



# CONTRACT AMENDMENT COVER SHEET

<b>Agency Tracking #</b> 31865-00007	<b>Edison ID</b> 36612	<b>Contract #</b>	<b>Amendment #</b> 03
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<b>Contractor Legal Entity Name</b> Department of Health – Division of Health Licensure and Regulation	<b>Edison Vendor ID</b> 0000000051
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**Amendment Purpose & Effect(s)**  
Extends Term, Increases Maximum Liability and Updates Payment Rates for FY17

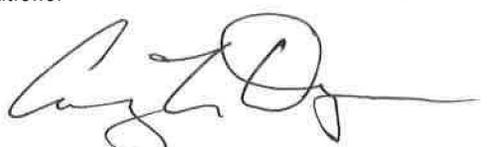
<b>Amendment Changes Contract End Date:</b> <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<b>End Date:</b> June 30, 2017
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**TOTAL Contract Amount INCREASE or DECREASE per this Amendment** (zero if N/A): **\$500,000.00**

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	\$250,000.00	\$250,000.00			\$500,000.00
2015	\$250,000.00	\$250,000.00			\$500,000.00
2016	\$250,000.00	\$250,000.00			\$500,000.00
2017	\$250,000.00	\$250,000.00			\$500,000.00
<b>TOTAL:</b>	<b>\$1,000,000.00</b>	<b>\$1,000,000.00</b>			<b>\$2,000,000.00</b>

**American Recovery and Reinvestment Act (ARRA) Funding:**  YES  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.



*CPO USE*

<b>Speed Chart (optional)</b>	<b>Account Code (optional)</b>
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**AMENDMENT #3  
TO CONTRACT #36612  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE  
AND  
DEPARTMENT OF HEALTH  
DIVISION OF HEALTH LICENSURE AND REGULATION**

This Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration, Bureau of TennCare hereinafter referred to as the "Procuring State Agency" or "TennCare" and the Department of Health, Division of Health Licensure and Regulation (DHLR), hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract Sections A.10.a, b, and d are deleted in their entirety and replaced with the following:
  - a. Upon notification by the Contractor of a SNF, NF, or ICF/IID decertification by CMS, TennCare LTSS staff will work with and assist Contractor staff to ensure appropriate transition activities (e.g., resident/family meetings) are scheduled and conducted timely after the notice of facilitation termination by CMS;
  - b. Assist Contractor staff with completion of bed surveys, as requested, in the county in which the decertified facility is located, all contiguous counties, and extended 2<sup>nd</sup> tier counties to determine bed availability, and assist Contractor staff with updating the bed surveys as necessary during the transition process to ensure current information regarding bed availability and/or to address specific placement needs;
  - d. Establish a process for NFs to be certified for readmission in the Medicaid Program after having been involuntarily terminated from participation in the Medicare Program by CMS and/or the Medicaid Program by TennCare; and
2. Contract Section B.1 is deleted in its entirety and replaced with the following:
  - B.1. This Contract shall be effective for the period beginning July 1, 2013, and ending on June 30, 2017. The Contractor hereby acknowledges and affirms that the Procuring State Agency shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.
3. Contract Section C.1 is deleted in its entirety and replaced with the following:
  - C.1. Maximum Liability. In no event shall the maximum liability of the Procuring State Agency under this Contract exceed Five Hundred Thousand Dollars (\$500,000.00) for FY 14, Five Hundred Thousand Dollars (\$500,000.00) for FY 15, Five Hundred Thousand Dollars (\$500,000.00) for FY 16, and Five Hundred Thousand Dollars (\$500,000.00) for FY '17, with a total maximum liability of Two Million Dollars (\$2,000,000.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the services 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.
4. The Contract is amended by adding section C.3.b(4):



C.3.b(4) For service performed from July 1, 2016, through June 30, 2017, the following rates shall apply:

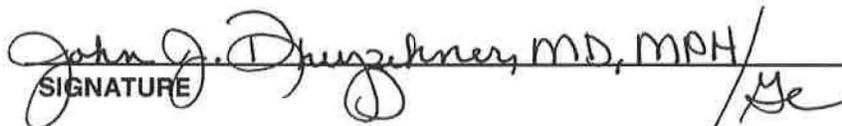
Service Description	Amount (per compensable increment)
Perform Audits (OCRC)	\$65,000.00
Perform Audits (LINTON)	\$15,000.00
Administer Nurse Aide Test	\$340,000.00
Implementation of Federal Long-Term Care Enforcement Regulations	\$80,000.00
<b>TOTAL</b>	<b>\$500,000.00</b>

**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).

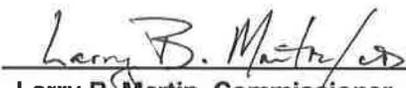
**Amendment Effective Date.** The revisions set forth herein shall be effective June 30, 2016. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

**IN WITNESS WHEREOF,**

**TENNESSEE DEPARTMENT OF HEALTH:**

  
 SIGNATURE \_\_\_\_\_ DATE 5.31.16  
 John J. Dreyzehner, MD, MPH, FACOEM, Commissioner  
 PRINTED NAME AND TITLE OF SIGNATORY (above)

