

CONTRACT #1
RFS # 318.65-00357
FA # NA
Edison # 37044

**Department of Finance and
Administration
Division of Health Care Finance
and Administration
Bureau of TennCare**

VENDOR:
**Ascend Management
Innovations, LLC**



STATE OF TENNESSEE
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE
310 Great Circle Road
NASHVILLE, TENNESSEE 37243

August 30, 2013

Lucian Geise, Director
Fiscal Review Committee
8th Floor, Rachel Jackson Bldg.
Nashville, TN 37243

Attention: Ms. Leni Chick

RE: Ascend Management Innovations, LLC - Amendment #1
Express Scripts, Inc. - Amendment #7

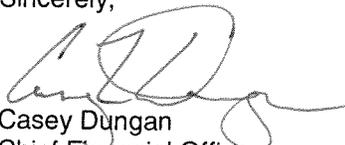
Dear Mr. Geise:

The Department of Finance and Administration, Division of Health Care Finance and Administration (HCFA), is submitting for consideration contract amendment #1 to Ascend Management Innovations, LLC, the competitively procured contract for the provision of evaluations of individuals who have been denied medical eligibility for TennCare-reimbursed Long Term Care Services and Supports (LTSS). We are amending this contract to provide language for Home and Community Based Services Level of Care Reliability audits for individuals who have been approved for medical eligibility for LTSS.

Additionally, HCFA is submitting for consideration amendment #7 to Express Scripts, Inc. the competitively procured contract for the provision of administrative services of the State's pharmacy assistance program for eligible Cover Tennessee adults, known as CoverRx. This amendment is necessary to extend the term of the contract and to provide funding to support the term extension. The rates in the contract amendment did not change. This is the last extension period for this contract.

The Department of Finance and Administration, Division of Health Care Finance and Administration, respectfully submits the above referenced amendments for consideration and approval by the Fiscal Review Committee.

Sincerely,



Casey Dungan
Chief Financial Officer

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

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Casey Dungan	*Contact Phone:	507-6482		
*Original Contract Number:	#37044	*Original RFS Number:	31865-00357		
Edison Contract Number: <i>(if applicable)</i>	#37044	Edison RFS Number: <i>(if applicable)</i>			
*Original Contract Begin Date:	June 1, 2013	*Current End Date:	May 31, 2018		
Current Request Amendment Number: <i>(if applicable)</i>	1				
Proposed Amendment Effective Date: <i>(if applicable)</i>	November 1, 2013				
*Department Submitting:	Finance and Administration				
*Division:	Health Care Finance and Administration				
*Date Submitted:	August 30, 2013				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	Ascend Management Innovations				
*Current Maximum Liability:	\$4,216,475.00				
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet) Attached</i>					
FY: 2014	FY: 2015	FY: 2016	FY: 2017	FY 2018	FY
\$ 843,288.00	\$843,288.00	\$843,288.00	\$843,288.00	\$843,288.00	
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from Edison) No Expenditures Incurred to Date</i>					
FY: 2014	FY: 2015	FY: 2016	FY: 2017	FY 2018	FY
\$ 0.00	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:		N/A			
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		N/A			
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		N/A			
*Contract Funding	State:	\$2,108,237.50	Federal:	\$2,108,237.50	

Supplemental Documentation Required for
Fiscal Review Committee

Source/Amount:				
Interdepartmental:			<i>Other:</i>	
If "other" please define:				
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
N/A				
Method of Original Award: <i>(if applicable)</i>		Request for Proposal		
*What were the projected costs of the service for the entire term of the contract prior to contract award?		\$4,216,475.00		

Supplemental Documentation Required for Fiscal Review Committee

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

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

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

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

Service Description	Amount (per compensable increment)
Development of Onsite Evaluation Tool	\$ <u>0.00</u> Payable Upon Completion and Approval by TennCare
Nursing Facility Onsite Evaluation	\$380.22 per Evaluation
Home Based Onsite Evaluation	\$380.22 per Evaluation
Phone Based Hearing (all activities associated with phone based hearing, including preparation and distribution of the Witness Packet pursuant to A.6.)	\$159.31 per Phone Hearing
RN In-Person Hearings (all activities associated with In-Person hearing, including preparation and distribution of the Witness Packet pursuant to A.6.)	\$32.00 per hour
Overnight Courier Between Contractor and On-site Evaluator for HIPAA Compliance	Actual Expenditures
HCBS LOC Reliability Audit (Section A.14 – A.16)	\$421.00 per audit

Supplemental Documentation Required for
Fiscal Review Committee

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

This contract does not include proposed savings, however, it is a competitively procured contract for required evaluations of individuals who have been denied medical eligibility for TennCare-reimbursed Long Term Care Services and Supports (LTSS) and for whom an appeal has been requested. This amendment adds an audit process for HCBS level of care Reliability Audits for individuals who have been approved for medical eligibility. The rates included in the contract are based on competitive cost proposal.

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

Ascend Management Innovations, LLC was awarded the competitively procured contract for provision of evaluations for individuals who have been denied medical eligibility for TennCare-reimbursed Long Term Care Supports (LTSS) and for whom an appeal has been requested. Pursuant to State of Tennessee contract rules, an RFP is the optimum state procurement method and no other options were explored. All technical and cost proposals submitted as a result of this RFP are available for public inspection.



CONTRACT

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



Begin Date June 1, 2013	End Date May 31, 2018	Agency Tracking # 31865-00357	Edison Record ID 37044
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Contractor Legal Entity Name . Ascend Management Innovations, LLC	Edison Vendor ID 0000012047
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Service Caption (one line only)
Level of Care Onsite Assessment for Medical Eligibility Appeal

Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA # 93.778 Dept of Health & Human Services/Title XIX
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Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	\$421,644.00	\$421,644.00			\$843,288.00
2015	\$421,644.00	\$421,644.00			\$843,288.00
2016	\$421,644.00	\$421,644.00			\$843,288.00
2017	\$421,644.00	\$421,644.00			\$843,288.00
2018	\$421,661.50	\$421,661.50			\$843,323.00
TOTAL:	\$2,108,237.50	\$2,108,237.50			\$4,216,475.00

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

Ownership/Control

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

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

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

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



OCR USE - FA

Speed Chart (optional) TN00000183	Account Code (optional) 70803000
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Non-Competitive Amendment Request

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

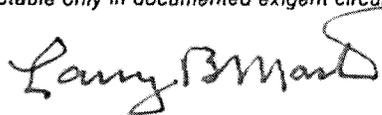
Route a completed request, as one file in PDF format, via e-mail attachment sent to: Agsprs.Agsprs@state.tn.us

APPROVED

CENTRAL PROCUREMENT OFFICER

Request Tracking #	31865-00357	
1. Procuring Agency	Department of Finance and Administration Division of Health Care Finance and Administration	
2. Contractor	Ascend Management Innovations, LLC	
3. Contract #	37044	
4. Proposed Amendment #	1	
5. Edison ID #	12047	
6. Contract Begin Date	June 1, 2013	
7. Current Contract End Date - with ALL options to extend exercised	May 31, 2016	
8. Proposed Contract End Date - with ALL options to extend exercised	May 31, 2016	
9. Current Maximum Contract Cost - with ALL options to extend exercised	\$4,216,475.00	
10. Proposed Maximum Contract Cost - with ALL options to extend exercised	\$4,216,475.00	
11. Office for Information Resources Endorsement - information technology service (N/A to THDA)	x Not Applicable <input type="checkbox"/> Attached	
12. eHealth Initiative Support - health-related professional, pharmaceutical, laboratory, or imaging	x Not Applicable <input type="checkbox"/> Attached	
13. Human Resources Support - state employee training service	x Not Applicable <input type="checkbox"/> Attached	
14. Explanation Need for the Proposed Amendment	<p>As we work to rebalance the LTSS service delivery system, our partners (MCOs, AAADs and PACE) have continued to face challenges in collecting medical documentation for Home and Community Based Services (HCBS) applicants who may qualify for an LTSS program, but who don't have the specific medical records to demonstrate their level of need like applicants in the nursing home setting do. To combat this challenge, we've changed documentation requirements for HCBS Pre Admission Evaluation (PAE) applications used to determine medical eligibility for our programs. In lieu of certain medical</p>	

