

CONTRACT #1
RFS # 339.01-10311
FA # 11-32301
Edison # 21444

**Department of Mental Health
and Substance Abuse Services**

VENDOR:
Ascend Management
Innovations, LLC



STATE OF TENNESSEE
DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
601 MAINSTREAM DRIVE
NASHVILLE, TENNESSEE 37243-0675

BILL HASLAM
GOVERNOR

E. DOUGLAS VARNEY
COMMISSIONER

TO: Fiscal Review Committee
FROM: *DD* Dennis Temple, Director of PASRR, Geriatric Programs, and Disaster Mental Health Programs
DATE: October 31, 2013
SUBJECT: Amendment One to the Pre-Admission Screening and Resident Review Program (PASRR) Contract (Edison #21444; Contract FA1132301)

The subject Contract is between the Department of Mental Health and Substance Abuse Services and Ascend Management Innovations, LLC. The purpose of the Contract is to conduct the federally-mandated Pre-Admission Screening and Resident Review (PASRR) program, a federal program originating in the 1987 Nursing Home Reform Act, part of the Omnibus Budget Reconciliation Act of 1987 (Title IV, Subtitle C of Public Law 100-203 (Medicare, Medicaid, and Other Health-Related Programs/Nursing Home Reform)).

The subject Contract was awarded through the Request for Proposal (RFP) process for the term July 1, 2010 through June 30, 2015. Due to the high referral rate from the State Medicaid office whose mandated responsibility is to screen all applicants to Medicaid certified nursing facilities and refer those with mental health issues to TDMHSAS for evaluation, it is expected that the original contract amount of \$7,135,809.00 will be expended as of January 2014.

The increased number of referrals can be attributed to a number of things, including 1) a change in diagnosis codes which broadened the population to be screened; 2) a change in emphasis by the Centers for Medicare and Medicaid Services (CMS) of "specialized services" within the PASRR program once an individual is in a nursing facility; 3) the aging population and the level of care for this aging population; and 4) a Centers for Medicare and Medicaid Services (CMS) state-by-state review of the program, which began in 2008/2009, that has resulted in enhanced training and awareness of the PASRR requirements as well as increased compliance efforts.

To ensure that the federally-mandated service will continue as required, we are seeking to add \$5,100,000.00 to the subject Contract, bringing its total maximum liability to \$12,235,809.00.

The following required FRC documentation is attached:

1. Non-Competitive Amendment Request;
2. Fiscal Review Committee (FRC) Supplemental Documentation;
3. Supplemental Support Documentation (Edison report of expenditures)
4. Proposed Amendment One and Contract Summary Sheet; and
5. Approved Original Contract and Contract Summary Sheet.

If additional information is needed, please let us know.

Thank you.

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Dennis Temple or Sandra Braber-Grove	*Contact Phone:	615-253-5558 or 615-532-6520		
*Original Contract Number:	FA1132301	*Original RFS Number:	33901-10311		
Edison Contract Number: <i>(if applicable)</i>	21444	Edison RFS Number: <i>(if applicable)</i>	N/A		
*Original Contract Begin Date:	July 1, 2010	*Current End Date:	June 30, 2015		
Current Request Amendment Number: <i>(if applicable)</i>	One (1)				
Proposed Amendment Effective Date: <i>(if applicable)</i>	January 1, 2014				
*Department Submitting:	TDMHSAS				
*Division:	Mental Health Services				
*Date Submitted:	October 31, 2013				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	Ascend Management Innovations, LLC				
*Current Maximum Liability:	\$ 7,135,809.00				
*Current Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY:2011	FY:2012	FY:2013	FY:2014	FY2015	FY
\$1,317,463.00	\$1,370,158.00	\$1,424,974.00	\$1,481,965.00	\$1,541,249.00	\$
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from STARS or FDAS report)					
FY:2011	FY:2012	FY:2013	FY:2014	FY2015	FY
\$1,315,281.10	\$1,609,376.42	\$2,225,113.32	\$828,659.90	\$	\$
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:		Referrals from Medicaid office have increased each year over original projections. The increase has steadily grown. Funding has been acquired by moving funds from future years.			
*Contract	State:	25%	Federal:	75%	

Supplemental Documentation Required for
Fiscal Review Committee

Funding Source/Amount:				
Interdepartmental:	\$7,135,809.00		Other:	
If "other" please define:				
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
N/A		N/A		
Method of Original Award: <i>(if applicable)</i>		Request For Proposals (RFP) process		
*What were the projected costs of the service for the entire term of the contract prior to contract award?		\$7,200,000.00		

Supplemental Documentation Required for
Fiscal Review Committee

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

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

NOTE: The question is not applicable because the amendment does not change Sections A. or C.3. of the original contract document.

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

Deliverable description:	FY:	FY:	FY:	FY:	FY:
N/A					

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

Deliverable description:	FY:	FY:	FY:	FY:	FY:
N/A					

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

Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
N/A					
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