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

  
 \_\_\_\_\_ DATE 5/31/2016  
 Larry B. Martin, Commissioner



# CONTRACT AMENDMENT COVER SHEET



Agency Tracking # 31865-00007	Edison ID 36612	Contract #	Amendment # 02		
Contractor Legal Entity Name Department of Health – Division of Health Licensure and Regulation			Edison Vendor ID 0000000051		
Amendment Purpose & Effect(s) Extends Term, Increases Maximum Liability and Updates Payment Rates for FY16					
Amendment Changes Contract End Date: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		End Date: June 30, 2016			
TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):			\$500,000.00		
Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	\$250,000.00	\$250,000.00			\$500,000.00
2015	\$250,000.00	\$250,000.00			\$500,000.00
2016	\$250,000.00	\$250,000.00			\$500,000.00
TOTAL:	\$750,000.00	\$750,000.00			\$1,500,000.00
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.			CPO USE		
					
Speed Chart (optional)		Account Code (optional)			



**AMENDMENT #2  
TO CONTRACT #36612  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE  
AND  
DEPARTMENT OF HEALTH  
DIVISION OF HEALTH LICENSURE AND REGULATION**

This Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration, Bureau of TennCare hereinafter referred to as the "Procuring State Agency" or "TennCare" and the Department of Health, Division of Health Licensure and Regulation (DHLR), hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

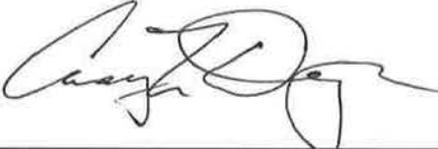
1. Contract Section A.10.b. is deleted in its entirety and replaced with the following:
  - b. Upon notification by the Contractor of a SNF, NF, or ICF/IID decertification by CMS, TennCare LTSS staff will work with and assist Contractor staff to ensure appropriate transition activities (e.g., resident/family meetings) are scheduled and conducted timely after the notice of facility termination by CMS;
  
2. Contract Section B.1 is deleted in its entirety and replaced with the following:
  - B.1. This Contract shall be effective for the period beginning July 1, 2013, and ending on June 30, 2016. The Contractor hereby acknowledges and affirms that the Procuring State Agency shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.
  
3. Contract Section C.1 is deleted in its entirety and replaced with the following:
  - C.1. Maximum Liability. In no event shall the maximum liability of the Procuring State Agency under this Contract exceed Five Hundred Thousand Dollars (500,000.00) for FY 14, Five Hundred Thousand Dollars (\$500,000.00) for FY 15, and Five Hundred Thousand Dollars (500,000.00) for FY 16 with a total maximum liability of One Million Five Hundred Dollars (\$1,500,000.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the services 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.
  
4. The Contract is amended by adding sections C.3.b(3) below:
  - C.3.b.(3) For service performed from July 1, 2015, through June 30, 2016, the following rates shall apply:

Service Description	Amount (per compensable increment)
Perform Audits (OCRC)	\$65,000.00
Perform Audits (LINTON)	\$15,000.00
Administer Nurse Aide Test	\$340,000.00





# CONTRACT AMENDMENT COVER SHEET

<b>Agency Tracking #</b> 31865-00007	<b>Edison ID</b> 36612	<b>Contract #</b>	<b>Amendment #</b> 01		
<b>Contractor Legal Entity Name</b> Department of Health – Division of Health Licensure and Regulation			<b>Edison Vendor ID</b> 0000000051		
<b>Amendment Purpose &amp; Effect(s)</b> Updates Scope					
<b>Amendment Changes Contract End Date:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		<b>End Date:</b> June 30, 2015			
<b>TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A):</b>			<b>\$</b>		
<b>Funding —</b>					
<b>FY</b>	<b>State</b>	<b>Federal</b>	<b>Interdepartmental</b>	<b>Other</b>	<b>TOTAL Contract Amount</b>
2014	\$250,000.00	\$250,000.00			\$500,000.00
2015	\$250,000.00	\$250,000.00			\$500,000.00
<b>TOTAL:</b>	<b>\$500,000.00</b>	<b>\$500,000.00</b>			<b>\$1,000,000.00</b>
<b>American Recovery and Reinvestment Act (ARRA) Funding:</b> <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO					
<b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.			<i>CPO USE</i>		
					
<b>Speed Chart (optional)</b>		<b>Account Code (optional)</b>			



**AMENDMENT #1  
TO CONTRACT #36612  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE  
AND  
DEPARTMENT OF HEALTH  
DIVISION OF HEALTH LICENSURE AND REGULATION**

This Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration, Bureau of TennCare hereinafter referred to as the "Procuring State Agency" or "TennCare" and the Department of Health, Division of Health Licensure and Regulation (DHLR), hereinafter referred to as the "Contractor." For good and valuable consideration, the sufficiency of which is hereby acknowledged, it is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. The first two paragraphs of the Contract are deleted and replaced with the following:

This Contract, between the State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration, Bureau of TennCare, hereinafter referred to as the "Procuring State Agency" or "TennCare," and the Department of Health, Division of Health Licensure and Regulation (DHLR), designated as the survey agency in accordance with 42 CFR § 431.610(e) and Section 4.11(a) of the State Plan, hereinafter referred to as the "Contractor."

TennCare is the "Single State Medicaid Agency" designated by Section 1.1(a) of the Medicaid State Plan (State Plan), and TennCare is the "Medical Assistance Unit" designated by Section 1.2(b) of the State Plan to administer the State medical assistance program as provided for in Title XIX of the Social Security Act as amended. The Contractor is the "State Survey Agency," responsible for survey and certification of Title XVIII and XIX facilities, designated by Sections 4.11(a),(b) of the State Plan to perform survey and certification of Title XIX facilities as further defined below in the "SCOPE OF SERVICES."