Request Tracking #	31865-00357
<p>records we're allowing a Qualified Assessor (practicing professional who meets the qualifications established by TennCare to certify the accuracy of a level of care assessment) from the AAAD, MCO or PACE to complete and submit TennCare developed interview tools. These tools allow for documentation of the Qualified Assessor's observations as well as documentation of information from the applicant and his/her paid and unpaid caregivers. To ensure this change is successful, we are amending this existing competitively procured contract to provide an audit process to: (1) Ensure outcome reliability; (2) Gain insights for training; (3) Avoid submitter drift and, (4) Monitor conflict of interest. This Contractor can offer an unbiased review and the manpower needed to audit a meaningful sample size. Ascend's Qualified Assessors currently perform independent reviews using the interview tools described above, therefore it would be technically feasible as well as cost effective to have them perform in person assessments just as they do for the appeals process. This layer of review will: (1) Look at decision-to-decision agreement between the Ascend assessor and the MCO, PACE or AAAD submitter; (2) Investigate variability with source respondents and source documents to confirm actual needs, and (3) Weigh item-to-item variability to measure specific areas to identify potential causes of drift (or loss of fidelity to instructions). This audit process will allow for a 'bottom line' assessment in variability of decision, while providing enough information to target training and updates, measure training efficacy and when necessary, assess sanctions for contractor non compliance. Due to the fact that this is a new contract and volume rates are an estimated projection, no additional funds are added to this contract at this time.</p>	
<p>15. Name & Address of the Contractor's Principal Owner(s) <i>- NOT required for a TN state education institution</i></p> <p>Terri Lepley, Chief Executive Officer Ascend Management Innovations, LLC 840 Crescent Centre Drive, Suite 400 Franklin, Tennessee 37067</p>	
<p>16. Evidence Contractor's Experience & Length Of Experience Providing the Service</p> <p>Ascend Management Innovations, LLC, originally founded in 1998, is a nationally recognized leader in healthcare management services headquartered in Nashville. Ascend offers high quality, customized, clinically-based and cost effective support solutions for the public and private sector healthcare industry. Services include comprehensive and highly specialized clinical assessment services, customized innovative information systems, and expert project management services. Clinical staff includes a network with hundreds of credentialed physicians, psychologists, psychiatrists, licensed social workers, and of importance to this project, registered nurses trained in all aspects of clinical reviews, including onsite client assessments. Ascend collaborates and partners with numerous state agencies and health plan regulators across the U.S. and has a proven track record of success.</p>	
<p>17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives</p> <p>The Division of Health Care Finance and Administration released a Request for Proposal (RFP) and identified Ascend Management as the proposer with combined technical, experience and Cost to perform the LTSS services of this contract.</p>	
<p>18. Justification <i>- specifically explain why non-competitive negotiation is in the best interest of the state</i></p> <p>TennCare is amending this existing competitively procured contract to provide an audit process to: (1) Ensure outcome reliability; (2) Gain insights for training; (3) Avoid submitter drift and, (4) Monitor conflict of interest. This Contractor can offer an unbiased review and the manpower needed to audit a meaningful sample size. Ascend's Qualified Assessors currently perform independent reviews using the interview tools described above, therefore it would be technically feasible as well as cost effective to have</p>	

Request Tracking #	31865-00357
<p>them perform in person assessments just as they do for the appeals process. This audit process will allow for a 'bottom line' assessment in variability of decision, while providing enough information to target training and updates, measure training efficacy and when necessary, assess sanctions for contractor non compliance. There are no additional funds added to this contract at this time, however, an additional rate has been added to the payment structure in contract Section C.3 to support the additional scope of work included in this amendment. The Bureau of TennCare respectfully requests approval of this competitively procured contract amendment.</p>	
<p>Agency Head Signature and Date – MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances</p> <p style="text-align: right;"></p> <p style="text-align: right;">(1)</p>	



CONTRACT AMENDMENT

Agency Tracking # 31865-00357	Edison ID 37044	Contract #	Amendment # 01		
Contractor Legal Entity Name Ascend Management Innovations, LLC			Edison Vendor ID 12047		
Amendment Purpose & Effect(s) Updates Scope and Payment Terms					
Amendment Changes Contract End Date: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		End Date: May 31, 2018			
Amount of the TOTAL Contract Amount INCREASE or DECREASE per this Amendment:			\$0.00		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	\$421,644.00	\$421,644.00			\$843,288.00
2015	\$421,644.00	\$421,644.00			\$843,288.00
2016	\$421,644.00	\$421,644.00			\$843,288.00
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2018	\$421,661.50	\$421,661.50			\$843,323.00
TOTAL:	\$2,108,237.50	\$2,108,237.50			\$4,216,475.00
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.			<i>OCR USE</i>		
Speed Chart (optional) TN00000183		Account Code (optional) 70803000			

**AMENDMENT #1
CONTRACT #37044
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE
AND
ASCEND MANAGEMENT INNOVATIONS, LLC**

This Contract amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration, Bureau of TennCare, hereinafter referred to as the "State" or "TennCare," and Ascend Management Innovations, LLC, hereinafter referred to as the "Contractor" for the provision of evaluation of individuals who have been denied medical eligibility for TennCare-reimbursed Long Term Care Services and Supports (LTSS) and for whom an appeal has been requested, and for Home and Community Based Services Level of Care (HCBS LOC) Reliability Audits for individuals who have been approved for medical eligibility for LTSS. It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The following new contract sections are added as Section A.14, A.15, and A.16:

HCBS LOC Reliability Audit Process – Effective November 1, 2013

- A.14. Using a randomized referral process, TennCare shall refer approved HCBS LOC applications through the TennCare Pre-Admission Evaluation System (TPAES) to the Contractor for the purpose of performing HCBS LOC Reliability Audits. TennCare shall provide the Contractor with access to TPAES to obtain the HCBS LOC applications.
 - a. TennCare shall refer the following HCBS LOC applications to the Contractor for HCBS LOC Reliability Audits:
 1. Fifty percent (50%) of TennCare-approved HCBS LOC applications per month for six (6) months, beginning from the effective date of this Amendment.
 2. Twenty-five percent (25%) of TennCare-approved HCBS LOC applications per month for the following eighteen (18) months.
 - b. The Contractor shall complete all HCBS LOC Reliability Audits and submit the results to TennCare through TPAES within ten (10) business days, determined from the day on which TennCare makes the HCBS LOC application available to the Contractor through TPAES.
 - c. TennCare shall determine the monthly percentage(s) of future HCBS LOC Reliability Audits to be completed by the Contractor after the initial twenty-four (24) month period and communicate the percentage(s) in writing to the Contractor no later than thirty (30) business days before the expiration of the initial twenty-four (24) month period.
- A.15. The Contractor shall complete the following steps for each HCBS LOC Reliability Audit:
 - a. In-Person Assessment. A licensed practical nurse (LPN), registered nurse (RN), or licensed clinical social worker (LCSW) must complete an In-Person Assessment of the referred HCBS applicant, whose LOC has previously been approved by TennCare. This In-Person Assessment shall include the following steps:
 1. Performing individual applicant and collateral interviews relating to the HCBS LOC application. Such interviews shall include the individual whose HCBS LOC assessment the Contractor is auditing, any physicians or medical professionals involved in the HCBS LOC

- assessment, any paid or unpaid care givers, and any of the individual's natural supports;
 2. Documenting any observations of the applicant during the interview process that relate to the applicant's HCBS LOC assessment;
 3. Conducting record reviews relating to the HCBS LOC assessment;
 4. Obtaining a Release of Information relating to the HCBS LOC assessment; and
 5. Performing any other assessments that TennCare may reasonably request.
- b. **Assessment Review.** After completion of the In-Person Assessment, an RN must complete an Assessment Review. Assessment Review shall include the following steps:
1. Reviewing for accuracy all information and documentation obtained during the In-Person Assessment and interview processes;
 2. Correcting assessment inaccuracies and/or discrepancies;
 3. Completing LOC scores based on this review;
 4. Comparing LOC scores to the HCBS LOC assessment provided by TennCare in TPAES. Such comparisons shall include analyzing the differences between the HCBS LOC assessment in TPAES and the LOC scores, and gathering information and documentation through phone interviews and record reviews; and
 5. Entering the final LOC decisions into TPAES.
- c. **Quality Review.** After an RN has entered the final LOC decisions into TPAES, that RN shall check for discrepancies between the final LOC scores and the initial HCBS LOC assessment from TPAES. Once the RN has completed this check for discrepancies, the RN shall then take one of three actions:
1. Submit approval of the initial HCBS LOC assessment to TennCare through TPAES;
 2. Approve the initial HCBS LOC assessment, but with Material Item Discordance (MID), and analyze the findings of the In-Person Assessment and Assessment Review using a TennCare-approved Quality Review Process, entering these results into TPAES upon completion. TennCare shall establish the criteria for MID, which are subject to change, and communicate these criteria in writing to the Contractor before the effective date of this Amendment, and prior to each subsequent change in criteria; or
 3. Deny the initial HCBS LOC assessment after determining that the initial assessment of the individual does not meet the medical eligibility criteria set forth in the Bureau of TennCare Rules at 1200-13-01-.10 and after completing TennCare-approved Quality Review Process. This denial shall be sent to TennCare through TPAES.

A.16. The Contractor shall hire and maintain staff in accordance with the terms of this Contract.

- a. Such staffing for HCBS LOC Reliability Audits shall include the following key staff:
1. A minimum of one (1) LPN, RN, or LCSW to conduct In-Person Assessments and interviews as detailed in this Contract in Section A.15.a. Any such LPN, RN, or LCSW shall at all times during the course of this Contract maintain a license in good standing in the State of Tennessee, or, for RNs only, a multi-state compact license that includes Tennessee.
 2. A minimum of one (1) RN to conduct the Assessment Reviews and Quality Reviews as detailed in this Contract in Sections A.15.b-c. Any such RN shall at all times during the course of this Contract maintain a

license in good standing in the State of Tennessee, or a multi-state compact license that includes Tennessee.

- b. The Contractor shall hire and maintain different, dedicated staff for the HCBS LOC Reliability Audits than the staff the Contractor hires and maintains to perform reviews of appeals under this Contract.
- c. The Contractor shall comply with Section A.9.e for all hires or subcontracts concerning staff for HCBS LOC Reliability Audits.
- d. All HCBS LOC Reliability Audit staff shall complete the TennCare Pre-Admission Evaluation (PAE) HCBS LOC assessment training in accordance with Section A.9.c of this Contract before conducting any phase of the HCBS LOC Reliability Audits. Any staff who have completed PAE HCBS LOC training in accordance with Section A.9.c on or after July 1, 2013 for the purpose of conducting reviews of appeals as specified in this Contract, and may assist with the HCBS LOC Reliability Audits, are not required to retake the PAE HCBS LOC training.