Total P		39.00						
Unit	Voucher	Invoice	Remit Vndr	Name	Gross Amt	Reference	Pymnt Date	Fiscal Year
33901	00037660	ASCEND-420354-SEP13	0000012047	Ascend Management Innovations Llc	\$ 271,893.16	0000769167	10/16/2013	2014
33901	00036975	ASCEND-420354-AUG13	0000012047	Ascend Management Innovations Llc	\$ 287,279.02	0000730173	9/18/2013	2014
33901	00036525	ASCEND-420354-JUL13	0000012047	Ascend Management Innovations Llc	\$ 269,487.72	0000701177	8/29/2013	2014
					\$ 828,659.90			2014 Total
33901	00036149	ASCEND-420353-JUN13	0000012047	Ascend Management Innovations Llc	\$ 226,428.53	0000674777	8/9/2013	2013
33901	00034645	ASCEND-420353-MAY13	0000012047	Ascend Management Innovations Llc	\$ 203,846.16	0000590281	6/12/2013	2013
33901	00033911	ASCEND-420353-APR13	0000012047	Ascend Management Innovations Llc	\$ 214,439.50	0000551478	5/14/2013	2013
33901	00033188	ASCEND-420353-MAR13	0000012047	Ascend Management Innovations Llc	\$ 197,258.85	0000507497	4/12/2013	2013
33901	00032412	ASCEND-420353-FEB13	0000012047	Ascend Management Innovations Llc	\$ 196,532.54	0000470810	3/14/2013	2013
33901	00031537	ASCEND-420353-JAN13	0000012047	Ascend Management Innovations Llc	\$ 198,276.19	0000433749	2/19/2013	2013
33901	00030671	ASCEND-420353-DEC12	0000012047	Ascend Management Innovations Llc	\$ 151,005.92	0000391258	1/16/2013	2013
33901	00029988	ASCEND-420353-NOV12	0000012047	Ascend Management Innovations Llc	\$ 153,259.50	0000352303	12/14/2012	2013
33901	00029336	ASCEND-420353-OCT12	0000012047	Ascend Management Innovations Llc	\$ 229,365.42	0000308017	11/15/2012	2013
33901	00028793	ASCEND-420353-SEP12	0000012047	Ascend Management Innovations Llc	\$ 170,894.40	0000277433	10/22/2012	2013
33901	00027838	ASCEND-420353-AUG12	0000012047	Ascend Management Innovations Llc	\$ 152,144.76	0000230919	9/17/2012	2013
33901	00027520	ASCEND-420353-JUL12	0000012047	Ascend Management Innovations Llc	\$ 131,661.55	0000201368	8/27/2012	2013
					\$ 2,225,113.32			2013 Total
33901	00027305	ASCEND-420352-JUN12	0000012047	Ascend Management Innovations Llc	\$ 164,541.96	0000196037	8/21/2012	2012
33901	00026059	ASCEND-420352-MAY12	0000012047	Ascend Management Innovations Llc	\$ 138,213.47	0000124598	6/29/2012	2012
33901	00025112	ASCEND-420352-APR12	0000012047	Ascend Management Innovations Llc	\$ 134,612.13	0000079399	5/30/2012	2012
33901	00024410	ASCEND-420352-MAR12	0000012047	Ascend Management Innovations Llc	\$ 136,709.69	0000037687	4/30/2012	2012
33901	00023729	ASCEND-420352-FEB12	0000012047	Ascend Management Innovations Llc	\$ 123,922.56	0001236140	3/30/2012	2012
33901	00022985	ASCEND-420352-JAN12	0000012047	Ascend Management Innovations Llc	\$ 137,037.03	0001196432	3/1/2012	2012
33901	00022256	ASCEND-420352-DEC11	0000012047	Ascend Management Innovations Llc	\$ 109,449.29	0001153463	1/30/2012	2012
33901	00021839	Ascend Mgr 420352 11-11	0000012047	Ascend Management Innovations Llc	\$ 123,533.34	0001117819	12/30/2011	2012
33901	00021154	ASCEND-420352-OCT11	0000012047	Ascend Management Innovations Llc	\$ 134,147.40	0001078486	11/30/2011	2012
33901	00020662	ASCEND-420352-SEPT11	0000012047	Ascend Management Innovations Llc	\$ 144,649.52	0001039007	10/28/2011	2012
33901	00019642	ASCEND-420352-AUG11	0000012047	Ascend Management Innovations Llc	\$ 140,456.60	0000999489	9/30/2011	2012

33901	00019214	ASCEND-420352-JULY11	0000012047	Ascend Management Innovations Llc	\$ 122,103.43	0000961383	8/30/2011	2012
					\$ 1,609,376.42			2012 Total
33901	00018780	ASCEND-420351-JUNE11	0000012047	Ascend Management Innovations Llc	\$ 139,212.39	0000921242	7/29/2011	2011
33901	00017851	ASCEND-420351-MAY11	0000012047	Ascend Management Innovations Llc	\$ 124,625.48	0000882181	6/30/2011	2011
33901	00017029	ASCEND-420351-APR11	0000012047	Ascend Management Innovations Llc	\$ 97,361.78	0000838438	5/27/2011	2011
33901	00016335	ASCEND-420351-MAR11	0000012047	Ascend Management Innovations Llc	\$ 137,409.95	0000799857	4/29/2011	2011
33901	00015664	ASCEND-420351-FEB11	0000012047	Ascend Management Innovations Llc	\$ 101,352.34	0000759723	3/30/2011	2011
33901	00014996	ASCEND-420351-JAN11	0000012047	Ascend Management Innovations Llc	\$ 111,786.29	0000723368	3/2/2011	2011
33901	00014234	ASCEND-420351-DEC10	0000012047	Ascend Management Innovations Llc	\$ 92,075.22	0000679971	1/28/2011	2011
33901	00013729	ASCEND-420351-NOV10	0000012047	Ascend Management Innovations Llc	\$ 95,784.87	0000636488	12/20/2010	2011
33901	00012945	ASCEND-420351-OCT10	0000012047	Ascend Management Innovations Llc	\$ 91,090.26	0000585905	11/10/2010	2011
33901	00012274	ASCEND 420351 SEPT 2010	0000012047	Ascend Management Innovations Llc	\$ 105,028.10	0000561466	10/21/2010	2011
33901	00011853	ASCEND-420351-AUG10	0000012047	Ascend Management Innovations Llc	\$ 110,520.59	0000523558	9/22/2010	2011
33901	00011852	ASCEND-420351-JULY10	0000012047	Ascend Management Innovations Llc	\$ 109,033.83	0000525010	9/23/2010	2011
					\$ 1,315,281.10			2011 Total
					\$ 5,978,430.74			Grand Total