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

- b. The Contractor shall perform complete provider-specific surveys for SNFs, NFs, and ICF/IID according to the survey requirements in 42 U.S.C. § 1396r(g)(2)(A), and as specified in 42 C.F.R. § 488.305 and SOM Appendices J and P:
  - i. NF, SNF, and ICF/IID surveys shall be performed no later than 15 months after the last day of the previous provider-specific survey, and the statewide average interval between surveys shall not exceed 12 months in accordance with 42 U.S.C. § 1396r(g)(2)(A)(iii) and 42 C.F.R. § 442.109. Facilities with excellent histories of compliance may be surveyed less frequently to determine compliance, but no less frequently than every 15 months.
  - ii. If the provider-specific survey finds that a facility has furnished substandard quality of care, the Contractor shall conduct an extended survey not later than 14 calendar days after the provider-specific survey in accordance with 42 U.S.C. § 1396r(g)(2)(B)(i),(ii) and 42 C.F.R. § 488.310(c).

3. Contract section A.8.b. is deleted in its entirety and replaced with the following:

- b. Conduct State Monitoring Visits (distinct from survey and certification visits) in accordance with the requirements specified in SOM § 5077 when the following events occur:



- i. During bankruptcy, in those cases in which CMS has authorized such visits;
  - ii. After a change of ownership, as authorized by the CMS Regional Office (RO);
  - iii. During or shortly after removal of immediate jeopardy when the purpose of the visit is to ensure the welfare of the residents/clients/patients by providing an oversight presence, rather than to perform a structured follow-up visit; and
  - iv. In other circumstances, as authorized by the CMS RO.
4. Contract section A.10. is deleted in its entirety and replaced with the following:

**A.10. TennCare Responsibilities:**

Although survey and certification functions are overseen by CMS, TennCare will receive individual survey results, receive aggregate performance reports, confirm that only those facilities certified as meeting conditions of participation are enrolled as Medicaid providers, and coordinate activities with the Contractor to benefit Medicaid recipients. Specifically, TennCare shall:

- a. Upon notification by the Contractor of a SNF, NF, or ICF/IID decertification by CMS, TennCare LTSS staff will work with and assist staff from the Contractor to ensure appropriate and timely transition activities, including scheduling resident/family meetings, which shall be due within 7 but no more than 10 days after the notice of facility termination by CMS;
  - b. Assist the Contractor staff with completion of bed surveys, as requested, in the county in which the decertified facility is located, all contiguous counties, and extended 2<sup>nd</sup> tier counties to determine bed availability, and update as necessary during the transition process to ensure current information regarding bed availability and/or to address specific placement needs;
  - c. Coordinate with TennCare Managed Care Organizations to provide information to transitioning residents regarding home and community based services alternatives to placement in another NF;
  - d. Establish a process for NFs to be recertified for participation in the Medicaid Program after having been involuntarily terminated from participation by CMS; and
  - e. Require the timely submission of all reports identified in sections A.5 and A.9 of this contract, and may assess liquidated damages as specified in section E.12 and Attachment A.
5. Contract section E.2. is deleted in its entirety and replaced with the following:

**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 Procuring State Agency:

Deputy Commissioner  
Department of Finance and Administration



Division of Health Care Finance and Administration  
 Bureau of TennCare  
 310 Great Circle Road  
 Nashville TN 37243  
 (615) 507-6443 (Phone)  
 (615) 741-0882 (FAX)  
[Darin.J.Gordon@tn.gov](mailto:Darin.J.Gordon@tn.gov)

The Contractor:

Department of Health  
 Division of Health Licensure and Regulation  
 665 Mainstream Drive, Ste. 2.301  
 Nashville, TN 37247-4501  
 Phone: (615) 741-8902  
 Fax: (615) 741-5542

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

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 June 30, 2014. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

**IN WITNESS WHEREOF,**

**TENNESSEE DEPARTMENT OF HEALTH:**

*John J. Dreyzehner, MD, MPH* / *5-15-14*  
 \_\_\_\_\_  
 SIGNATURE DATE  
 John J. Dreyzehner, MD, MPH, FACOEM, Commissioner

PRINTED NAME AND TITLE OF SIGNATORY (above)

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

*Larry B. Martin* / *5/16/2014*  
 \_\_\_\_\_  
 Larry B. Martin, Commissioner DATE



# CONTRACT

(fee-for-service contract between state agencies– NOT including the University of Tennessee or Board of Regents colleges and universities)

<b>Begin Date</b> July 1, 2013	<b>End Date</b> June 30, 2015	<b>Agency Tracking #</b> 31865-00007	<b>Edison ID</b> 36612
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**Contractor Agency Name**  
Department of Health – Division of Health Licensure and Regulation

<b>Subrecipient or Vendor</b> <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	<b>CFDA #</b> 93.778 Dept of Health & Human Services/Title XIX
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**Service Caption**  
Survey and Certification of Title XIX Facilities

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	\$250,000.00	\$250,000.00			\$500,000.00
2015	\$250,000.00	\$250,000.00			\$500,000.00
<b>TOTAL:</b>	<b>\$500,000.00</b>	<b>\$500,000.00</b>			<b>\$1,000,000.00</b>

**American Recovery and Reinvestment Act (ARRA) Funding:**  YES  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.

*OCR USE - ID*



<b>Speed Chart</b> (optional)	<b>Account Code</b> (optional)
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**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
DIVISION OF HEALTH CARE FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE  
AND  
DEPARTMENT OF HEALTH  
DIVISION OF HEALTH LICENSURE AND REGULATION**

This Contract, between the State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration, Bureau of TennCare, hereinafter referred to as the "Procuring State Agency" or "TennCare," and the Department of Health, Division of Health Licensure and Regulation (DHLR), hereinafter referred to as the "Contractor," is for the provision of survey and certification of Title XIX facilities.

