



CONTRACT AMENDMENT COVER SHEET

Agency Tracking # 31865-00350	Edison ID 34597	Contract #	Amendment # 02
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Contractor Legal Entity Name Keystone Peer Review Organization, Inc. (KEPRO)	Edison Vendor ID 00000013433
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Amendment Purpose & Effect(s)
Extends Term and Increases Maximum Liability

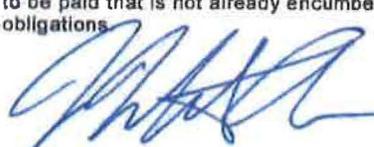
Amendment Changes Contract End Date: YES NO **End Date:** January 14, 2018

TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A): **\$ 14,400,000.00**

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2013	\$1,675,660.00	\$1,675,660.00			\$3,351,320.00
2014	\$3,921,032.50	\$3,921,032.50			\$7,842,065.00
2015	\$3,974,963.50	\$3,974,963.50			\$7,949,927.00
2016	\$4,964,400.00	\$4,964,400.00			\$9,928,800.00
2017	\$6,025,056.00	\$6,025,056.00			\$12,050,112.00
2018	\$2,700,000.00	\$2,700,000.00			\$5,400,000.00
TOTAL:	\$23,261,112.00	\$23,261,112.00			\$46,522,224.00

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

Speed Chart (optional) TN00000163	Account Code (optional) 70803000
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**AMENDMENT #2 TO #34597
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION,
BUREAU OF TENNCARE
AND
KEYSTONE PEER REVIEW ORGANIZATION, INC.**

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 "State" or "TennCare" and Keystone Peer Review Organization, Inc. (KEPRO), 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 B.1 is deleted in its entirety and replaced with the following:
 - B.1. This Contract shall be effective for the period beginning January 15, 2013, and ending on January 14, 2018. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

2. 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 State under this Contract exceed Forty-Six Million Five Hundred Twenty-Two Thousand Two Hundred Twenty-Four Dollars (\$46,522,224.00). 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.

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 October 31, 2016. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.



IN WITNESS WHEREOF,

KEYSTONE PEER REVIEW ORGANIZATION, INC.:

10/12/2016

CONTRACTOR SIGNATURE

DATE

JOSEPH DOUGHER, PRESIDENT AND CHIEF EXECUTIVE OFFICER

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

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

10/17/16

LARRY B. MARTIN, COMMISSIONER

DATE

FUNDING REVISION



CONTRACT

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

Begin Date January 15, 2013	End Date January 14, 2017	Agency Tracking # 31865-00350	Edison Record ID 34597
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Contractor Legal Entity Name Keystone Peer Review Organization, Inc. (KEPRO)	Edison Vendor ID 0000013433
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Goods or Services Caption (one line only)
 TennCare Member Appeals Process
Funding Revision: \$1,635,532.00 from FY2017 to FY2016

Contractor <input checked="" type="checkbox"/> Contractor	CFDA # 93.778 Dept of Health & Human Services/Title XIX
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Funding — FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2013	\$1,675,660.00	\$1,675,660.00			\$3,351,320.00
2014	\$3,921,032.50	\$3,921,032.50			\$7,842,065.00
2015	\$3,974,963.50	\$3,974,963.50			\$7,949,927.00
2016	\$4,964,400.00	\$4,964,400.00			\$9,928,800.00
2017	\$1,525,056.00	\$1,525,056.00			\$3,050,112.00
TOTAL:	\$16,061,112.00	\$16,061,112.00			\$32,122,224.00

Contractor Ownership Characteristics:

Minority Business Enterprise (MBE): African American, Asian American, Hispanic American, Native American

Woman Business Enterprise (WBE)

Tennessee Service Disabled Veteran Enterprise (SDVBE)

Tennessee Small Business Enterprise (SBE): \$10,000,000.00 averaged over a three (3) year period or employs no more than ninety-nine (99) employees.

Other: For Profit Corporation

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

Competitive Selection | RFP

Other

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.



Speed Chart (optional) TN00000163	Account Code (optional) 70803000
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CONTRACT AMENDMENT COVER SHEET

Agency Tracking # 31865-00350	Edison ID 34597	Contract #	Amendment # 01
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Contractor Legal Entity Name Keystone Peer Review Organization, Inc. (KEPRO)	Edison Vendor ID 00000013433
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Amendment Purpose & Effect(s)
Extends Term, Updates Scope and Payment Terms, and Increases Maximum Liability

Amendment Changes Contract End Date: YES NO **End Date:** January 14, 2017

TOTAL Contract Amount INCREASE or DECREASE per this Amendment (zero if N/A): **\$ 10,332,315.00**

