan that is secured by the assets of the Provider Entity.

A person with “Control Interest” is someone who directs the Provider Entity and includes Directors, Trustees and Officers of Corporations and Partners in a Partnership. If the Provider Entity is a non-profit entity, respond N/A in the column for % of ownership.

A “Managing Employee” is someone who makes the day to day decisions for the Provider Entity. These individuals include office or billing managers for smaller providers, and for larger Provider Entities the heads of the major operating groups of the provider like, Head of Accounting, or Director of same day services. In other words, the line of individuals typically listed below the corporate officers on an organizational chart.

An “Agent” is an individual who has the legal ability to bind the Provider Entity, i.e., the Provider Entity may use an Agent to obtain contracts for it.

Please provide the following information for Owners, persons with Control interests, Agents and Managing employees of the Provider Entity. Attach a separate sheet if needed. If the company is a non-profit please put N/A in % ownership column.

**A. Master List**

Name	Address <i>(For individuals use Home address. For business entities that might have Ownership/Control interest use all street addresses (if more than one location), and P.O. Box address if any.)</i>	City	ST	ZIP	DOB	SSN for individuals or Tax ID for business entities	% own er-ship.	Title
Towan Siler	3140 Country Meadow Rd.	Antioch	TN	37013	08/10/78	415293746	49%	President
Derek Potter	1211 GreenHills St.	Mufreesboro	TN	37129	12/04/77	400212577	51%	Secretary

**B. Specific Questions**

1) Is any person on the **Master List** related to another person on the **Master List** as a spouse, parent, child or sibling?

Yes  No  If yes, please provide the following information about the related persons:

Name of First related person	Name of Second related Person	Type of relation

2) Does any person or entity in the **Master List** have an **Ownership** or **Control** interest in any other **Provider Entity**?

Yes  No  If "yes", please provide the following information about the other **Provider Entity** the person on the **Master List** has an interest in.

Name of other Provider entity	Address	City	State	Zip	Tax I.D.

3) Have any of the individuals or entities on the **Master list** been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, Tricare or the CHIP services program since the inception of those programs? Yes  No  If yes, please provide the information requested below:

Name on Court records	SSN /TIN	Matter of the Offense	Date of the Conviction	Exclusion Period of the Offense if you were excluded by the Federal Office of the Inspector General(OIG)

4) Have any of the individuals or entities on the **Master List** ever been **Debarred** from participation in Federal Government contracts? "**Debarred**" means an individual is not allowed to participate in contracts paid for by the Federal government, whether or not those contracts are in the health care area.

Yes  No  If 'yes' is checked, provide the following information:

When you were debarred	Length of Debarment	Reason for Debarment

5) Has any person or entity on the **Master List** ever been **Excluded** from participation in Federal health care programs (Medicare, Medicaid, CHIP or Tricare) in the past. "Excluded" means that a provider or entity has been told by the Department of Health and Human Services, Office of the Inspector General (HHS,OIG) that they may no longer be a provider for any federally funded healthcare program.

Yes  No  If "Yes" please supply the following information:

Name of Individual	Beginning date of exclusion or termination	End date of exclusion or termination	Reason for exclusion or termination

6) Has any person or entity on the **Master List** ever been **Terminated** from a State's Medicaid or CHIP programs for reasons having to do with Program Integrity (fraud or abuse)? **Terminated** means the Provider lost the right to bill a State's Medicaid or CHIP programs for a cause related to fraud or abuse.

Yes  No  If "Yes", please supply the following information:

State where practicing when terminated	Reason for termination	Date of termination

7) Has any person or entity on the **Master List** ever had **Civil Monetary Penalties (CMPs)** assessed against them? A CMP is a type of fine assessed against a Provider by a governmental agency that manages a federal healthcare program.