TennCare is the "Single State Medicaid Agency" designated by Section 1.1(a) of the Medicaid State Plan (State Plan), and TennCare is the "Medical Assistance Unit" designated by Section 1.2(b) of the State Plan to administer the State medical assistance program as provided for in Title XIX of the Social Security Act as amended. The Contractor is the "State Survey Agency," responsible for survey and certification of Title XVIII and XIX facilities, designated by Sections 4.11(a),(b) of the State Plan to perform survey and certification of Title XIX facilities as further defined below in the "SCOPE OF SERVICES."

**A. SCOPE OF SERVICES:**

- A.1. The Contractor shall provide all services and deliverables as required, described, and detailed herein, and shall meet all service and delivery timelines as specified by this Contract.
- A.2. The Contractor shall adhere to the federal requirements, forms, methods, and procedures that TennCare designates will be used to determine provider eligibility and certification under Medicaid. If any provisions in this Contract conflict with current or future written guidance from the Centers for Medicare and Medicaid Services (CMS), CMS written guidance is controlling.
  - a. The Contractor shall implement this Contract in accordance with federal law and regulations, including the requirements of 42 C.F.R. § 431.610(f) (which are incorporated into sections A.2 – A.7 of this Contract), the *State Operations Manual (SOM)*, and the federal long-term care survey and certification and enforcement regulations.
  - b. The Contractor shall further provide all services and qualified staff to survey and make recommendations regarding whether Skilled Nursing Facilities (SNFs), Nursing Facilities (NFs), and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) meet the conditions of participation specified in 42 U.S.C. § 1396r and 42 C.F.R. § 483 *et seq.*, and perform all of the State Survey Agency functions specified in 42 C.F.R. § 488.11.
- A.3. Surveys. The Contractor shall perform surveys as follows:
  - a. The Contractor shall use survey teams that are qualified and trained in accordance with 42 U.S.C. § 1396r(g)(2)(E);



- b. The Contractor shall perform complete provider-specific surveys for SNFs, NFs, and ICF/IID according to the survey requirements in 42 U.S.C. § 1396r(g)(2)(A), and as specified in 42 C.F.R. § 488.305 and SOM Appendices J and P;
    - i. NF and SNF surveys using the Quality Indicator Survey (QIS) process shall be performed in a timely manner as determined by CMS.
    - ii. NF, SNF, and ICF/IID surveys not using the QIS process shall be performed no later than 15 months after the last day of the previous provider-specific survey, and the statewide average interval between surveys shall not exceed 12 months in accordance with 42 U.S.C. § 1396r(g)(2)(A)(iii) and 42 C.F.R. § 442.109. Facilities with excellent histories of compliance may be surveyed less frequently to determine compliance, but no less frequently than every 15 months.
    - iii. If the provider-specific survey finds that a facility has furnished substandard quality of care, the Contractor shall conduct an extended survey not later than 14 calendar days after the provider-specific survey in accordance with 42 U.S.C. § 1396r(g)(2)(B)(i),(ii) and 42 C.F.R. § 488.310(c).
  - c. The Contractor may conduct a complete provider-specific survey within 60 days of a change of ownership, management firm, administrator, or Director of Nursing if the State is concerned that the change may have caused a decline in the quality of care or services furnished by a SNF, NF, or ICF/IID pursuant to 42 U.S.C. § 1396r(g)(2)(A)(iii)(II), 42 U.S.C. § 1396d, and 42 C.F.R. § 488.308(e);
  - d. The Contractor must review all complaint allegations and conduct a standard or an abbreviated survey to investigate complaints of violations of requirements by SNFs and NFs in accordance with 42 C.F.R. § 488.308 and SOM § 5075, and for ICF/IID, conduct either an extended or full survey in accordance with SOM Appendix J; and
  - e. In accordance with the Arlington Exit Plan and Agreed Order, the Contractor shall subcontract with the Department of Intellectual and Developmental Disabilities (DIDD) so that DIDD shall perform surveys on privately-owned ICFs/IID currently performed by the Contractor after an adequate transition period as determined by the Interdepartmental Agreement. The Contractor shall maintain oversight of the survey process. TennCare shall maintain administrative authority of the survey process in its capacity as the Medical Assistance Unit of the Single State Medicaid Agency in accordance with the State Plan.
- A.4. Survey Findings. The Contractor shall certify its findings to CMS pursuant to 42 C.F.R. § 488.11(c), and shall submit all survey findings and recommendations via email to TennCare's Deputy of Audit and Compliance of Long-Term Services and Supports (LTSS), or their designee, for appropriate action.
- a. The Contractor shall also complete all pertinent documentation relating to certification actions for each SNF, NF and/or ICF/IID provider and forward this documentation to TennCare's Director of Provider Services, using a method agreed upon by the Contractor and Provider Services, no later than 45 days after the exit interview at the facility in accordance with SOM § 2760.
  - b. The Contractor shall further cooperate with TennCare's Office of General Counsel by providing documentation and testimony regarding enforcement actions and any resulting litigation.
  - c. Additional cooperative actions that the Contractor shall take include:



- i. Contacting TennCare's Deputy of Audit and Compliance of LTSS, or their designee, and TennCare's Director of Provider Services via written communication within 1 business day upon notification that a facility has been sanctioned by the Licensing Board to ensure appropriate decertification action; and
  - ii. Collecting and managing civil money penalty funds consistent with federal guidance.
- A.5. Reports. The Contractor shall complete survey reports, noting whether each requirement for which a survey is made is satisfied. The Contractor shall provide the following reports for all facilities (SNFs, NFs, and ICF/IID) to TennCare's Deputy of Audit and Compliance of LTSS, or their designee, in accordance with the timelines listed below:
  - a. Within 10 days of citing an Immediate Jeopardy (IJ) deficiency against a facility, a copy of the facility's report shall be submitted which must include the number and type of deficiencies cited, the type of IJ, and within 5 days, a copy of the letter sent to the facility advising of the IJ;
  - b. Within 5 days of the revisit following citation of an IJ, written notification regarding whether or not the facility has removed the IJ, has met substantial compliance for continued participation in the Medicare/Medicaid Program, or if the facility will be terminated;
  - c. Within 30 days following the end of each calendar quarter, a quarterly summary report shall be submitted listing the number of complaints received per facility, the complaint allegations, how the complaints were prioritized and classified, the dates of the onsite visit investigations as applicable, and the outcomes of the investigations;
  - d. Within 30 days following the end of each calendar quarter, a quarterly report shall be submitted including a listing of all facilities, categorized by type, date of most recent survey, type of most recent survey (e.g., annual re-certification, complaint, IJ, etc), and general outcome of the most recent survey;
  - e. Maintain a current, publicly available website listing of all survey outcomes, including a copy of each facility's survey report and a summary of the number and type of deficiencies for each facility surveyed, and the facility's response in correcting the deficiency;
  - f. Provide federal and state ad hoc reports within specified time frames as reasonably requested by TennCare's Division of LTSS; and
  - g. Upon request by TennCare's Division of LTSS, provide access to complaint audit reports on specific facilities within time frames specified by LTSS.
- A.6. Retaining Reports. The Contractor shall keep on file, for the time required by federal and state law, all information and reports used in determining whether participating facilities meet federal requirements.
- A.7. Accessibility of Reports. The Contractor shall make the information and reports required readily accessible to Health and Human Services (HHS) and TennCare as necessary for meeting other requirements under the plan, and for purposes consistent with TennCare's effective administration of the program.
- A.8. Additional Required Evaluations and Monitoring. In addition to the survey functions listed in A.3, the Contractor shall also:



- a. Perform an evaluation of all SNFs, NFs, and ICF/IID to ensure that the Office of Civil Rights Compliance (OCRC) requirements are met during both the initial and annual licensure/Linton health survey. The review shall consist of:
  - i. Interviews with the facility's designated OCRC Coordinator and review of documents;
  - ii. Documentation of findings on the OCRC/Linton on-site survey form which shall include:
    1. Verification of patient characteristics including the number of minority, non-minority residents in the facility;
    2. Financial review to determine whether the facility met or did not meet requirements for policies regarding deposits; and whether or not financial matters are applied uniformly;
    3. Confirmation that criteria for admission, room assignment, services are available on a non-discriminatory basis, and are not made due to race;
    4. Verification that the facility has written operational policies and procedures to insure that all services (medical, dental, nursing, lab., pharmacy, rehab, social, dietary, housekeeping, volunteer, etc.), are being provided on a non-discriminatory basis;
    5. Affirmation that the use of physical facilities, such as beauty/barber shop, is non-discriminatory; and
    6. Review of admission packet information provided to residents/families to ensure written information does not violate OCRC; and
- b. Conduct State Monitoring Visits in accordance with the requirements and timelines specified in SOM § 5077 to oversee the SNF, NF, and/or ICF/IID's compliance with conditions of participation.

A.9. Nurse Aide Registry. The Contractor, or subcontractor selected by the Contractor, shall develop, maintain, and administer a Nurse Aide Registry and the State Standardized Competency Evaluation Test to Nurse Aides who complete a State-approved training program in compliance with the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35 and as specified in 42 C.F.R. § 483.150 *et seq.* As part of developing, maintaining, and administering the Nurse Registry, the Contractor shall submit the following reports to TennCare's Deputy of Audit and Compliance of LTSS, or their designee, within the following timeframes:

- a. Within 30 days following the end of each calendar quarter, a quarterly summary report shall be submitted providing the total number of individuals currently on the nurse aide registry and the number added during the reporting period; and
- b. Within 30 days following the end of each calendar quarter, a quarterly summary report shall be submitted listing the number of persons testing for nurse aide certification.

A.10. TennCare Shall:



- a. Provide contract oversight and monitoring regarding federal survey and certification processes for all SNFs, NFs, and ICF/IID.
- b. Ensure that enforcement remedies levied against a SNF, NF, or ICF/IID are implemented in accordance with all regulatory requirements set forth in federal and state law;
- c. Upon notification by the Contractor of a SNF, NF, or ICF/IID decertification by CMS, TennCare LTSS staff will work with and assist staff from the Contractor to ensure appropriate and timely transition activities, including scheduling resident/family meetings, which shall be due within 7 but no more than 10 days after the notice of facility termination by CMS;
- d. Assist the Contractor staff with completion of bed surveys in the county in which the decertified facility is located, all contiguous counties, and extended 2<sup>nd</sup> tier counties to determine bed availability, and update as necessary during the transition process to ensure current information regarding bed availability and/or to address specific placement needs;
- e. Coordinate with TennCare Managed Care Organizations to provide information to transitioning residents regarding home and community based services alternatives to placement in another NF;
- f. Establish a process for NFs to be recertified for participation in the Medicaid Program after having been involuntarily terminated from participation by CMS; and
- g. Ensure the timely submission of all reports identified in sections A.5 and A.9 of this contract, and may assess liquidated damages as specified in section E.12 and Attachment A.