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

C.3.b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount (per compensable increment)
Development of Onsite Evaluation Tool	\$ <u>0.00</u> Payable Upon Completion and Approval by TennCare
Nursing Facility Onsite Evaluation	\$380.22 per Evaluation
Home Based Onsite Evaluation	\$380.22 per Evaluation
Phone Based Hearing (all activities associated with phone based hearing, including preparation and distribution of the Witness Packet pursuant to A.6.)	\$159.31 per Phone Hearing
RN In-Person Hearings (all activities associated with In-Person hearing, including preparation and distribution of the Witness Packet pursuant to A.6.)	\$32.00 per hour
Overnight Courier Between Contractor and On-site Evaluator for HIPAA Compliance	Actual Expenditures
HCBS LOC Reliability Audit (Section A.14 – A.16)	\$421.00 per audit

3. The following new contract sections are added as Section E.32, E.33 and E.34.

E.32. Sensitive Data Related to Alcohol and Drug Abuse Enrollee Records for Substance Abuse Treatment. This information has been disclosed to you from records protected by Federal confidentiality rules (42 CFR part 2). The Federal rules prohibit you from making any further disclosure of this information unless further disclosure is expressly permitted

by the written consent of the person to whom it pertains or as otherwise permitted by 42 CFR part 2. A general authorization for the release of medical or other information is NOT sufficient for this purpose. The Federal rules restrict any use of the information to criminally investigate or prosecute any alcohol or drug abuse patient. 42 C.F.R. § 2.32 (SAMHSA).

- E.33. Federal Tax Information (FTI). Any FTI made available shall be used only for the purpose of carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this Agreement. Inspection by or disclosure to anyone other than an officer of employer of the Grantee is strictly prohibited.
- E.34 Failure to comply with federal regulations regarding HIPAA/HITECH, SSA, Medicaid, CHIP, SAMHSA, and FTI (IRS) data may result in criminal and civil fines and penalties.
- 4. Contract Attachment B, Liquidated Damages, is deleted and replaced in its entirety with Revised Attachment B, Liquidated Damages.
- 5. Contract Attachment C, Definitions, is deleted and replaced in its entirety with Revised Attachment C, Definitions.

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

The revisions set forth herein shall be effective November 1, 2013. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,

ASCEND MANAGEMENT INNOVATIONS, LLC

GRANTEE SIGNATURE	DATE
TERI LEPLEY, CHIEF EXECUTIVE OFFICER	

PRINTED NAME AND TITLE OF GRANTEE SIGNATORY (above)

**DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE**

LARRY B. MARTIN, COMMISSIONER	DATE
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REVISED ATTACHMENT B LIQUIDATED DAMAGES

TennCare may elect to apply the following liquidated damages remedies in the event the Contractor fails to perform its obligations under this Contract in a proper and/or timely manner. Upon determination by TennCare that the Contractor has failed to meet any of the requirements of this Contract in a proper and/or timely manner, TennCare will notify the Contractor in writing of the deficiency and of the potential liquidated damages to be assessed. Liquidated damages shall be assessed for any part of each week during which the deficiency occurs or remains uncorrected, unless the amount of liquidated damages is otherwise designated as "per occurrence" or "per incident" in the following table. Should the deficiency remain uncorrected for more than thirty (30) days from the date of the original notification of the deficiency by TennCare, TennCare may impose an additional liquidated damage of Five Hundred Dollars (\$500) per calendar day from the date of the original notification to Contractor until said deficiency is resolved.

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

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

A general liquidated damage of \$500.00 per calendar day/occurrence, as applicable, may be assessed at the sole discretion of the State for any violation of a contract provision that is not specifically listed in the following table.

	PROGRAM ISSUES	DAMAGE
1.	Failure to provide adequate staff training as specified in Sections A.2.c., A.3.b, A.9.c, A.9.f, A.9.g and A.16.d.	The damage that may be assessed may be One Thousand Dollars (\$1000) per occurrence.
2.	Failure to have staff and management available and trained to perform the responsibilities of this contract as specified in Section A.9.g and A.16.a-b.	The damage that may be assessed may be One Thousand Dollars (\$1000) per occurrence that adequate staff is not available.
3.	Failure to adhere to timelines and performance measures as specified in Section A.5. and A.14.b.	The damage that may be assessed may be One Thousand Dollars (\$1000) per occurrence.

4.	<p>Failure to prepare and distribute a witness packet to LTSS within three (3) business days of hearing notification notice as specified in A.6.</p> <p>Failure to provide a participant in an appeal hearing who is familiar with the in person, face to face on-site assessment of the individual who has the appeal as specified in Section A.6.</p>	The damage that may be assessed may be One Thousand Dollars (\$1000) per occurrence.
5.	Failure to provide timely reports as specified in Section A.8.	The damage that may be assessed may be Five Hundred Dollars (\$500) per week per deficiency, until reports are submitted and acceptable to TennCare.
6.	Failure to provide tasks specified in Section A.9 by the specific timeline for each task as identified in Section A.9 a. – A.9.h.	The damage that may be assessed may be One Thousand Dollars (\$1000) per occurrence.
7.	Failure to comply with HIPAA and HITECH Rules resulting in an unauthorized disclosure of PHI as described in Sections E.20 and E.21.	The damage that may be assessed shall be up to Five Thousand Dollars (\$5,000) per incident.
8.	Failure to have adequate Privacy and Security Safeguards and Policies resulting in a security incident as described in Sections E.20 through E.22.	The damage that may be assessed shall be up to Two Thousand Dollars (\$2,000) per incident.
9.	Failure to obtain a third (3rd) party certification of their HIPAA transaction compliance within ninety (90) calendar days upon request by TennCare as described in Section E.21.	The damage that may be assessed shall be up to Two Thousand Dollars (\$2,000) per incident.
10.	Failure to report a privacy breach or security incident or provisional privacy breach or security incident immediately upon becoming aware of breach as described in Section E.23.	The damage that may be assessed shall be up to Five Thousand Dollars (\$5,000) per incident.
11.	Failure to comply with federal regulations regarding SSA, Medicaid, CHIP, SAMHSA, and FTI (IRS) data that results in a disclosure or prohibited re-disclosure of recipient or applicant PHI/PII as described in Section E.34.	The damage that may be assessed shall be up to Five Thousand Dollars (\$5,000.00) per incident.

REVISED ATTACHMENT C

DEFINITIONS

1. Auxiliary Aids and Services – Includes (1) Qualified interpreters on-site or through video remote interpreting (VRI) services; note-takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including Telecommunications Relay Service (TRS), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing; (2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision; (3) Acquisition or modification of equipment or devices; and (4) Other similar services and actions. The provision of Auxiliary Aids or Services by the Contractor shall be in compliance with the applicable Federal and State laws and regulations and Contract section D.16.
2. Bureau of TennCare (Bureau) - shall mean the administrative unit of TennCare which is responsible for the administration of TennCare as defined elsewhere in the Bureau's Rules. DOE – Refers to the case of *Doe v. Word*, No. 3-84-1260, 1987 WL 108974 (M.D. Tenn. Jan. 14, 1987) and any Orders relating thereto. DOE is a class action filed to protect the due process rights of persons entering nursing home facilities in the State of Tennessee.
3. Effective Communication - Taking the appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others by utilizing auxiliary aids and services.
4. Enrollee - shall mean an individual eligible for and enrolled in the TennCare program or in any Tennessee federal Medicaid waiver program approved by the Secretary of the U.S. Department of Health and Human Services pursuant to Sections 1115 or 1915 of the Social Security Act. As concerns MCC compliance with these rules, the term only applies to those individuals for whom the MCC has received at least one day's prior written or electronic notice from the Bureau of the individual's assignment to the MCC.
5. Field Assessor RN - Contractor's employee or subcontractor who is a Registered Nurse and who meets all licensing and other requirements of this Contract and who performs onsite, face to face PAE LOC assessments for specified TennCare enrollees or applicants on behalf of the Contractor, as directed by TennCare.
6. Hearing - a contested case proceeding held pursuant to the provisions of the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated §§ 4-5-301, et seq., except as noted otherwise herein, to allow an enrollee to appeal an adverse decision of the TennCare Program. An evidentiary hearing is held before an impartial hearing officer or administrative judge who renders an initial order under Tennessee Code Annotated §4-5-314. If an enrollee appeals the initial order under Tennessee Code Annotated §4-5-315, the Commissioner may render a final order.
7. Individuals with Limited English Proficiency (LEP) – Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand the English language.
8. Level of Care (LOC) - Medical eligibility criteria for receipt of an institutional service, HCBS offered as an alternative to the institutional service, or in the case of persons At Risk for Institutionalization, to delay or prevent institutional placement. An individual who meets the

LOC criteria for NF care is an individual who has been determined by the Bureau to meet the medical eligibility criteria established for that service.