Non-Competitive Amendment Request

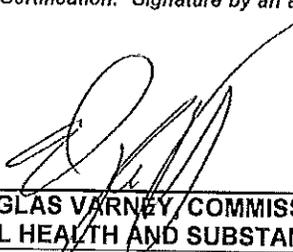
NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.
Route a completed request, as one file in PDF format, via e-mail attachment sent to: AgSprs.Agspr@sstate.tn.us

APPROVED



Chief Procurement Officer/Central Procurement Office/TDGS

Request Tracking #	33901-10311 (original contract)	
1. Procuring Agency	Department of Mental Health and Substance Abuse Services	
2. Contractor	Ascend Management Innovatons, LLC	
3. Contract #	FA1132301	
4. Proposed Amendment #	One (1)	
5. Edison ID #	21444	
6. Contract Begin Date	July 1, 2010	
7. Current Contract End Date <i>- with ALL options to extend exercised</i>	June 30, 2015	
8. Proposed Contract End Date <i>- with ALL options to extend exercised</i>	June 30, 2015	
9. Current Maximum Contract Cost <i>- with ALL options to extend exercised</i>	\$ 7,135,809.00	
10. Proposed Maximum Contract Cost <i>- with ALL options to extend exercised</i>	\$ 12,235,809.00	
11. Office for Information Resources Endorsement <i>- information technology service (N/A to THDA)</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
12. eHealth Initiative Support <i>- health-related professional, pharmaceutical, laboratory, or imaging</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
13. Human Resources Support <i>- state employee training service</i>	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached	
14. Explanation of Need for the Proposed Amendment	<p>The proposed amendment is needed to add funds to cover the increase in PASRR evaluations being requested and conducted. The Preadmission Screening and Resident Review (PASRR) program is a federally mandated program required by federal law, state statute, and the state Medicaid plan. Under federal law, every person applying to a Medicaid certified nursing facility must be screened by the State Medicaid office to ascertain if they have a mental illness (Level I PASRR). If they are positive for a mental illness, they must be referred to our department for a comprehensive mental health evaluation (Level II PASRR). These evaluations per federal law must be: 1) reviewed and approved by department staff; 2) performed by a private entity; 3) used to determine the appropriateness of nursing facility</p>	

Request Tracking #	33901-10311 (original contract)
admission versus the need for psychiatric care; and 4) used to provide treatment recommendations that the nursing facility must implement if the person enters the nursing facility.	
15. Name & Address of the Contractor's Principal Owner(s) <i>- NOT required for a TN state education institution</i> Teri Lepley, Chief Executive Officer Ascend Management Innovations LLC 840 Crescent Centre Drive; Suite 400 Franklin, TN 37067	
16. Evidence Contractor's Experience & Length Of Experience Providing the Service Ascend Management Innovations has been providing Pre-Admission Screening and Resident Review (PASRR) services since 2000. Two members of their leadership team were selected by the federal Centers for Medicare and Medicaid Services (CMS) to be consultants on behalf of the federal government for the national PASRR Technical Assistance Center. Ascend's team trained all of the regional CMS staff who work with and audit PASRR, as well as many state government agencies who manage PASRR, on federal PASRR policy and program requirements. Ascend maintains a fully credentialed and qualified statewide team of clinical assessors who are trained to conduct PASRR, as well as an in-house team of clinicians that coordinate these processes. Ascend manages PASRR services in eight (8) states.	
17. Efforts to Identify Reasonable, Competitive, Procurement Alternatives We are seeking to amend a contract that was awarded under the Request for Proposals (RFP) process; therefore, no alternative procurement methods were identified. This particular Contractor was selected by the RFP process in 2004 and again in 2010.	
18. Justification <i>- specifically explain why non-competitive negotiation is in the best interest of the state</i> Non-competitive negotiation is in the best interest of the State for this amendment seeking to add funds to cover the increased number of PASRR evaluations being conducted as explained in Item 14. We believe that to attempt to re-bid or change Contractors at this point would place the State at high risk of non-compliance with both federal and state mandates.	
Agency Head Signature and Date <i>- MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances.</i>  <div style="float: right; text-align: right;"> 10/30/13 DATE </div> <hr/> E. DOUGLAS VARNEY, COMMISSIONER MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES	



CONTRACT AMENDMENT

Agency Tracking # 33901-10311 (original contract)	Edison ID 21444	Contract # FA1132301	Amendment # 1		
Contractor Legal Entity Name Ascend Management Innovations, LLC			Edison Vendor ID 12047		
Amendment Purpose & Effect(s) The purpose of Amendment 1 is to add funds to cover an increased number of evaluations being requested and conducted through the Pre-Admission Screening and Resident Review (PASRR) program; update department name; and update contact information in Section E.2.					
Amendment Changes Contract End Date: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		End Date: June 30, 2015			
TOTAL Contract Amount <u>INCREASE</u> or <u>DECREASE</u> per this Amendment (zero if N/A):			\$ 5,100,000.00		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011			\$1,317,463.00		\$1,317,463.00
2012			\$1,370,158.00		\$1,370,158.00
2013			\$1,424,974.00		\$1,424,974.00
2014			\$1,481,965.00		\$1,481,965.00
2014			\$5,100,000.00		\$5,100,000.00
2015			\$1,541,249.00		\$1,541,249.00
TOTAL:			\$12,235,809.00		\$12,235,809.00
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)		Account Code (optional)			

**AMENDMENT ONE
OF CONTRACT NUMBER FA1132301; EDISON ID 21444**

This Contract Amendment is made and entered by and between the State of Tennessee, Department of Mental Health and Substance Abuse Services (as amended herein), hereinafter referred to as the "State" and Ascend Management Innovations, LLC, hereinafter referred to as the "Contractor" for the purpose of adding funds to cover an increased number of evaluations being requested and conducted through the Pre-Admission Screening and Resident Review (PASRR) program; update department name; and update contact information in Section E.2. It is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract Section C.1. Maximum Liability is deleted in its entirety and replaced with the following:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Twelve Million Two Hundred Thirty-Five Thousand Eight Hundred Nine Dollars (\$12,235,809.00). 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.