Yes  No  If "Yes" please supply the following information:

Name Of Individual	State where practicing when CMP assessed	Reason for CMP	Amount of CMP	Date of CMP

8) Did anyone on the **Master List** obtain their **Direct or Indirect Ownership** interest 1) as a result of a transfer of Direct or Indirect ownership from someone who was about to be Excluded or Terminated from participation in a Federal healthcare program, or was in fact Excluded or terminated from

participation in a federal healthcare Program.: And 2) where the original **Owner** is or was a member of the **current Owner's Immediate Family** or **Member of the current owner's Household**, at the time of the transfer of ownership? [**Immediate Family**] is defined as a person's husband or wife; natural or adoptive parent; child or sibling; stepparent, stepchild, stepbrother or stepsister; father-, mother-, daughter-, son-, brother- or sister-in-law; grandparent or grandchild; or spouse of a grandparent or grandchild. **Member of Household** is, with respect to a person, any individual with whom they are sharing a common abode as part of a single family unit, including domestic employees and others who live together as a family unit. A roomer or boarder is not considered a member of household.]

Yes  No  If "Yes" please supply the following information:

Name of original <b>Owner</b>	SSN or TAX ID of original <b>Owner</b>	Place of Transfer	Date of Transfer

9a) List any **Subcontractor** in which this **Provider Entity** has a Direct or Indirect **Ownership** interest of at least a 5%. A **Subcontractor** is a person or company that this **Provider Entity** has contracted with to do some of the **Provider Entities'** management functions, i.e., billing agent, or provide medical services i.e. a medical lab.

Name of Subcontractor	Address	City	State	Zip	Tax I.D.

9b) For each **Subcontractor(s)** listed in 8a above please provide the following information for the individuals with an Direct or Indirect **Ownership** or **Control Interest** in the **Subcontractor(s)**. See the Introduction section above for a definition of those terms. Attach a separate sheet if necessary.

Name	Address (for individuals use Home address, for business entities that might have a Direct or Indirect Ownership or Control Interest use business street address, and P.O. Box address if any.)	City	ST	Zip	DOB	SSN for individuals or Tax ID for business entities	% of ownership	Title

9c) Is anybody in the list in 9b list related to any person in the **Master List** above?

Yes  No  If yes, please supply the following information about the related persons:

Name of First related person	Name of Second related Person	Type of relation

**III. BUSINESS TRANSACTIONS**

1) Please list the **Subcontractors** with whom you have done business over the last 5 years where the contract is worth at least 5% of your **Provider Entities'** total operating expenses or \$25,000 *whichever is less*. Use a separate sheet if necessary. *Do not* include the Subcontractors listed in II.8a. in which you have an **Direct or Indirect Ownership interest**. A **Subcontractor** is a person or company that this **Provider Entity** has contracted with to do some of the **Provider Entities'** business functions, i.e., billing agent, or to provide medical services, i.e., a medical lab.

Name	Address	City	State	Zip

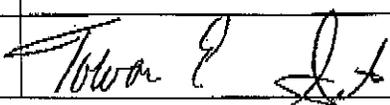
2) Does the **Provider Entity** wholly own a **Supplier**? **Supplier** means an individual, agency, or organization from which the **Provider Entity** purchases goods and services used in carrying out its responsibilities under Medicaid (e.g., a commercial laundry, a manufacturer of hospital beds or a pharmacy.)

Yes  No  If yes, supply the following information about the **Supplier**:

Name	Address	City	State	Zip	NPI	TIN

**IV. SIGNATURE**

The State or Federal Medicaid agency may refuse to enter into, renew, or terminate an agreement with a Provider if it is determined that a Provider did not fully, accurately, and truthfully make the disclosures required by this statement. Additionally, false statements or representations of the required disclosures may be prosecuted under applicable federal or state laws. 42 C.F.R. § 455.106. The signature below **MUST** be the written signature of an individual who can legally bind this **Provider Entity**;

Name of Person (Printed)	Signature of Person	Title	Date
Towan Siler		President	6-27-17