9. Litigation Hold - A directive from the State to preserve documents and electronically stored information that is relevant or potentially relevant to litigation. When a party reasonably anticipates litigation, that party has the duty to suspend its routine document retention and/or document destruction policies and institute a litigation hold to ensure the preservation of relevant and potentially relevant documents.
10. Long-Term Services and Supports (LTSS) Enrollee or Participant - An individual who is participating in a TennCare LTSS Program.
11. Long-Term Services and Supports (LTSS) Program - One of the programs offering LTSS to individuals enrolled in TennCare. LTSS Programs include institutional programs (NFs and ICFs/IID), HCBS offered through CHOICES or through a Section 1915(c) HCBS Waiver Program, and the PACE Program.
12. MCC (Managed Care Contractor) - (a) A Managed Care Organization, Pharmacy Benefits Manager and/or a Dental Benefits Manager which has signed a TennCare Contractor Risk Agreement with the State and operates a provider network and provides covered health services to TennCare enrollees; or (b) A Pharmacy Benefits Manager, Behavioral Health Organization or Dental Benefits Manager which subcontracts with a Managed Care Organization to provide services; or (c) A State government agency (i.e., Department of Children's Services and Department of Intellectual and Developmental Disabilities (DIDD)) that contracts with TennCare for the provision of services.
13. Material Item Discordance (MID) – Criteria determined by TennCare identifying a variance that exists between the initial HCBS LOC assessment and/or application completed and submitted by an MCO, AAAD or PACE and the assessment and/or application completed by the Contractor.
14. Nursing Facility (NF) - A Medicaid-certified NF.
15. Plain Language - Any notice or explanation written at a level that does not exceed the sixth grade reading level as measured by the Flesch Index, Fog Index, or Flesch-Kincaid Index.
16. Potential Enrollee - means a Medicaid beneficiary who is subject to mandatory enrollment or may voluntarily elect to enroll in a given managed care program, but is not yet an enrollee of a specific MCO. 42 C.F.R. § 438.10.
17. PreAdmission Evaluation (PAE) - A process of assessment by the Bureau used to determine an individual's medical (or LOC) eligibility for TennCare-reimbursed care in a NF or ICF/IID, and in the case of NF services, the appropriate level of reimbursement for such care, as well as eligibility for HCBS as an alternative to institutional care, or in the case of persons At Risk for Institutionalization, in order to delay or prevent NF placement. For purposes of CHOICES, the PAE application shall be used for the purposes of determining LOC and for persons enrolled in CHOICES Group 2, calculating the Member's Individual Cost Neutrality Cap.
18. Qualified Assessor - A practicing professional who meets the qualifications established by TennCare to certify the accuracy of a level of care assessment as reflected in the PAE application. For the CHOICES program, Qualified Assessors shall include only the following: a licensed physician, nurse practitioner, physician assistant, registered or licensed nurse, or licensed social worker.
19. Quality RN – Contractor's employee or subcontractor who is a Registered Nurse and who meets all licensing and other requirements of this Contract and who provides quality review of the PAE LOC assessments performed by the Field Assessor RNs for the Contractor, as directed by TennCare.

20. TennCare - The program administered by the Single State Agency as designated by the State and CMS pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration Waiver granted to the State of Tennessee.
21. TennCare CHOICES in Long-Term Services and Supports Program (CHOICES) - The program in which NF services for TennCare eligibles of any age and HCBS for individuals aged sixty-five (65) and older and/or adults aged twenty-one (21) and older with Physical Disabilities are integrated into TennCare's Managed Care System.
22. TennCare Eligible - For purposes of this Chapter, an individual who has been determined by the Tennessee Department of Human Services (DHS) to be financially eligible to have TennCare reimbursement for covered LTSS.
23. Tennessee Pre-Admission Evaluation System (TPAES) - A component of the State's Medicaid Management Information System and the system of record for all PreAdmission Evaluation (LOC) submissions and LOC determinations, as well as enrollments into and transitions between LTSS programs, including CHOICES and the State's Money Follows thePerson Rebalancing Demonstration (MFP), and which shall also be used to gather data required to comply with tracking and reporting requirements pertaining to MFP.
24. Vital Documents - Vital Documents are designated by the State and shall include, but are not limited to, consent and complaint forms, intake and application forms with the potential for important consequences, notices pertaining to the reduction, denial, delay, suspension or termination of services, and certain critical outreach documents. Unless otherwise notified by the State, Vital Documents issued by the Contractor shall be translated and available to each LEP group identified by the State that constitutes five percent (5%) of the Exchange population or one-thousand (1,000) members, whichever is less. At a minimum, all Vital Documents shall be available in the Spanish language.



CONTRACT

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



Begin Date June 1, 2013	End Date May 31, 2018	Agency Tracking # 31865-00357	Edison Record ID 37044		
Contractor Legal Entity Name Ascend Management Innovations, LLC			Edison Vendor ID 0000012047		
Service Caption (one line only) Level of Care Onsite Assessment for Medical Eligibility Appeal					
Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor		CFDA # 93.778 Dept of Health & Human Services/Title XIX			
Funding --					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	\$421,644.00	\$421,644.00			\$843,288.00
2015	\$421,644.00	\$421,644.00			\$843,288.00
2016	\$421,644.00	\$421,644.00			\$843,288.00
2017	\$421,644.00	\$421,644.00			\$843,288.00
2018	\$421,661.50	\$421,661.50			\$843,323.00
TOTAL:	\$2,108,237.50	\$2,108,237.50			\$4,216,475.00
American Recovery and Reinvestment Act (ARRA) Funding: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
Ownership/Control					
<input type="checkbox"/> African American <input type="checkbox"/> Asian <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Female <input type="checkbox"/> Person w/Disability <input type="checkbox"/> Small Business <input type="checkbox"/> Government <input checked="" type="checkbox"/> NOT Minority/Disadvantaged <input type="checkbox"/> Other:					
Selection Method & Process Summary (mark the correct response to confirm the associated summary)					
<input checked="" type="checkbox"/> RFP		The procurement process was completed in accordance with the approved RFP document and associated regulations.			
<input type="checkbox"/> Competitive Negotiation		The predefined, competitive, impartial, negotiation process was completed in accordance with the associated, approved procedures and evaluation criteria.			
<input type="checkbox"/> Alternative Competitive Method		The predefined, competitive, impartial, procurement process was completed in accordance with the associated, approved procedures and evaluation criteria.			
<input type="checkbox"/> Non-Competitive Negotiation		The non-competitive contractor selection was completed as approved, and the procurement process included a negotiation of best possible terms & price.			
<input type="checkbox"/> Other		The contractor selection was directed by law, court order, settlement agreement, or resulted from the state making the same agreement with <u>all</u> interested parties or <u>all</u> parties in a predetermined "class."			
Budget Officer Confirmation: There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations. 			OCR USE - FA		
Speed Chart (optional) TN00000183		Account Code (optional) 70803000			



CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION,
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE
AND
ASCEND MANAGEMENT INNOVATIONS, LLC

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration, Bureau of TennCare, hereinafter referred to as the "State" or "TennCare" and Ascend Management Innovations, LLC, hereinafter referred to as the "Contractor," is for the provision of the evaluation of individuals who have been denied medical eligibility for TennCare-reimbursed Long Term Care services and for whom an appeal has been requested, as further defined in the "SCOPE OF SERVICES."

The Contractor is a Limited Liability Company.
Contractor Place of Incorporation or Organization: Tennessee
Contractor Edison Registration ID # 0000012047

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. All work performed under this contract is subject to damages as specified in Attachment B. Definitions and Terms associated with this contract are located in Attachment C.
- A.2. Upon an email request or other form of written request from TennCare, the Contractor shall conduct in person, face-to-face medical Level of Care (LOC) assessments of Tennessee residents to determine if the individual meets the medical LOC eligibility criteria set forth in the Bureau of TennCare Rules at 1200-13-01-.10. Each of these individuals will have previously been denied medical eligibility for Long-Term Care services by the Bureau of TennCare and have timely requested an appeal. The Contractor shall make each LOC re-assessment in accordance with criteria established by the State:
- a. The Contractor shall accurately gather and record assessment and determination information on a TennCare approved assessment and determination tool. All LOC assessments and determinations shall be conducted by professional, experienced, specifically trained and currently licensed registered nurses (Field Assessor RNs).
 - b. The Contractor shall ensure consistent and defensible LOC determinations. In order to ensure such consistency, the Contractor shall only utilize Tennessee licensed registered nurses experienced in Long Term Care to conduct LOC assessments. The Contractor shall also review each LOC determination through the use of Tennessee licensed registered nurses who are trained to conduct quality reviews of each assessment and determination (Quality RN) to verify that all information necessary for the determination was gathered and that the Pre-Admission Evaluation (PAE) LOC criteria were correctly applied.
 - c. The Contractor shall create and provide training to persons who conduct LOC assessments and determinations. This training shall include, but not be limited to TennCare Rules, State criteria interpretation, and interview strategies before assuming assessment responsibilities;
 - d. The Contractor shall strictly comply with all timeliness requirements mandated by applicable court orders and federal and state laws and regulations, and any amendments or changes thereto. Time is of the essence in this Contract;



- e. The Contractor shall prepare witness packets for appeals being prepared for hearing as directed by TennCare and shall provide expert testimony at each such hearing. Witness packets shall contain:
 - (1) Initial appeal and accompanying information received;
 - (2) Any additional medical information obtained during onsite assessment;
 - (3) The onsite assessment tool completed by the Contractor; and
 - (4) The TennCare Notice of Hearing and its attachments.

A.3. The Contractor shall hire and maintain staff and management in accordance with the terms of this contract. Such staffing shall include at a minimum the key staff identified below:

- a. A Project Leader, whose primary office is within the Nashville metropolitan area, to assume operational responsibilities, oversee quality review responsibilities, coordinate operations with TennCare and to provide leadership and expertise in conformity with TennCare Rules and Policies, state and federal regulations, laws, court orders and in accordance with the direction of the Bureau of TennCare.
- b. One (1) or more Tennessee licensed Field Assessor RNs to conduct onsite, face to face LOC assessments and determinations. The Field Assessor RNs shall be licensed in the State of Tennessee or possess a multi-state compact license which includes Tennessee. Field Assessor RNs shall be assigned to conduct specific assessments. The Field Assessor RNs shall be responsible for:
 - (1) Completing the evaluation in its entirety;
 - (2) Providing clear and consistent documentation and
 - (3) Addressing and clarifying inconsistencies.
- c. One (1) or more Tennessee licensed Quality RNs to conduct quality reviews of each LOC assessment and determination. The Quality RN(s) shall maintain their primary office in the Metropolitan Nashville, Tennessee area. A Quality RN shall be assigned to review every assessment. The Quality RN is responsible for:
 - (1) Ensuring the completeness of the evaluation;
 - (2) Ensuring the consistency of the documentation;
 - (3) Following up to address and clarify any inconsistencies and/or omissions;
 - (4) Providing ongoing feedback and training to the assessor, and
 - (5) Ensuring that each individual evaluation fully complies with the criteria for evaluations established by TennCare.
- d. The Contractor's Project Leader and Quality RN(s), and NCC shall be available to TennCare staff during regular State business hours for any clarifications or discussions as needed.
- e. Privacy Official: The Contractor must designate a privacy official who is responsible for the development and implementation of the policies, procedures and practices according to the HIPAA Privacy and Security Rules. The Contractor must designate a contact person or office who is responsible for receiving privacy and security-related complaints and who is able to provide further information about privacy and security-related matters. This position must be documented pursuant to the regulation.
- f. A Nondiscrimination Compliance Coordinator (NCC) to be responsible for Contractor compliance with all applicable Federal and State civil rights laws, regulations, rules, and policies. The Contractor does not have to require that compliance with the applicable federal and state civil rights laws and regulations be the sole function of the NCC. However, the Contractor shall identify and provide TennCare with the designated NCC's name and contact information. Within ten (10) calendar days of the commencement of any period of time that the Contractor does not have a designated NCC, the Contractor shall report this vacancy to TennCare in writing. At such time that this function is



redirected, the name of the staff member who assumed the duties shall be reported in writing to TennCare within ten (10) calendar days of the change.