2. Contract Section E.2. Communications and Contacts, The State and The Contractor are deleted in their entirety and replaced with the following:

The State:

Dennis Temple, Director of PASRR, Geriatric Programs, and Disaster Mental Health Programs
Division of Mental Health Services
Tennessee Department of Mental Health and Substance Abuse Services
601 Mainstream Drive
Nashville, TN 37243
E-mail Address: dennis.temple@tn.gov
Telephone #: 615-253-5558

The Contractor:

Teri Lepley, Chief Executive Officer
Ascend Management Innovations, LLC
840 Crescent Centre Drive, Suite 400
Franklin, TN 37067
E-mail Address: tlepley@ascendami.com
Telephone #: 615-312-1465 Ext 3224
Fax #: 615-312-1463

3. Contract Section E.28. is added as a new section:

E.28. Department Name Change. All references to the "Department of Mental Health and Developmental Disabilities" shall be deleted and replaced with "Department of Mental Health and Substance Abuse Services".

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).

Amendment Effective Date. The revisions set forth herein shall be effective January 1, 2014. 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:

SIGNATURE

DATE

PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES:

E. DOUGLAS VARNEY, COMMISSIONER

DATE



CONTRACT

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

Agency Tracking #
33901-10311

Edison ID
21444

Contractor
Ascend Management Innovations LLC

Contractor Federal Employer Identification or Social Security #
 C- or V- 20-8680273

Service
Pre-Admission Screening and Resident Reviews (PASRR)

Contract Begin Date July 1, 2010	Contract End Date June 30, 2015	Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA #(s)
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FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2011			\$1,317,463.00		\$1,317,463.00
2012			\$1,370,158.00		\$1,370,158.00
2013			\$1,424,974.00		\$1,424,974.00
2014			\$1,481,965.00		\$1,481,965.00
2015			\$1,541,249.00		\$1,541,249.00
TOTAL:			\$7,135,809.00		\$7,135,809.00

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

OCR USE FA FA1132301	Agency Contact & Telephone # Gene Wood, Budget Director 615/532-6676
	Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred) <i>Gene Wood</i>
	Speed Code _____ Account Code _____

Contractor Ownership/Control

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

Contractor Selection Method

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

***Procurement Process Summary**

This contract is being issued as the result of a Request for Proposals.

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES
AND
ASCEND MANAGEMENT INNOVATIONS LLC**

This Contract, by and between the State of Tennessee, Department of Mental Health and Developmental Disabilities, hereinafter referred to as the "State" and Ascend Management Innovations LLC, hereinafter referred to as the "Contractor," is for the provision of Pre-Admission Screening and Resident Reviews, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for profit corporation.

Contractor Federal Employer Identification or Social Security Number: 20-8680273

Contractor Place of Incorporation or Organization: Tennessee

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all services and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.

A.2. Service Definition:

a. The Pre-Admission Screening and Resident Review (PASRR) Level II program is a statewide federally mandated program implemented to comply with federal legislation pertaining to nursing home admissions and the delivery of rehabilitative services in nursing facilities. The purpose of the program is to ensure each individual applying to a Medicaid certified nursing facility who has a mental illness (MI) or mental retardation and related conditions (MRRC), as those terms are defined in the Tennessee Administrative Rules (TAR); Rules of Tennessee Department of Finance and Administration, Bureau of TennCare; Rule 1200-13-01.23 (hereinafter Rule 1200-13-01.23), will receive the treatment services, specialized or rehabilitative, that he or she needs. This is accomplished by performing a comprehensive evaluation, called a PASRR Level II, for each applicant referred by the Long Term Care (LTC) Unit of Tennessee's Medicaid program, TennCare. The TennCare LTC Unit refers all applicants who have a positive indicator for MI or MRRC, as those terms are defined in Rule 1200-13-01.23, on the PASRR Level I screen. PASRR Level II screens are also performed at the request of nursing facilities and other agencies when a resident has a "Change of Mental Status". In addition, Tennessee uses its Resident Review evaluations to track and monitor individuals who have clinical risk issues along with its Resident Review of Rehabilitative Services (RRRS) program which monitors compliance and delivery of the mandated PASRR Level II recommendations.

b. The following referenced laws and rules govern this program:

- (1) Code of Federal Regulations (CFR) Title 42, Chapter IV, Sub-chapter G, Part 483, Subpart C, §§ 483.100 through 483.138 (hereinafter 42 CFR §§ 438.100 through 438.138); and
- (2) Tennessee Administrative Rules (TAR); Rules of Tennessee Department of Finance and Administration, Bureau of TennCare; Rule 1200-13-01.23 (hereinafter Rule 1200-13-01.23).

A.3. Service Recipients:

- a. Individuals applying to Medicaid certified nursing homes previously identified and determined by the PASRR Level I Screening as having MI or MRRC as those terms are defined in Rule 1200-13-01.23. The TennCare LTC Unit refers these applicants to the State for a PASRR Level II evaluation.
- b. Individuals who are presently residing in a nursing facility who have MI or MRRC as those terms are defined in Rule 1200-13-01.23 and are determined by a PASRR Level II evaluation to be in the PASRR population on admission or anytime afterward. As part of the State's mandated tracking and monitoring program, high risk individuals in this population may receive a Resident Review (RR). Individuals in this population may also be designated to receive an RRRS to determine if mandated services are being delivered to those in the PASRR population.
- c. Individuals residing in a nursing facility that experience a "Change in Mental Status" as described in 42 CFR §§ 483.100 through 483.138. These individuals will be referred to the State by nursing facilities or a psychiatric facility when a resident is returning to a nursing facility.