**B. CONTRACT PERIOD:**

- B.1. This Contract shall be effective for the period beginning July 1, 2013, and ending on June 30, 2015. The Contractor hereby acknowledges and affirms that the Procuring State Agency shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than 5 years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of a contract amendment. If a term extension necessitates additional funding beyond that which was included in the original Contract, an increase of the State's maximum liability will also be affected through contract amendment, and shall be based upon payment rates provided in the original Contract.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the Procuring State Agency under this Contract exceed Five Hundred Thousand Dollars (500,000.00) for FY 14 and Five Hundred Thousand Dollars (\$500,000.00) for FY 15, with a total maximum liability of One Million Dollars (\$1,000,000.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the services 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.

- C.2. Compensation Firm. The payment rates and the maximum liability of the Procuring State Agency 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 Procuring State Agency 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 based upon the following payment rates:
    - (1) For service performed from July 1, 2013, through June 30, 2014, the following rates shall apply:

Service Description	Amount (per compensable increment)
Perform Audits (OCRC)	\$65,000.00
Perform Audits (LINTON)	\$15,000.00
Administer Nurse Aide Test	\$340,000.00
Implementation of Federal Long-Term Care Enforcement Regulations	\$80,000.00
<b>TOTAL</b>	<b>\$500,000.00</b>

- (2) For service performed from July 1, 2014, through June 30, 2015, the following rates shall apply:

Service Description	Amount (per compensable increment)
Perform Audits (OCRC)	\$65,000.00
Perform Audits (LINTON)	\$15,000.00
Administer Nurse Aide Test	\$340,000.00
Implementation of Federal Long-Term Care Enforcement Regulations	\$80,000.00
<b>TOTAL</b>	<b>\$500,000.00</b>

- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Payment of Invoice. A payment by the Procuring State Agency shall not prejudice the Procuring State Agency's right to object to or question any payment, invoice, or matter in



relation thereto. A payment by the Procuring State Agency shall not be construed as acceptance of any part of the work or service provided or as approval of any amount invoiced.

- C.6. 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 Procuring State Agency, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.7. Deductions. The Procuring State Agency 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 Procuring State Agency any amounts, which are or shall become due and payable to the Procuring State Agency by the Contractor.

**D. STANDARD TERMS AND CONDITIONS:**

- D.1. Required Approvals. The Procuring State Agency is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The Contract may be terminated by either party by giving written notice to the other, at least 30 days before the effective date of termination. Should the Procuring State Agency exercise this provision, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Should the Contractor exercise this provision, the Procuring State Agency shall have no liability to the Contractor except for those units of service which can be effectively used by the Procuring State Agency. The final decision as to what these units of service are shall be determined by the Procuring State Agency.
- 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 Procuring State Agency shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services.
- 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 Procuring State Agency. Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the Procuring State Agency as requested.
- D.7. 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.8. State Liability. The Procuring State Agency shall have no liability except as specifically provided in this Contract.
- D.9. 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.10. 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 Procuring State Agency:

Deputy Commissioner  
Department of Finance and Administration  
Division of Health Care Finance and Administration  
Bureau of TennCare  
310 Great Circle Road  
Nashville TN 37243  
(615) 507-6443 (Phone)  
(615) 741-0882 (FAX)  
[Darin.J.Gordon@tn.gov](mailto:Darin.J.Gordon@tn.gov)

The Grantee:

Department of Health  
Division of Health Licensure and Regulation  
220 Athens Way, Suite 104  
Nashville, TN 37247-4501  
Phone: (615) 741-8902  
Fax: (615) 741-5542

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 Procuring State Agency 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 Procuring State Agency. 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 Procuring State Agency any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

- E.4. 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 shall:

- a. Provide safeguards that restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan;
- b. Ensure that it has adequate and appropriate safeguards in place so that the information is adequately stored and processed so that it is protected against unauthorized disclosure for other purposes;
- c. Have criteria specifying the conditions for release and use of information about applicants and recipients;

Access to information concerning applicants or recipients must be restricted to persons or contractor representatives who are subject to standards of confidentiality that are comparable to those of the contractor; and, the contractor must not publish names of applicants or recipient 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.5. HIPAA and HITECH Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH) under the American Recovery and Reinvestment Act of 2009 (ARRA) and their accompanying regulations, and as amended.



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

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

Failure to comply may result in actual damages that the State incurs as a result of the breach and liquidated damages as listed in Section E.12.

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

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

E.6. 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 sub-recipients 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 31 U.S.C.A. § 1352.

E.7. 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 3 year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. Have not within a 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 Procuring State Agency 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.8. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

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



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

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

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

b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.

c. If this Contract is amended to extend its term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the amendment to this Contract becomes effective.

d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at:  
<http://fedgov.dnb.com/webform/>

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

E.9. State and Federal Compliance. The Contractor agrees to comply with all applicable federal and state laws, policies, rules and regulations, consent decrees and court orders, including Constitutional provisions regarding due process and equal protection of the laws.