The Contractor's NCC shall be responsible for instructing Contractor's staff on how to assist Potential Enrollees and Long-Term Services and Supports (LTSS) Enrollees with accessing free services for individuals with disabilities who may require reasonable accommodations and/or Auxiliary Aids or Services and for Individuals with Limited English Proficiency (LEP). In addition, the NCC shall instruct the Contractor's staff on how to assist Potential Enrollees and LTSS Enrollees with filing discrimination complaints and to cooperate with TennCare and/or any other designated entity during discrimination investigations. The NCC's nondiscrimination staff instructions shall be prior approved by TennCare.

- g. Litigation Hold Official: The Contractor must designate a representative who is designated to receive Litigation Hold notices.
- A.4. The Contractor shall maintain an adequate staff of Field Assessor RNs to meet the timelines imposed by this Contract and all applicable court orders, federal and state laws and regulations, and any amendments or changes thereto.
- Upon completion of programming updates to TennCare Pre-Admission Evaluation System (TPAES), the sharing of information between TennCare and the Contractor shall occur via TPAES.
- A.5. Within seven (7) business days of receipt of an email or other written request from TennCare, the Contractor shall complete the following performance measures relating to that specific referral:
- a. Conduct the in person, face-to-face on-site LOC assessment and gather appropriate ancillary information as indicated;
 - b. Make an initial LOC determination based on the assessment and documentation gathered;
 - c. Perform a quality review of the initial LOC assessment to ensure that LOC criteria were appropriately applied;
 - d. Make a final determination of the individual's LOC eligibility as represented by all available information, and
 - e. Communicate the final LOC determination to TennCare in the format specified by TennCare, including submission of the assessment and all documentation relied upon in making the determination.
- A.6. The Contractor will be notified by TennCare when an appeal hearing is scheduled. Within three (3) business days of receipt of the hearing notice, the Contractor shall prepare and distribute a witness packet to TennCare LTSS. On the day of the hearing, an RN shall be available to participate in the hearing by phone or in-person (at TennCare's election) and provide testimony on behalf of TennCare. The RN must be familiar with the specific in-person, face-to-face onsite LOC assessment that is the subject of the hearing and such RN shall be able to cogently present the PAE LOC determination at hearing, consistently interpret TennCare's LOC criteria, and consistently communicate how the criteria was applied in making the specific LOC determination that is being appealed.
- A.7. The Contractor shall create and maintain a Project Database to record key aspects of each LOC assessment, The database shall include but is not limited to, the following:
- a. Referral documents provided by TennCare;
 - b. Any Quality RN or Project Leader special instructions to the Field Assessor RN;



- c. Identity of the Field Assessor RN assigned to the referral, time/date of referral to the Field Assessor RN, due date for the completed LOC assessment, and the time/date the LOC assessment was received from the Field Assessor RN;
- d. Location of on-site, likely applicant's residence;
- e. Special circumstances, if any;
- f. Quality RN's score on measure of quality of work submitted by the Field Assessor RN, and
- g. Time/date of Quality RN's review, decision and Contractor's submission to TennCare.

The Project Database shall be fully and securely accessible by Project Leader(s), Field Assessor RNs and Quality RNs. The Project Database shall also be capable of creating billing summaries.

- A.8. Information maintained in the project database will be used for reporting and billing purposes. A report with the following data elements shall be submitted to TennCare on by the fifteenth (15th) of each month (or next business day) and shall include information from the preceding month:
- a. Total number of assessments completed, with an indication of whether the assessment occurred in a nursing facility or home or community based setting.
 - b. Total number of LOC decisions overturned;
 - c. Total number of LOC decisions upheld;
 - d. Total number of witness packets prepared, and
 - e. Total number of hearings for which Contractor's expert testimony was provided.
 - f. Reports shall be submitted in a format and in a manner acceptable to TennCare.

No reports created or data collected under this Contract shall be released to persons or entities outside of TennCare without prior, express written consent from TennCare.

- A.9. The Contractor shall perform the following services within the specific timelines set forth below:
- a. Within fifteen (15) calendar days of the Contract start date, at a minimum, the Project Leader and Quality RN, shall participate in TennCare's in person training regarding PAE LOC criteria, acuity scale, interpretation of the TennCare Rules, applicable state and federal statutes and DOE orders, and the PAE LOC assessment and appeals processes;
 - b. Within twenty (20) calendar days of completion of training by TennCare, submit for TennCare approval Contractor's proposed assessment tool. Contractor shall not utilize the assessment tool unless and until TennCare has provided written approval of the tool;
 - c. Within twenty (20) calendar days of receipt of written approval by TennCare of the assessment tool, the Contractor shall develop and submit to TennCare for approval a PAE LOC assessment training and procedure manual to include the following:
 - (1) Step-by-step protocol review;
 - (2) A project procedure manual to include procedures associated with receiving, assigning, reviewing, making determinations, and hearing protocols;
 - (3) A quality improvement tool and protocol;
 - (4) Interview techniques;
 - (5) Record review process;
 - (6) Documentation requirements;
 - (7) Processing requirements;



- (8) Quality management approach and related expectations; and
- (9) Medical Eligibility Criteria (Level of Care) Rule 1200-13-01-.10.

The Contractor shall not utilize the PAE LOC assessment training and procedure manual, quality improvement tool, or any of its subparts unless and until TennCare has provided written approval of this material.

- d. Within thirty (30) calendar days of the Contract start date, the Contractor shall create, test, demonstrate to TennCare the efficacy of the Project Database required in A.7 above and obtain TennCare's written approval to begin using the Project Database.
 - e. Within thirty (30) calendar days of the Contract start date, the Contractor shall hire or execute subcontracts with a sufficient number of registered nurses to complete all on-site face-to-face PAE LOC assessments referred to Contractor by TennCare and to provide the quality assurance reviews required in this Contract. Such subcontracts shall be substantially in the form of a subcontract template approved in advance by TennCare and shall comply with the requirements of Section D.5 of this Contract. Within this timeframe, the Contractor shall complete for each such registered nurse:
 - (1) A reference check;
 - (2) A criminal background check;
 - (3) Licensure verification;
 - (4) Interviews/review of project expectations;
 - (5) Updating of HIPAA and other assurances requested by TennCare;
 - (6) Submission of selected evaluators for TennCare approval, if requested by TennCare, and
 - (7) Issuance of Contractor project contracts to RN independent contractors.
 - f. Within forty (40) calendar days of receipt of written approval by TennCare of the assessment tool, the Contractor shall create and submit to TennCare for approval a Field Assessor RN Training plan. The training plan shall include all materials, whether written, video or web based, that will be used to instruct Field Assessor RNs on how to perform on-site face-to-face LOC assessments. The Contractor shall not implement the training plan unless and until TennCare has provided written approval of the plan.
 - g. Within sixty (60) calendar days of the Contract start date, the Contractor shall have an adequate number of Field Assessor RNs employed or under contract and fully trained across the State to perform all on-site LOC assessments requested by TennCare.
 - h. The Contractor shall maintain all policies, procedures, manuals, tools and other items required by this Section A.9 throughout the duration of the Contract term. When necessary or appropriate, the Contractor shall update these materials. However, such updated materials shall not be effective and shall not be utilized by the Contractor unless and until TennCare has provided written approval of those materials.
- A.10. Three (3) months prior to the final expiration of this Contract, the Contractor shall provide any personnel resources necessary to assist TennCare in transitioning to a new Contractor at the end of this Contract. In addition, the Contractor shall prepare, for the State's approval, a transition plan for transfer of the Contractor's services to the new Contractor. The transition plan shall be submitted to TennCare no less than ninety (90) days prior to the Contract termination date and shall include the following information:
- a. Define transition approach, all tasks and subtasks, and provide a schedule for the transition effort to achieve State requirements;
 - b. Securely transfer all files, data, and other materials developed under this Contract, and any and all amendments thereto, to the State or its designated agent;
 - c. Provide copies of all procedures for performing the functions of the Contractor;