A.4. Service Goals:

- a. All completed PASRR evaluations will have corresponding written summaries in a format selected by the provider. The evaluation and the written summary must conform to the requirements stated in 42 CFR §§ 483.100 through 483.138.
- b. All completed written summaries will have the appropriate specialized service determinations. These determinations are based on Rule 1200-13-01.23's definition of Specialized Services for Individuals with Mental Illness which states: "Specialized services is defined as the implementation of an individualized plan of care developed under and supervised by a physician, provided by a physician and other qualified mental health professionals, that prescribes specific therapies and activities for the treatment of persons who are experiencing an acute episode of severe mental illness, which necessitates supervision by trained mental health personnel." and Rule 1200-13-01.23's definition of Specialized Services for Individuals with Mental Retardation which states: "A continuous program for each individual, which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services that is directed towards (1) the acquisition of the behaviors necessary for the client to function with as much self determination and independence as possible; and (2) the prevention or deceleration of regression or loss of current optimal functional status. Specialized services does not include services to maintain generally independent clients who are able to function with little supervision or in the absence of a continuous specialized services program."
- c. All completed written summaries must include, at least, clinical recommendations for rehabilitative services, rationales, case abstracts, and appropriate demographic information as described in 42 CFR §§ 483.100 through 483.138; and:
 - (1) All written summaries must be completed in accordance with the following timelines:
 - i. Pre-Admission Summary: Five (5) working days
 - ii. Change of Mental Status Summary: Three (3) working days

- iii. Resident Reviews (All types): Fifteen (15) working days (after assigned by the State)
 - iv. Additional Information: Two (2) working days
 - v. Pre-Screens for Dementia: One (1) working day; and
- (2) All Preadmission Evaluations, Resident Reviews and Change of Mental Status will be completed complying with federal regulations as stated in 42 CFR §§ 483.100 through 483.138 and Rule 1200-13-01.23. RRRS will be completed according to procedures established in this Scope of Services.

A.5. Structure:

a. Staffing and Resources: The Contractor shall:

- (1) Provide the staff and resources necessary to comply with laws and rules identified in this Scope of Services. Because of the daily nature of PASRR responsibilities and mandated timelines, the need exists for on-site accessibility to monitor operations, including but not limited to immediate access to records and clinical and management staff. Therefore, the Contractor shall maintain an office located in the State of Tennessee. This in-state (Tennessee) office must provide an adequate amount of qualified clinical staff to perform and maintain the continual and daily tasks of the PASRR program.
- (2) Staffing in the Tennessee office must include, at least, a Contract Manager with psychiatric and PASRR management experience, quality staff responsible for training and overseeing the integrity of all clinical evaluations, clinicians responsible for the RRRS program, data programmers and analysts, psychiatrists and psychologists as well as a full network of assessors and statewide evaluators who are qualified to conduct on-site face-to-face client evaluations. All staff time will be one hundred percent (100%) dedicated and have the appropriate State of Tennessee licensing. Proof of licensing credentials shall be shown to the State upon request. Due to the expertise required to administer a PASRR program the State shall continually evaluate performance of the personnel and, shall as necessary, refuse any personnel whose performance is found to be inadequate.
- (3) Employ a qualified professional with a Masters degree in social work or psychology; or a Registered Nurse (RN) licensed to practice in the State of Tennessee to perform assessments. These professionals shall have at least one (1) year of geriatric experience. Proof of credentials shall be shown to the State upon request.
- (4) Participate with in-service training as requested by the State.
- (5) Participate with the State in problem solving activities involving the PASRR process.
- (6) Maintain standard office operating capability (e.g. computer program capabilities, facsimile transmission, phone services etc.).
- (7) Ensure that the Contractor is not an employee of, and does not have a relationship with, any nursing care facilities; also ensure that each of the Contractor's evaluators is not an employee of, and does not have a relationship with, any nursing care facilities as this may be deemed a conflict of interest as stated in 42 CFR §§ 483.100 through 483.138.

- b. Scheduling and Organizing Evaluations and What to Do When a Determination is Appealed: The Contractor shall:
- (1) Schedule and organize evaluations with appropriate releases and authorization ensuring client confidentiality.
 - (2) Comply with any and all evaluation processes as described in 42 CFR §§ 483.100 through 483.138.
 - (3) When a determination is appealed, review additional information collected or provided that may effect that determination; and in appeal cases, perform further on-site reviews as requested by the State; and participate in appeal hearings as requested by the State.
- c. Reporting and Documentation: The Contractor shall:
- (1) Ensure all written summaries are completed in a web-based system and can be generated as hard copies by the State as needed in appropriate PASRR format. The State has the right to reject or request that a summary be resubmitted for clinical clarification or any other reason that might render the summary unusable without further costs to the State.
 - (2) Maintain all comprehensive evaluation documentation for five (5) years.
 - (3) Maintain all completed summaries for five (5) years.
 - (4) Submit annual reports as requested and approved by the State.
 - (5) Provide data to the State as requested and by the date requested.
- d. Secure Web-based System: The Contractor shall:
- (1) Develop and maintain a secure web-based application to support submission of referrals electronically for online tracking of the status for any request for service. Contractor shall provide the program expertise, staffing, web technologies and management capacities necessary to develop and maintain the web-based application, as well as maintain the database containing records of each request for data, service, and the determination. All evaluations and determination data shall be stored in a relational database. The fully web-based system must be accessible to the State and the TennCare LTC Unit. The system shall integrate outcomes, generate reports, and provide a secure data application. The State must have the capacity to review all documents in a secure environment and to make final decisions about service plans. All project data associated with quality monitoring must be web-based and accessible to the State. The application shall comply with published State Enterprise Information Security Policies with particular attention to the appendix "Secure Application Development Guide." (Attachment 3) The Contractor's web-based application must be fully programmed and functional by the Contract start date to prevent any disruption of operations.