E.10. Offer of Gratuities. By signing this contract, the Contractor signifies that no member of or a delegate of Congress, nor any elected or appointed official or employee of the State of Tennessee, the federal General Accounting Office, federal Department of Health and Human Services, the Center for Medicare and Medicaid Services, or any other state or federal agency has or will benefit financially or materially from this Contract. This Contract may be terminated by TennCare as provided in Section D.4, if it is determined



that gratuities of any kind were offered to or received by any of the aforementioned officials or employees from the Contractor, its agent, or employees.

E.11. Tennessee Bureau of Investigation Medicaid Fraud and Abuse Unit (MFCU) and Office of TennCare Inspector General Access to Contractor Records

Pursuant to the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations, MFCU and TennCare OIG shall be health oversight agencies as defined at 45 C.F.R. §§ 164.501 and 164.512(d) and 65 F.R. § 82462. When acting in their respective capacities as health oversight agencies and in compliance with federal regulations, MFCU and TennCare OIG do not need enrollee authorization to obtain enrollee protected health information (PHI). Because MFCU and TennCare OIG will request the information mentioned above for health oversight activities, "minimum necessary" standards do not apply to disclosures to MFCU or TennCare OIG that are required by law. See 45 C.F.R. §§ 164.502(b)(2)(iv), 164.502(b)(2)(v), and 164.512(d). The Contractor shall immediately report to MFCU all factually based known or suspected fraud, abuse, waste and/or neglect of a provider or Contractor, including, but not limited to, the false or fraudulent filings of claims and/or the acceptance or failure to return money allowed or paid on claims known to be false or fraudulent. The Contractor shall not investigate or resolve the suspicion, knowledge or action and must inform MFCU and must cooperate fully in any investigation by MFCU or subsequent legal action that may result from such an investigation.

E.12. Assessment of Liquidated Damages

In addition to the remedies described in Section D.4, TennCare may choose to assess Liquidated Damages as referenced in Attachment A for each instance in which the Contractor fails to properly perform its obligations as defined under this Contract in an appropriate and/or timely manner, including monitoring and oversight of its subcontractor(s) to ensure compliance with this Contract. Upon determination that the Contractor has failed to perform one or more of the services described in Section A under this Contract in an appropriate and/or timely manner, TennCare will notify the Contractor in writing of the deficiency. The Contractor must work to immediately correct such deficiency. The Contractor shall have 10 business days from the date of notification to provide proof that such deficiency has been fully resolved to the satisfaction of TennCare. The Deputy Commissioner of TennCare shall determine when a deficiency has been satisfactorily cured. Resolution of the identified deficiency within 10 business days does not preclude TennCare's ability to assess a one-time liquidated damage for each instance of such deficiency.

Should the deficiency remain more than 10 business days from notification by the Procuring State Agency, TennCare may assess additional damages for each day that the deficiency remains unresolved and/or satisfactory documentation thereof is not provided to the Procuring State Agency. The damages may be retroactive to the date of notice of deficiency and will be deducted from the monthly payments to the Contractor.

E.13. Social Security Administration (SSA) Required Provisions for Data Security. Contractor shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. § 3541, et seq.), and related National Institute of Standards and Technology guidelines. In addition, Contractor shall have in place administrative, physical, and technical safeguards for data.

- a. Contractor shall not duplicate in a separate file or disseminate, without prior written permission from TennCare, the data governed by the Contract for any purpose other than that set forth in this Contract. Should Contractor propose a



redisclosure of said data, Contractor must specify in writing to TennCare the data the Contractor proposes to redisclose, to whom, and the reasons that justify the redisclosure. TennCare will not give permission for such redisclosure unless the redisclosure is required by law or essential to the administration of the program.

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

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

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

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

- g. TennCare may immediately and unilaterally suspend the data flow under this Contract, or cause Contractor to terminate this Contract, if TennCare, in its sole discretion, determines that Contractor has: (1) made an unauthorized use or disclosure of TennCare SSA-supplied data; or (2) violated or failed to follow the terms and conditions of this Contract.
- h. In order to meet certain requirements set forth in TennCare's Computer Matching and Privacy Protection Act Contract (CMPPA) with the SSA, the Parties acknowledge that this Section shall be included in all Contracts executed by or on behalf of TennCare and Contractor further agree that FISMA and NIST do not apply in the context of data use and disclosure under this Contract as Contractor and Contractor shall neither use nor operate a federal information system on



behalf of a federal executive agency. Further, NIST is applicable to federal information systems; therefore, although encouraged to do so, TennCare, its contractors, agents and providers are not required to abide by the NIST guidelines.

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

E.14 Medicaid and CHIP – Verification of Income and Eligibility - The Contractor must provide safeguards that restrict the use or disclosure of information concerning applicants and beneficiaries to purposes directly connected with the administration of the plan:

- a. Purposes directly related to the administration of Medicaid and CHIP include:
  - (1) establishing eligibility;
  - (2) determining the amount of medical assistance;
  - (3) providing services for beneficiaries; and,
  - (4) conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to Medicaid or CHIP administration.
- b. The Contractor must have adequate safeguards to assure that—