- d. Provide an estimated inventory of all work in progress and its projected status at the end of the contract one (1) month before final termination of this Contract;
 - e. Update the work in process and inventory estimates weekly throughout the Transition Phase;
 - f. Provide a final, detailed, inventory and accounting of all work in progress and all completed work within seven (7) working days of final contract expiration;
 - g. Provide current specifications for all reports generated for TennCare and
 - h. Prepare and securely submit a final report summarizing transition task results and certifying the completion of all transitions.
- A.11. Contractor personnel shall report any suspected fraud or abuse by TennCare enrollees or TennCare providers as follows:
- a. All possible enrollee fraud and abuse shall be reported immediately to OIG;
 - b. All possible provider fraud and abuse shall be reported immediately to TennCare and MFCU, and
 - c. Possible fraud and abuse by the Contractor in the administration of the program shall be reported to TennCare Office of Program Integrity.
- A.12. Nondiscrimination. The Contractor shall agree that no person on the grounds of handicap, and/or disability, age, race, color, religion, sex, or national origin, or any other classification protected by federal or state law shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor.
- a. The Contractor shall have written policies and procedures that demonstrate non-discrimination in the provision of its services to Potential Enrollees and LTSS Enrollees. The policies and procedure shall include, but are not limited to assisting Potential Enrollees and LTSS Enrollees with accessing free services for Individuals with LEP and/or for individuals with disabilities who may require reasonable accommodations and/or Auxiliary Aids or Services in order access services and/or to achieve Effective Communication. These policies and procedures shall be prior approved in writing by TennCare.
 - b. At a minimum, the written materials sent by the Contractor to Potential Enrollees and LTSS Enrollees shall be in Plain Language and state that the Contractor does not discriminate based on race, color, national origin, disability, age, sex, or any other classification protected by federal or state laws in the provision of its services under this Contract and identify the individual and contact information responsible for compliance. The written materials shall comply with Vital Document standards and at a minimum be available in both the English and Spanish languages. TennCare shall notify the Contractor of each Limited English Proficiency (LEP) group identified by it that constitutes five percent (5%) of the TennCare population or one-thousand (1,000) members, whichever is less. Within ninety (90) calendar days from that notification, all Vital Documents issued by the Contractor shall be available in a written translation format and provided to the above identified LEP groups. At a minimum, the Contractor shall provide all Vital Documents in the Spanish language in a written translation format.
 - c. Accessibility for Individuals with Disabilities: The Contractor shall comply with the applicable requirements set forth in the Americans with Disabilities Act and section 504 of the Rehabilitation Act of 1973. For individuals with disabilities, the Contractor shall



provide free reasonable accommodations and/or Auxiliary Aids or Services in order to access services and/or achieve Effective Communication.

- (1) The Contractor shall provide reasonable accommodations as necessary in order to avoid discrimination on the basis of disability, unless the Contractor can demonstrate that providing the reasonable accommodation would fundamentally alter the nature of the service, program, or activity or create an undue financial and administrative burden. If a requested accommodation would result in an alteration or undue financial burden to the Contractor, the Contractor shall take any other action that would not result in such an alteration or financial burden but would ensure that, to the maximum extent possible, the individual with the disability(ies) receives the benefits or services provided by the Contractor.
- (2) Similarly, in determining what types of Auxiliary Aids and Services are necessary, the Contractor shall give primary consideration to the requests of individuals with disabilities. The type of Auxiliary Aid or Service necessary to ensure Effective Communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place. In order to be effective, Auxiliary Aids and Services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability. If an individual requests an Auxiliary Aid or Service that the Contractor can demonstrate would result in a fundamental alteration in the nature of its services or result in an undue financial and administrative burden the Contractor does not have to provide the requested Auxiliary Aid or Service to the individual. However, if available, the Contractor shall provide the individual with another form of an Auxiliary Aid or Service that would achieve Effective Communication with the individual and not result in a fundamental alteration in the nature of the Contractor's services or result in an undue financial and administrative burden.

A.13. Without limiting the scope of paragraph E.8, below, all policies, procedures, training materials, quality improvement tools and other materials referred to above shall be considered Work Product.

B. CONTRACT PERIOD:

B.1. This Contract shall be effective for the period beginning June 1, 2013, and ending May 31, 2018, with on-site assessments to begin August 1, 2013. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

C. PAYMENT TERMS AND CONDITIONS:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Four Million Two Hundred Sixteen Thousand Four Hundred Seventy-Five Dollars (\$4,216,475.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the



payment rates detailed in section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

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

Service Description	Amount (per compensable increment)
Development of Onsite Evaluation Tool	\$ 0.00 Payable Upon Completion and Approval by TennCare
Nursing Facility Onsite Evaluation	\$380.22 per Evaluation
Home Based Onsite Evaluation	\$380.22 per Evaluation
Phone Based Hearing (all activities associated with phone based hearing, including preparation and distribution of the Witness Packet pursuant to A.6.)	\$159.31 per Phone Hearing
RN In-Person Hearings (all activities associated with In-Person hearing, including preparation and distribution of the Witness Packet pursuant to A.6.)	\$32.00 per hour
Overnight Courier Between Contractor and On-site Evaluator for HIPAA Compliance	Actual Expenditures

- 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:

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

- 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 Finance and Administration, Bureau of TennCare
- (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
- (6) Contractor Name
- (7) Contractor Tennessee Edison Registration ID Number 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 sixty (60) 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 (Tenn. Code Ann.), § 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 Tenn. Code Ann., § 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.



- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tenn. Code Ann., §§ 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

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



- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with Member 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:

Darin J. Gordon
Deputy Commissioner
Department of Finance and Administration
Division of Health Care Finance and Administration
Bureau of TennCare
310 Great Circle Road
Nashville, TN 37243
Telephone # (615) 507-6443
FAX # (615) 741-0882

The Contractor:

Teri Lepley, CEO
Ascend Management Innovations, LLC
840 Crescent Centre Drive, Suite 400
Franklin, TN 37067
tlepley@ascendami.com
(615) 312-3857 (Phone)
(877) 431-1388 (Toll Free Phone)
(615) 425-4057 (FAX)

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or Member 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 Tenn. Code Ann., § 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to Tenn. Code Ann., 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 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.6. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

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

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

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

- (1) In event of a Breach by Contractor, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity.
- (2) Liquidated Damages— In the event of a Breach, the State may assess Liquidated Damages. The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced, Attachment 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 thirty (30) days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

E.7. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of Tenn. Code Ann. §12-7-101 *et. seq.*, shall be printed pursuant to this contract unless a printing

authorization number has been obtained and affixed as required by Tenn. Code Ann. §12-7-103 (d).



- E.8. State Ownership of Work Products. The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." The State shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.
- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.
 - b. The Contractor shall furnish such information and data as the State may request, including but not limited to, project and participant data, complete with data definitions, and any data essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.
 - c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
 - d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.
- E.9. Competitive Procurements. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or contracted services. Such procurements shall be made on a competitive basis, where practical. The Contractor shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Contract. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification, approved by the Deputy Commissioner, Department of Finance and Administration, for such decision and non-competitive procurement.
- E.10. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.
- E.11. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.
- a. this Contract document with any attachments or exhibits (excluding the items listed at subsections b. through e., below);
 - b. any clarifications of or addenda to the Contractor's proposal seeking this Contract;



- c. the State solicitation, as may be amended, requesting proposals in competition for this Contract;
 - d. any technical specifications provided to proposers during the procurement process to award this Contract;
 - e. the Contractor's proposal seeking this Contract.
- E.12. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.
- E.13. 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.14. 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.15. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subMembers 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.16. 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.17. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's proposal responding to RFP-31865-00357 (Attachment 6.2, Section B) and resulting in this Contract.

The Contractor shall assist the State in monitoring the Contractor's performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and persons with a disability. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in form and substance as required by said office.

- E.18. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.

- E.19. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

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



- E.20. HIPAA and HITECH Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH) under the American Recovery and Reinvestment Act of 2009 (ARRA) and their accompanying regulations, and as amended.

Contractor warrants to the State that it is familiar with the requirements of HIPAA and HITECH and their accompanying regulations, and shall comply with all applicable HIPAA and HITECH requirements in the course of this Contract including but not limited to the following:

1. Compliance with the Privacy Rule, Security Rule, Notification Rule;
2. The creation of and adherence to sufficient Privacy and Security Safeguards and Policies;
3. Timely Reporting of Violations in the Access, Use and Disclosure of PHI; and
4. Timely Reporting of Privacy and/or Security Incidents.

The Contractor warrants that it shall cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and HITECH and their accompanying regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA and HITECH.

The State and the Contractor shall sign documents, including but not limited to business associate agreements, as required by HIPAA and HITECH and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA and HITECH.

- E.21. 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 discloses PHI;
- f. Specify in its agreements with any agent or subcontractor that will have access to PHI that such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Contractor pursuant to this Section;
- g. Make available to TennCare enrollees the right to amend their PHI in accordance with the federal HIPAA regulations. The Contractor shall also send information to enrollees educating them of their rights and necessary steps in this regard;
- h. Make an enrollee's PHI accessible to TennCare immediately upon request by TennCare;
- i. Make its internal policies and procedures, records and other documentation related to the use and disclosure of PHI available to the U.S. Secretary of Health and Human Services for the purposes of determining compliance with the HIPAA/HITECH regulations upon request;
- j. Create and adopt policies and procedures to periodically audit adherence to all HIPAA/HITECH regulations, and for which Contractor acknowledges and promises to perform, including but not limited to, the following obligations and actions:
- k. Agree to ensure that any agent, including a subcontractor, to whom it provides PHI that was created, received, maintained, or transmitted on behalf of TennCare agrees to use reasonable and appropriate safeguards to protect the PHI.
- l. If feasible, return or destroy all PHI, in whatever form or medium (including any electronic medium) and all copies of any data or compilations derived from and allowing identification of any individual who is a subject of that PHI upon termination, cancellation, expiration or other conclusion of the Agreement, and in accordance with this Section of this Contract. The Contractor shall complete such return or destruction as promptly as possible, but not later than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement. The Contractor shall identify any PHI that cannot feasibly be returned or destroyed. Within such thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement, the Contractor shall: (1) certify on oath in writing that such return or destruction has been completed; (2) identify any PHI which cannot feasibly be returned or destroyed; and (3) certify that it will only use or disclose such PHI for those purposes that make its return or destruction infeasible;
- m. Implement all appropriate administrative, physical and technical safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Contract and, including, but not limited to, privacy, security and confidentiality requirements in 45 C.F.R. Parts 160 and 164;
- n. Set up appropriate mechanisms to limit use or disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use or disclosure;
- o. Create and implement policies and procedures to address present and future HIPAA/HITECH regulatory requirements as needed, including, but not limited to: use and disclosure of data; de-identification of data; minimum necessary access; accounting of disclosures; enrollee's right to amend, access, request restrictions; notice of privacy practices and right to file a complaint;
- p. Provide an appropriate level of training to its staff and employees regarding HIPAA/HITECH-related policies, procedures, enrollee rights and penalties prior to the HIPAA/HITECH implementation deadlines and at appropriate intervals thereafter;