- (2) The secure web-based system must provide a maximum response time of five (5) seconds between transaction/request and results delivery for ninety-five percent (95%) of transactions.
 - (3) Ensure a web-based tracking system is operational to enable RRs or RRRS to be completed upon request from the State and in accordance with the standards in 42 CFR §§ 483.100 through 483.138.
- e. Resident Review of Rehabilitative Services: The Contractor shall design and operate the RRRS program that evaluates the delivery and effectiveness of mandatory rehabilitative recommendations. This includes and catalogues extensive interviews with providers, caregivers, and others regarding the individual's care plan, responsiveness to treatment, symptoms, and associated continued service needs. Each interview must be carefully and extensively summarized and contain recommendations for additional care plan modifications and a description of whether the provider is in compliance with PASRR requirements. All summaries and associated collateral documents must be viewable by the State via a secure Contractor-developed web-based application. The State must have the capacity to review all documents in a secure environment to make final decisions about service plans. All project data associated with quality monitoring must be web-based and accessible to the State. The Contractor's web-based application must be fully programmed and functional by the Contract start date to prevent any disruption of operations.

A.6. Process:

- a. The Contractor shall, as general requirements, ensure that:
 - (1) All PASRR referrals from the State are completed as directed in this Scope of Services.
 - (2) Any on-site face-to-face interview is completed by a qualified mental health professional as described in Section A.5.a.(3) and that the resulting evaluation consists of procedures as approved by the State and as described in 42 CFR §§ 483.100 through 483.138.
 - (3) A licensed psychiatrist makes any determinations based on the definition of specialized services in Rule 1200-13-01.23.
 - (4) In the case of evaluations for MMRC as that term is defined in Rule 1200-13-01.23, a licensed psychologist with experience in the area makes the determinations based on the definition of specialized services for individuals with mental retardation in Rule 1200-13-01.23; and that criteria for evaluations is based on those described in 42 CFR §§ 483.100 through 483.133.
- b. The Contractor shall, as specific requirements for the services listed below, ensure that:
 - (1) Pre-admission Screening: All PASRR Preadmissions are conducted on-site with face-to-face interviews of applicants and are completed and returned to the State within five (5) working days. All Preadmission Evaluations include service determinations and recommendations based on, and consistent with, evaluation results. The only exception to the on-site face-to-face provision shall be at the special request of the TennCare LTC Unit or State out-of-state urgent need evaluations. These evaluations will be immediately followed up by on-site face-to-face resident review if transfer to a Tennessee nursing facility is approved. All evaluations shall include a psychosocial assessment, physical assessment, review of medical history, and any other evaluations as required by 42 CFR §§ 483.100 through 483.138.

- (2) Resident Review Evaluation: All RRs resulting in on-site face-to-face reviews will have prior approval of the State. All on-site face-to-face RR's involve all procedures and processes required for Preadmission Evaluations; and that reviews are performed based on clinical need and prior approval of the State; and that reviews are completed according to a schedule approved by the State and in accordance with 42 CFR §§ 483.100 through 483.138.
- (3) Change of Mental Status Evaluation: Change of Mental Status evaluations are on-site face-to-face PASRR Level II screens of nursing home residents and are conducted in accordance with the requirements of 42 CFR §§ 483.100 through 483.138. Change of Mental Status evaluations may also be submitted by other agencies, particularly psychiatric, to facilitate a return to the nursing facility. The Contractor shall also ensure that the completed summary includes the required criteria and a service determination. Clinical indicators of an adverse Change of Mental Status will indicate an on-site face-to-face review. Inability to obtain appropriate data may also indicate the necessity for an on-site face-to-face review. The State is Tennessee's Mental Health Authority and is the final authority on whether a Change of Mental Status referral is appropriate and whether an evaluation needs to be completed. The Contractor shall also ensure that any written summaries for these evaluations are returned to the State pursuant to the timelines identified in Section A.4.c.(1).
- (4) Resident Review of Rehabilitative Services: RRRS is performed on each eligible individual in a nursing facility who receives an initial evaluation or Change of Mental Status and who is determined to meet criteria for being placed in, or remaining in, the PASRR population per State and federal standards. RRRS determines the effectiveness and delivery of associated recommendations. These will be due as assigned by the State. If State-approved criteria are met and there is a significant Change of Mental Status, then an on-site face-to-face review, upon approval of the State, shall be performed.
- (5) Resident Review of Rehabilitative Services and Pre-Screening Dementia Evaluation: RRRS and Pre-Screens for Dementia are conducted by phone, with supplemental clinical information being requested from the nursing facility or provider as needed. These reviews will be conducted by a degreed clinician with geriatric or psychiatric experience as described in Section A.5.a.(3). All data collected must be fully electronic and the State must have the ability to review online and make final decisions for all review types. The State shall make decisions monthly about the number of reviews to be conducted each month; and these numbers will vary from month to month and depend on program volumes. The State shall have final approval of the process and procedures including individuals assigned to complete the procedures. The result of all RRRS must be available on the PASRR website as all other reviews.
- (6) Additional Information Review: Additional information paper reviews are based on material not previously available and may affect the determination process. The Contractor shall ensure that these reviews are returned to the State in two (2) working days.
- (7) Partial Review: If there is a partial review, one that is cancelled prior to a determination being made by the State and in which some work has been completed, the Contractor seeks approval by the State for partial payment to be made.