- (1) Information is made available only to the extent necessary to assist in the valid administrative purposes of those receiving the information, and information received under 26 USC section 6103(l) is exchanged only with parties authorized to receive that information under that section of the Code; and,
  - (2) the information is adequately stored and processed so that it is protected against unauthorized disclosure for other purposes.
- c. The Contractor must have criteria that govern the types of information about applicants and beneficiaries that are safeguarded. This information must include at least:
- (1) Names and addresses;
  - (2) Medical services provided;
  - (3) Social and economic conditions or circumstances;
  - (4) Contractor evaluation of personal information;
  - (5) Medical data, including diagnosis and past history of disease or disability; and
  - (6) Any information received for verifying income eligibility and amount of medical assistance payments, including income information received from SSA or the Internal Revenue Service,
  - (7) Any information received for verifying income eligibility and amount of medical assistance payments
  - (8) Income information received from SSA or the Internal Revenue Service must be safeguarded according to Medicaid and CHIP requirements
  - (9) Any information received in connection with the identification of legally liable third party resources.
  - (10) Social Security Numbers.
- d. The Contractor must have criteria approved by TennCare specifying:
- (1) the conditions for release and use of information about applicants and beneficiaries;
  - (2) Access to information concerning applicants or beneficiaries must be restricted to persons or Contractor representatives who are subject to standards of confidentiality that are comparable to those of TennCare.
  - (3) The Contractor shall not publish names of applicants or beneficiaries.
  - (4) The Contractor shall obtain permission from a family or individual, whenever possible, before responding to a request for information from an outside source, unless the information is to be used to verify income, eligibility and the amount of medical assistance payment to an authorized individual or entity;
  - (5) If, because of an emergency situation, time does not permit obtaining consent before release, the Contractor shall notify TennCare, the family or individual immediately after supplying the information.
  - (6) The Contractor's policies must apply to all requests for information from outside sources, including governmental bodies, the courts, or law enforcement officials.
- e. The Contractor shall notify TennCare of any requests for information on applicants or beneficiaries by other governmental bodies, the courts or law enforcement officials ten (10) days prior to releasing the requested information.
- f. If a court issues a subpoena for a case record or for any Contractor representative to testify concerning an applicant or beneficiary, the Contractor must notify TennCare at least ten (10) days prior to the required production date



so TennCare may inform the court of the applicable statutory provisions, policies, and regulations restricting disclosure of information, effective until Jan. 1, 2014.

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

E.15 Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

IN WITNESS WHEREOF,

DEPARTMENT OF HEALTH:

John D. Dreyzehner, MD, MPH / 4.26.13  
 CONTRACTOR SIGNATURE / DATE  
 John D. Dreyzehner, MD, MPH, FACOEM , Commissioner

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

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

Mark A. Emkes / 5/1/2013  
 Mark A. Emkes, Commissioner / DATE



**ATTACHMENT A**

**ASSESSMENT OF LIQUIDATED DAMAGES**

It is acknowledged by TennCare and the Contractor that in the event of failure to meet the requirements provided in this Contract and all documents incorporated herein, TennCare will be harmed. The actual damages that TennCare will sustain in the event of and by reason of such failure are uncertain and are extremely difficult and impractical to ascertain and determine. The parties therefore acknowledge that the Contractor shall be subject to liquidated damages as described below. It is further agreed that the Contractor shall pay TennCare liquidated damages as directed by TennCare and not to exceed the fixed amount as stated below; provided however, that if it is finally determined that the Contractor would have been able to meet the Contract requirements listed below but for TennCare's failure to perform as provided in this Contract, the Contractor shall not be liable for damages resulting directly therefrom. TennCare shall have the right to assess liquidated damages of \$500 per calendar day for each day that the Contractor fails to comply with the provisions and requirements of this Contract. The liquidated damages that may be assessed shall be \$500 per calendar day for each separate failure to comply with the Contract, plus, if applicable, an additional \$500 per calendar day for each affected TennCare enrollee.

	<b><u>PROGRAM ISSUES</u></b>	<b><u>LIQUIDATED DAMAGES</u></b>
1.	Failure to submit to TennCare a copy of the facility's report within 10 days of citing an IJ, including number and type of deficiency cited, type of IJ, and within 5 days a copy of letter sent to the facility advising of IJ, as referenced in Section A.5(a).	\$500 per occurrence plus an additional \$100 per day for each calendar day that the report is late or deficient.
2.	Failure to submit to TennCare written notification regarding the Contractor's determination within 5 days from the revisit following citation of an IJ, as specified in Section A.5(b). Such notification shall specify whether the facility has removed the IJ, has met substantial compliance for continued participation in the Medicare/Medicaid Program, or if the facility will be terminated.	\$500 per occurrence plus an additional \$100 per day for each calendar day that the notification is late or deficient.
3.	Failure to submit to TennCare a quarterly summary report within 30 days following the end of each calendar quarter, listing the number of complaints received per facility, the complaint allegations, how the complaints were prioritized and classified, the dates of the onsite visit investigations as applicable, and the outcomes of the investigations as referenced in Section A.5(c).	\$100 per each calendar day that the report is late or deficient.
4.	Failure to submit to TennCare a quarterly report within 30 days following the end of each calendar quarter, including a listing of all facilities, categorized by type, date of most recent survey, type of most recent survey (e.g., annual re-certification,	\$100 per each calendar day that the report is late or deficient.



	complaint, IJ, etc), and general outcome of the most recent survey as referenced in Section A.5(d).	
5.	Failure to submit to TennCare a quarterly summary report within 30 days following the end of each calendar quarter. The report shall provide total number of individuals currently on the nurse aide registry and number added during the reporting period as referenced in Section A.9(a).	\$100 per each calendar day that the report is late or deficient.
6.	Failure to submit to TennCare within 30 days following the end of each calendar quarter a quarterly summary report listing number of persons testing for nurse aide certification as referenced in Section A.9(b).	\$100 per each calendar day that the report is late or deficient.