- q. Track training of Contractor staff and employees and maintain signed acknowledgement by staff and employees of the Contractor's HIPAA/HITECH policies;
- r. Be allowed to use and receive information from TennCare where necessary for the management and administration of this Contract and to carry out business operations where permitted under the regulations;
- s. Be permitted to use and disclose PHI for the Contractor's own legal responsibilities;
- t. Adopt the appropriate procedures and access safeguards to restrict and regulate access to and use by Contractor employees and other persons performing work for the Contractor to have only minimum necessary access to PHI and personally identifiable data within their organization;
- u. Continue to protect and secure PHI AND personally identifiable information relating to enrollees who are deceased;
- v. Be responsible for informing its enrollees of their privacy rights in the manner specified under the regulations;
- w. Make available PHI in accordance with 45 C.F.R. § 164.524;
- x. Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526; and
- y. Obtain a third (3rd) party certification of their HIPAA transaction compliance ninety (90) calendar days before the start date of operations.

The Contractor shall track all security incidents as defined by HIPAA/HITECH, and, as required by the HIPAA/HITECH Reports. The Contractor shall periodically report in summary fashion such security incidents.

- E.22. Information Holders. TennCare and the Contractor are "information holders" as defined in Tenn. Code Ann. § 47-18-2107. In the event of a breach of the security of Contractor's information system, as defined by Tenn. Code Ann. § 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 Tenn. Code Ann. § 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 Tenn. Code Ann. § 47-18-2107.
- E.23. Notification of Breach and Notification of Provisional Breach. The Contractor shall notify TennCare's Privacy Office immediately upon becoming aware of any incident, either confirmed or provisional, that represents or may represent unauthorized access, use or disclosure of encrypted or unencrypted computerized data that materially compromises the security, confidentiality, or integrity of enrollee PHI maintained or held by the Contractor, including any unauthorized acquisition of enrollee PHI by an employee or otherwise authorized user of the Contractor 's system. This includes, but is not limited to, loss or suspected loss of remote computing or telework devices such as laptops, PDAs, Blackberrys or other Smartphones, USB drives, thumb drives, flash drives, CDs, and/or disks.
- E.24 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:
- a. Purposes directly related to the administration of Medicaid and CHIP include:
 - (1) establishing eligibility;



- (2) determining the amount of medical assistance;
 - (3) providing services for beneficiaries; and,
 - (4) conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to Medicaid or CHIP administration.
- b. The Contractor must have adequate safeguards to assure that:
- (1) Information is made available only to the extent necessary to assist in the valid administrative purposes of those receiving the information, and 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,
 - (2) the information is adequately stored and processed so that it is protected against unauthorized disclosure for other purposes.
- c. The Contractor must have criteria that govern the types of information about applicants and beneficiaries that are safeguarded. This information must include at least:
- (1) Names and addresses;
 - (2) Medical services provided;
 - (3) Social and economic conditions or circumstances;
 - (4) Contractor evaluation of personal information;
 - (5) Medical data, including diagnosis and past history of disease or disability;
 - (6) Any information received for verifying income eligibility and amount of medical assistance payments, including income information received from SSA or the Internal Revenue Service;
 - (7) Any information received for verifying income eligibility and amount of medical assistance payments;
 - (8) Income information received from SSA or the Internal Revenue Service must be safeguarded according to Medicaid and CHIP requirements;
 - (9) Any information received in connection with the identification of legally liable third party resources, and
 - (10). Social Security Numbers.
- d. The Contractor must have criteria approved by the State specifying:
- (1) the conditions for release and use of information about applicants and beneficiaries;
 - (2) Access to information concerning applicants or beneficiaries must be restricted to persons or Contractor representatives who are subject to standards of confidentiality that are comparable to those of the State;
 - (3) The Contractor shall not publish names of applicants or beneficiaries;
 - (4) The Contractor shall obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source,



unless the information is to be used to verify income, eligibility and the amount of medical assistance payment to an authorized individual or entity;

- (5) 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;
- (6) The Contractor's policies must apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials;
- (7) 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;
- (8) 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, and,
- (9) 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.25. Applicable Laws, Rules and Policies. Contractor agrees to comply with all applicable federal and State laws, rules, regulations and executive orders, including, but not limited to, Constitutional provisions regarding due process and equal protection of the laws.

E.26. Employees Excluded from Medicare, Medicaid or CHIP. The Contractor does hereby attest, certify, warrant, and assure that the Contractor shall not employ, in the performance of this Contract, employees who have been excluded or terminated from participation in the Medicare, Medicaid, and/or CHIP programs pursuant to Sections 1128 of the Social Security Act. The Contractor shall perform monthly checks of its employees to ensure that they have not been added to the various excluded individual databases maintained by the Federal Government. The Contractor further attests that no individual or entity with a 5% or greater ownership interest has been excluded or terminated from participation in Medicare, Medicaid, and/or CHIP programs.

E.27. 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 C.F.R. 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 C.F.R. § 229.402(c)(2)):
 - i. Salary and bonus.
 - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - v. Above-market earnings on deferred compensation which is not tax qualified.
 - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
- c. If this Contract is amended to extend 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.28. Social Security Administration (SSA) Required Provisions for Data Security. The Contractor shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. § 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. § 3541, *et seq.*), and related National Institute of Standards and Technology guidelines. In addition, the Contractor shall have in place administrative, physical, and technical safeguards for data.



- a. The Contractor shall not duplicate in a separate file or disseminate, without prior written permission from TennCare, the data governed by the Contract for any purpose other than that set forth in this Contract for the administration of the TennCare program. Should the Contractor propose a redisclosure of said data, the Contractor must specify in writing to TennCare the data the Contractor proposes to redisclose, to whom, and the reasons that justify the redisclosure. TennCare will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the TennCare program.
- b. The Contractor agrees to abide by all relevant federal laws, restrictions on access, use, and disclosure, and security requirements in this Contract.
- c. The Contractor shall provide a current list of the employees of such contractor with access to SSA data and provide such lists to TennCare 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 TennCare SSA-supplied data in a manner or purpose not authorized by this Contract may be subject to civil and criminal sanctions pursuant to applicable federal statutes.

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

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

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



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

E.29. Tennessee Bureau of Investigation Medicaid Fraud and Abuse Unit (MCFU), TennCare Office of Program Integrity, and Office of TennCare Inspector General Access to Contractor Records.

- a. Enrollee Records-Consent. As a condition of participation in TennCare, enrollees have given TennCare, the Office of the Comptroller of the Treasury, and any health oversight agency, such as Office of the Inspector General (OIG), Tennessee Bureau of Investigation Medicaid Fraud and Abuse Unit (TBI MFCU), Department of Health and Human Services Office of Inspector General (DHHS OIG), and Department of Justice (DOJ), and any other authorized state or federal agency, access to their records. The Contractor shall make available said records and furnish immediately upon request by the Contractor for fiscal audit, medical audit, medical review, utilization review, and other periodic monitoring as well as for administrative, civil and criminal investigations or prosecutions upon the request of an authorized representative of the Contractor, TennCare or authorized federal, state and Office of the Comptroller of the Treasury personnel, including, but not limited to, the OIG, the TBI MFCU, the DHHS OIG and the DOJ.
- b. TennCare Records-Access. The Contractor agrees that as a condition of payment under this contract TennCare, DHHS OIG, Office of the Comptroller of the Treasury, OIG, TBI MFCU, and DOJ, as well as any authorized state or federal agency or entity shall have the right to evaluate through inspection, evaluation, review or request, whether announced or unannounced, or other means any records pertinent to this Contract including, but not limited to medical records, billing records, financial records, and/or any records related to services rendered, quality, appropriateness and timeliness of services and/or any records

Teri Lepley CEO



PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE:

Mark A. Embles / CD

May 21, 2013

Commissioner

DATE



ATTACHMENT A

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Ascend Management Innovations, LLC
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	

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.

Teri Lepley

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.

Teri Lepley CEO

PRINTED NAME AND TITLE OF SIGNATORY

5/21/13

DATE OF ATTESTATION



ATTACHMENT B LIQUIDATED DAMAGES

TennCare may elect to apply the following liquidated damages remedies in the event the Contractor fails to perform its obligations under this Contract in a proper and/or timely manner. Upon determination by TennCare that the Contractor has failed to meet any of the requirements of this Contract in a proper and/or timely manner, TennCare will notify the Contractor in writing of the deficiency and of the potential liquidated damages to be assessed. Liquidated damages shall be assessed for any part of each week during which the deficiency occurs or remains uncorrected, unless the amount of liquidated damages is otherwise designated as "per occurrence" or "per incident" in the following table. Should the deficiency remain uncorrected for more than thirty (30) days from the date of the original notification of the deficiency by TennCare, TennCare may impose an additional liquidated damage of Five Hundred Dollars (\$500) per calendar day from the date of the original notification to Contractor until said deficiency is resolved.