- (8) Out-of-State Paper Pre-admission Screening and Out-of-State Paper Change of Mental Status Evaluation: Out-of-State Paper Preadmissions or Out-of-State Paper Change of Mental Status evaluations are completed only in the case of out-of-state residents who have an urgent need to transfer to a nursing facility in Tennessee. Such decisions are to be made on a case-by-case basis. If a PASRR Level II paper evaluation is deemed appropriate, then an on-site face-to-face RR will be performed within thirty (30) days of the resident's transfer. The Contractor shall ensure that in each case of a paper review, all applicable standards identified in this Scope of Services and in 42 CFR §§ 483.100 thru 483.138 are enforced.
- (9) Pre-Screening Dementia Evaluation: Pre-Screening Dementia evaluations are completed as designated by the State. These evaluations are to gather further information to determine if an individual is exempt from the PASRR Change of Mental Status process due to dementia. These evaluations do not require an on-site face-to-face interview and are to be completed in one (1) working day.

A.7. Outcome – Access:

- a. All referrals for evaluation by the State will be completed, unless cancelled by the State, in accordance with:
 - (1) This Contract;
 - (2) 42 CFR §§ 483.100 through 483.138; and
 - (3) Rule 1200-13-01.23.
- b. All reviews will be completed in the timeframes stipulated by the State.

A.8. Outcome – Capacity:

The Contractor shall possess the capability to perform all referred evaluations and RRs in accordance with the terms of this Contract.

A.9. Outcome – Effectiveness:

- a. Each completed on-site face-to-face evaluation returned to the State shall be submitted electronically to the State along with the specific collateral documents which support the basis for clinical decision making. In addition, each evaluation must be preliminarily summarized by a licensed psychiatrist, or a doctoral level psychologist for persons who are MMRC as that term is defined in Rule 1200-13-01.23, who has reviewed the entire assessment packet and made recommendations associated with the following:
 - (1) Demographics;
 - (2) Axis I, II, and III Diagnosis per 42 CFR § 483.102 or an applicable Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV) diagnosis;
 - (3) Strengths and weaknesses;
 - (4) Service Determination and Rationale;
 - (5) Clinical Recommendations;
 - (6) Eligibility for remaining in the PASRR population;

- (7) Appropriate signatures one hundred percent (100%) of the time; and
 - (8) Clinical Summary.
- b. Each referral will be appropriately completed and returned to the State within the designated time constraints previously illustrated with a ninety-nine (99%) accuracy rate.
 - c. Each completed evaluation must be approved by the State and accepted as such by the TennCare LTC Unit.

B. CONTRACT TERM:

This Contract shall be effective for the period commencing on July 1, 2010 and ending on June 30, 2015. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Seven Million One Hundred Thirty Five Thousand Eight Hundred Nine (\$7,135,809.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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

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

Service Description	Amount (per compensable increment)				
	7/1/2010 to 6/30/2011	7/1/2011 to 6/30/2012	7/1/2012 to 6/30/2013	7/1/2013 to 6/30/2014	7/1/2014 to 6/30/2015
<p>PASRR</p> <p>Scope of Services Sections A.2., A.3., A.4., A.5.a. through A.5.d., A.6.a., A.7., A.8., and A.9. are applicable to all Service Descriptions listed below. In addition, specific Scope of Services Sections applicable to each Service Description are noted below:</p>					
Pre-admission Screening – Section A.6.b.(1)	\$353.30 /Screening	\$367.43 /Screening	\$382.13 /Screening	\$397.41 /Screening	\$413.31 /Screening
Resident Review Evaluation – Section A.6.b.(2)	\$321.71 /Evaluation	\$334.58 / Evaluation	\$347.97 /Evaluation	\$361.88 /Evaluation	\$376.36 /Evaluation
Change of Mental Status Evaluation – Section A.6.b.(3)	\$403.60 /Evaluation	\$419.75 / Evaluation	\$436.54 /Evaluation	\$454.00 /Evaluation	\$472.16 /Evaluation
Resident Review of Rehabilitative Services – Sections A.5.e., A.6.b.(4), and A.6.b.(5)	\$140.38 / Review	\$145.99 / Review	\$151.83 / Review	\$157.91 / Review	\$164.22 / Review
Additional Information Review – Section A.6.b.(6)	\$87.73 / Review	\$91.24 / Review	\$94.89 / Review	\$98.69 / Review	\$102.64 / Review
Partial Review – Section A.6.b.(7)	\$116.99 / Review	\$121.67 / Review	\$126.54 / Review	\$131.60 / Review	\$136.86 / Review
Out-of-State Paper Pre-admission Screening – Section A.6.b.(8)	\$116.99 /Screening	\$121.67 /Screening	\$126.54 /Screening	\$131.60 /Screening	\$136.86 /Screening
Out-of-State Paper Change of Mental Status Evaluation – Section A.6.b.(8)	\$116.99 /Evaluation	\$121.67 / Evaluation	\$126.54 /Evaluation	\$131.60 /Evaluation	\$136.86 /Evaluation
Pre-Screening Dementia Evaluation – Sections A.6.b.(5) and A.6.b.(9)	\$87.73 /Evaluation	\$91.24 / Evaluation	\$94.89 /Evaluation	\$98.69 /Evaluation	\$102.64 /Evaluation

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

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

Tennessee Department of Mental Health and Developmental Disabilities
425 5th Avenue North, 5th Floor Cordell Hull Building
Nashville, TN 37243

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

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

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

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

- d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.

- e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.

C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.

- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.

D. STANDARD TERMS AND CONDITIONS:

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed

representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

- D.10. Prevailing Wage Rates. All contracts for construction, erection, or demolition or to install goods or materials that involve the expenditure of any funds derived from the State require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.*
- D.11. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.12. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.13. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.14. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.15. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.16. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.17. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.18. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.19. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.

- D.20. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.21. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

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

The State:

Dennis Temple, PASRR Coordinator
Tennessee Department of Mental Health and Developmental Disabilities
425 5th Avenue North
5th Floor Cordell Hull Building
Nashville, TN 37243
dennis.temple@tn.gov
Telephone # (615) 253-5558
FAX # (615) 253-5080

The Contractor:

Teri Stokes, President and COO
Ascend Management Innovations, LLC
227 French Landing Drive, Suite 250
Nashville, TN 37228
praby@ascendami.com
Telephone # 615-394-5298
FAX # 615-730-3441

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

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801,

- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.
- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
 - b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
 - c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.
- E.6. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.
- a. The Contractor shall maintain, at minimum, the following insurance coverage:
 - (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
 - (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000)

aggregate.