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

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

A general liquidated damage of \$500.00 per calendar day/occurrence, as applicable, may be assessed at the sole discretion of the State for any violation of a contract provision that is not specifically listed in the following table.

	<u>PROGRAM ISSUES</u>	<u>DAMAGE</u>
1.	Failure to provide adequate staff training as specified in Sections A.2.c., A.3.b, A.9.c, A.9.f and A.9.g	The damage that may be assessed may be One Thousand Dollars (\$1000) per occurrence.
2.	Failure to have staff and management available and trained to perform the responsibilities of this contract as specified in Section A.9.g.	The damage that may be assessed may be One Thousand Dollars (\$1000) per occurrence that adequate staff is not available.
3.	Failure to adhere to timelines and performance measures as specified in Section A.5.	The damage that may be assessed may be One Thousand Dollars (\$1000) per occurrence.



4.	<p>Failure to prepare and distribute a witness packet to LTSS within three (3) business days of hearing notification notice as specified in A.6.</p> <p>Failure to provide a participant in an appeal hearing who is familiar with the in person, face to face on-site assessment of the individual who has the appeal as specified in Section A.6.</p>	<p>The damage that may be assessed may be One Thousand Dollars (\$1000) per occurrence.</p>
5.	<p>Failure to provide timely reports as specified in Section A.8.</p>	<p>The damage that may be assessed may be Five Hundred Dollars (\$500) per week per deficiency, until reports are submitted and acceptable to TennCare.</p>
6.	<p>Failure to provide tasks specified in Section A.9 by the specific timeline for each task as identified in Section A.9 a. – A.9.h.</p>	<p>The damage that may be assessed may be One Thousand Dollars (\$1000) per occurrence.</p>
7.	<p>Failure to comply with HIPAA and HITECH Rules resulting in an unauthorized disclosure of PHI as described in Sections E.20 and E.21.</p>	<p>The damage that may be assessed shall be up to Five Thousand Dollars (\$5,000) per incident.</p>
8.	<p>Failure to have adequate Privacy and Security Safeguards and Policies resulting in a security incident as described in Sections E.20 through E.22.</p>	<p>The damage that may be assessed shall be up to Two Thousand Dollars (\$2,000) per incident.</p>
9.	<p>Failure to obtain a third (3rd) party certification of their HIPAA transaction compliance within ninety (90) calendar days upon request by TennCare as described in Section E.21.</p>	<p>The damage that may be assessed shall be up to Two Thousand Dollars (\$2,000) per incident.</p>
10.	<p>Failure to report a privacy breach or security incident or provisional privacy breach or security incident immediately upon becoming aware of breach as described in Section E.23.</p>	<p>The damage that may be assessed shall be up to Five Thousand Dollars (\$5,000) per incident.</p>

ATTACHMENT C



DEFINITIONS

1. **Auxiliary Aids and Services** – Includes (1) Qualified interpreters on-site or through video remote interpreting (VRI) services; note-takers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including Telecommunications Relay Service (TRS), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing; (2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision; (3) Acquisition or modification of equipment or devices; and (4) Other similar services and actions. The provision of Auxiliary Aids or Services by the Contractor shall be in compliance with the applicable Federal and State laws and regulations and Contract section D.16.
2. **Bureau of TennCare (Bureau)** - shall mean the administrative unit of TennCare which is responsible for the administration of TennCare as defined elsewhere in the Bureau's Rules. DOE – Refers to the case of *Doe v. Word*, No. 3-84-1260, 1987 WL 108974 (M.D. Tenn. Jan. 14, 1987) and any Orders relating thereto. DOE is a class action filed to protect the due process rights of persons entering nursing home facilities in the State of Tennessee.
3. **Effective Communication** - Taking the appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others by utilizing auxiliary aids and services.
4. **Enrollee** - shall mean an individual eligible for and enrolled in the TennCare program or in any Tennessee federal Medicaid waiver program approved by the Secretary of the U.S. Department of Health and Human Services pursuant to Sections 1115 or 1915 of the Social Security Act. As concerns MCC compliance with these rules, the term only applies to those individuals for whom the MCC has received at least one day's prior written or electronic notice from the Bureau of the individual's assignment to the MCC.
5. **Field Assessor RN** - Contractor's employee or subcontractor who is a Registered Nurse and who meets all licensing and other requirements of this Contract and who performs onsite, face to face PAE LOC assessments for specified TennCare enrollees or applicants on behalf of the Contractor, as directed by TennCare.
6. **Hearing** - a contested case proceeding held pursuant to the provisions of the Tennessee Uniform Administrative Procedures Act, Tennessee Code Annotated §§ 4-5-301, et seq., except as noted otherwise herein, to allow an enrollee to appeal an adverse decision of the TennCare Program. An evidentiary hearing is held before an impartial hearing officer or administrative judge who renders an initial order under Tennessee Code Annotated §4-5-314. If an enrollee appeals the initial order under Tennessee Code Annotated §4-5-315, the Commissioner may render a final order.
7. **Individuals with Limited English Proficiency (LEP)** – Individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand the English language.
8. **Level of Care (LOC)** - Medical eligibility criteria for receipt of an institutional service, HCBS



offered as an alternative to the institutional service, or in the case of persons At Risk for Institutionalization, to delay or prevent institutional placement. An individual who meets the LOC criteria for NF care is an individual who has been determined by the Bureau to meet the medical eligibility criteria established for that service.

9. Litigation Hold - A directive from the State to preserve documents and electronically stored information that is relevant or potentially relevant to litigation. When a party reasonably anticipates litigation, that party has the duty to suspend its routine document retention and/or document destruction policies and institute a litigation hold to ensure the preservation of relevant and potentially relevant documents.
10. Long-Term Services and Supports (LTSS) Enrollee or Participant - An individual who is participating in a TennCare LTSS Program.
11. Long-Term Services and Supports (LTSS) Program - One of the programs offering LTSS to individuals enrolled in TennCare. LTSS Programs include institutional programs (NFs and ICFs/IID), HCBS offered through CHOICES or through a Section 1915(c) HCBS Waiver Program, and the PACE Program.
12. MCC (Managed Care Contractor) - (a) A Managed Care Organization, Pharmacy Benefits Manager and/or a Dental Benefits Manager which has signed a TennCare Contractor Risk Agreement with the State and operates a provider network and provides covered health services to TennCare enrollees; or (b) A Pharmacy Benefits Manager, Behavioral Health Organization or Dental Benefits Manager which subcontracts with a Managed Care Organization to provide services; or (c) A State government agency (i.e., Department of Children's Services and Department of of Intellectual and Developmental Disabilities (DIDD)) that contracts with TennCare for the provision of services.
13. Nursing Facility (NF) - A Medicaid-certified NF.
14. Plain Language - Any notice or explanation written at a level that does not exceed the sixth grade reading level as measured by the Flesch Index, Fog Index, or Flesch-Kincaid Index.
15. Potential Enrollee - means a Medicaid beneficiary who is subject to mandatory enrollment or may voluntarily elect to enroll in a given managed care program, but is not yet an enrollee of a specific MCO. 42 C.F.R. § 438.10.
16. PreAdmission Evaluation (PAE) - A process of assessment by the Bureau used to determine an individual's medical (or LOC) eligibility for TennCare-reimbursed care in a NF or ICF/IID, and in the case of NF services, the appropriate level of reimbursement for such care, as well as eligibility for HCBS as an alternative to institutional care, or in the case of persons At Risk for Institutionalization, in order to delay or prevent NF placement. For purposes of CHOICES, the PAE application shall be used for the purposes of determining LOC and for persons enrolled in CHOICES Group 2, calculating the Member's Individual Cost Neutrality Cap.
17. Qualified Assessor - A practicing professional who meets the qualifications established by TennCare to certify the accuracy of a level of care assessment as reflected in the PAE application. For the CHOICES program, Qualified Assessors shall include only the following: a licensed physician, nurse practitioner, physician assistant, registered or licensed nurse, or licensed social worker.
18. Quality RN – Contractor's employee or subcontractor who is a Registered Nurse and who meets all licensing and other requirements of this Contract and who provides quality review of the PAE LOC assessments performed by the Field Assessor RNs for the Contractor, as directed by TennCare.
19. TennCare - The program administered by the Single State Agency as designated by the State and CMS pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration Waiver granted to the State of Tennessee.



20. TennCare CHOICES in Long-Term Services and Supports Program (CHOICES) - The program in which NF services for TennCare eligibles of any age and HCBS for individuals aged sixty-five (65) and older and/or adults aged twenty-one (21) and older with Physical Disabilities are integrated into TennCare's Managed Care System.
21. TennCare Eligible - For purposes of this Chapter, an individual who has been determined by the Tennessee Department of Human Services (DHS) to be financially eligible to have TennCare reimbursement for covered LTSS.
22. Tennessee Pre-Admission Evaluation System (TPAES) - A component of the State's Medicaid Management Information System and the system of record for all PreAdmission Evaluation (LOC) submissions and LOC determinations, as well as enrollments into and transitions between LTSS programs, including CHOICES and the State's Money Follows the Person Rebalancing Demonstration (MFP), and which shall also be used to gather data required to comply with tracking and reporting requirements pertaining to MFP.
23. Vital Documents - Vital Documents are designated by the State and shall include, but are not limited to, consent and complaint forms, intake and application forms with the potential for important consequences, notices pertaining to the reduction, denial, delay, suspension or termination of services, and certain critical outreach documents. Unless otherwise notified by the State, Vital Documents issued by the Contractor shall be translated and available to each LEP group identified by the State that constitutes five percent (5%) of the Exchange population or one-thousand (1,000) members, whichever is less. At a minimum, all Vital Documents shall be available in the Spanish language.