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

- b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

- E.7. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

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

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

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

- a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract.
- b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.

- E.9. Rule 2 Compliance. The State and Contractor shall comply with obligations under Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations as codified at 42 CFR § 2.1 et seq.
- a. Contractor warrants to the State that it is familiar with the requirements of Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations, and will comply with all applicable requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its regulations, in the course of performance of the Contract so that both parties will be in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and that are reasonably necessary to keep the State and Contractor in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, or if Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.10. Printing Authorization. The Contractor agrees that no publication coming within the jurisdiction of *Tennessee Code Annotated*, Section 12-7-101, et. seq., shall be printed unless a printing authorization number has been obtained and affixed as required by *Tennessee Code Annotated*, Section 12-7-103 (d).
- E.11. State Ownership of Work Products. The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." The State shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.
- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.
 - b. The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.
 - c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.

- d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

E.12. Ownership of Software and Work Products.

a. Definitions.

- (1) "Contractor-Owned Software," which shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
- (2) "Custom-Developed Application Software," which shall mean customized application software developed by Contractor solely for State.
- (3) "Rights Transfer Application Software," which shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.
- (4) "Third-Party Software," which shall mean software not owned by the State or the Contractor.
- (5) "Work Product," which shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the system solution includes Rights Transfer Application Software, the definition of Work Product shall also include such software.

b. Rights and Title to the Software

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted herein.
- (2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual property rights arising out of or embodied by the Work Product. Contractor shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer and/or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties, and Contractor shall cooperate fully in the foregoing endeavors.
- (3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted thereby.

- 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.13. 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.14. Incorporation of Additional Documents. Included in this Contract by reference are the following documents:
- a. The Contract document and its attachments;
 - b. All Clarifications and addenda made to the Contractor's Proposal;
 - c. The Request for Proposal and its associated amendments;
 - d. Technical Specifications provided to the Contractor; and
 - e. The Contractor's Proposal

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

- E.15. 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.16. Public Accountability. If the Contractor is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor shall display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this Contract, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

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

- E.17. 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.18. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:

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

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

E.19. 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.20. 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-33901-10311 (Attachment 6.2,B.15) 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.21. 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.22. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

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

- E.23. 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 2, and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the

parties that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or other section of this Contract.

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

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

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

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

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

- b. State Breach— In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of Contract by the State. Said

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

- E.24. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.25. Unencumbered Personnel. All persons assigned by the Contractor to perform services for the State under this Contract, whether they are employees, agents, subcontractors, or principals of the Contractor, shall not be subject to any employment contract or restrictive covenant provisions which would preclude those persons from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State. If the Contractor provides the State with the services of any person subject to a restrictive covenant or contractual provision in violation of this provision, any such restrictive covenant or contractual provision will be void and unenforceable, and the Contractor will pay the State and any person involved all of its expenses, including attorneys fees, caused by attempts to enforce such provisions.
- E.26. Drug-Free Workplace. The Contractor shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, Title 41 of the United States Code (41 USC) §§ 701 *et seq.*, and the regulations in Title 45 of the Code of Federal Regulations (45 CFR) Part 82.
- E.27. Professional Practice. The Contractor shall assure that there is a code of conduct in place and applicable to all employees that covers, at minimum, business practices, clinical practices, and service recipient/staff interaction/fraternization. Further, Contractor's personnel shall conduct their practice in conformity with all applicable statutes, rules and regulations, and recognized ethical standards of their profession. Procedures for reporting violations of the ethical standards shall be developed and communicated to staff upon hire and annually thereafter, which shall include a non-reprisal approach for persons reporting suspected violations, as well as a description of possible sanctions for violating the standards. Failure to implement a code of conduct in accordance with this section and to adequately address suspected violations of the code of conduct may be cause for termination of this Grant Contract.

IN WITNESS WHEREOF,

ASCEND MANAGEMENT INNOVATIONS LLC:

Teri Stokes, President 6/25/10
CONTRACTOR SIGNATURE DATE

Teri Stokes, President
PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES:

Virginia P. Betts, MSN, JD, RN, FAAN Commissioner 06-28-10
VIRGINIA TROTTER BETTS, MSN, JD, RN, FAAN COMMISSIONER DATE

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)	20-8680273

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 Stokes, President 6/22/10

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 Stokes, President

PRINTED NAME AND TITLE OF SIGNATORY

6/22/10

DATE OF ATTESTATION

ATTACHMENT 2

CONTRACT SECTION REFERENCE	ACT CONSTITUTING BREACH	LIQUIDATED DAMAGE
<p>Section A.4.c.(1) and corresponding items in Section A.6.b.</p>	<p>Failure to comply with the terms of the Contract in such a manner that any PASRR summary is late or cannot be approved on its due date specified in the Contract. A summary will be deemed "late" if:</p> <ol style="list-style-type: none"> 1) submitted at any time beyond the specified due date if not authorized by the State to be cancelled; 2) submitted at any time beyond the specified due date if an extension has not been authorized by the State; or 3) the quality of the report is unacceptable to the State. A summary that cannot be approved is one that does not meet the requirements of 42 CFR §§ 483.100 through 483.133 as specified in the Contract. 	<p>\$100 per day per written summary. If Contractor fails to cure the problem and any summary is deemed late in more than one (1) thirty (30)-day period, Contractor will continue to be fined \$100 per day per summary with an additional \$5,000 for each thirty (30)-day period unauthorized late summaries continue to occur.</p>