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2013	\$1,675,660.00	\$1,675,660.00			\$3,351,320.00
2014	\$3,921,032.50	\$3,921,032.50			\$7,842,065.00
2015	\$3,974,963.50	\$3,974,963.50			\$7,949,927.00
2016	\$4,146,634.00	\$4,146,634.00			\$8,293,268.00
2017	\$2,342,822.00	\$2,342,822.00			\$4,685,644.00
TOTAL:	\$16,061,112.00	\$16,061,112.00			\$32,122,224.00

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

Speed Chart (optional) TN00000163	Account Code (optional) 70803000
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**AMENDMENT #1 TO #34597
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION,
BUREAU OF TENNCARE
AND
KEYSTONE PEER REVIEW ORGANIZATION, INC.**

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 "State" or "TennCare" and Keystone Peer Review Organization, Inc. (KEPRO), 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 following is added as Contract Section A.56:

- A.56. The Contractor shall provide completion, approval and delivery of the requirement documents associated with an eligibility appeals tracking system separate from TEAMS as follows:
- a. The Contractor shall hold requirements sessions to gather business and system requirements for a separate eligibility appeals tracking system from TEAMS. The Contractor shall document the requirements gathered during the requirements meetings and submit those documents for state approval;
 - b. The Contractor shall hold requirements validation meetings following the requirements sessions to validate that the documented requirements accurately describe the desired system functionality;
 - c. During the requirements gather phase of the project, the Contractor shall hold weekly status meetings to discuss progress in completing the requirements and escalate any outstanding issues to management within the Division of Member Services;
 - d. At the conclusion of the requirements gathering and documentation, the Contractor shall deliver to the State the final Requirement Documents that have been individually approved in electronic and hard copy form. The Contractor will also maintain a copy of these documents in their possession until the conclusion of the Contract, and
 - e. The Contractor shall submit a single invoice for the completed work, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to payment per C.3.b.

*LP/MLC
9-14-15*

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 January 15, 2013, and ending on January 14, 2017. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.



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 State under this Contract exceed Thirty-Two Million One Hundred Twenty-Two Thousand Two Hundred Twenty-Four Dollars (\$32,122,224.00). 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 Contractor 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.

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

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:

<u>SERVICE</u>	Completed Medical Necessity Reviews	<u>PAYMENT RATE</u> 01/15/2013- 01/14/2016	<u>PAYMENT RATE **</u> 01/15/2016 - 01/14/2018
Contractor Operations including Medical Necessity Reviews for Appeals	Up to and including 350 Medical Necessity reviews per month	<u>\$600.117.00/Month</u>	<u>\$646,026.00/Month</u>
Monthly Medical Necessity Review for Each Appeal over 350	Each Review over 350	<u>\$1,013.51</u> Each	<u>\$1,091.05</u> Each
Completion, approval and delivery of the requirement documents		\$29,989.00 (one Time Payment)	



associated with an eligibility appeals tracking system separate from TEAMS (A.56).	
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copy 9-14-15
9-14-15

The following payment rates apply to the Eligibility Determination Appeals Processes beginning September 1, 2013.

<u>SERVICE</u>	<u>PAYMENT RATE</u>	<u>PAYMENT RATE **</u>
	09/01/2013-01/14/2016	01/15/2016 - 01/14/2018
Monthly Eligibility Appeals Process and Monitoring (begin September 1, 2013)	<u>\$53,931.00/Month</u>	<u>\$58,057.00/Month</u>

**** Rates for extension should the contract be amended for term extension pursuant to Section B.2.**

A "month" shall be defined as a minimum of one hundred sixty (160) hours of service. The Contractor shall not bill more than the monthly rate even if the contractor works more than 160 hours in a calendar month. The Contractor shall not be compensated for travel time to the primary location of service provision. In addition to monthly rates specified above, medical appeals processed will constitute additional monthly rates as specified above based solely on volume and in accordance with amounts submitted in Cost Proposal.

The Contractor shall submit monthly invoices for completed work, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall, at a minimum, include the name of each individual, the individual's job title, the number of hours worked during the period, the applicable Payment Rate, the total compensation requested for the individual, and the total amount due the Contractor for the period invoiced.

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 September 30, 2015. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,



KEYSTONE PEER REVIEW ORGANIZATION, INC.:

9-14-15

[Handwritten Signature]

8/5/15

CONTRACTOR SIGNATURE

DATE

JOSEPH DOUGHER, PRESIDENT AND CHIEF EXECUTIVE OFFICER

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

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

*LBW/CD
9-14-15*

Larry B. Martin / CD

8/19/2015

LARRY B. MARTIN, COMMISSIONER

DATE



CONTRACT

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



Begin Date January 15, 2013	End Date October 31, 2015	Agency Tracking # 31865-00350	Edison Record ID 34597
Contractor Legal Entity Name Keystone Peer Review Organization, Inc.			Edison Vendor ID 0000013433

Service Caption (one line only)
TennCare Member Appeals Process

Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	CFDA # 93.778 Dept. of Health & Human Services, Title XIX
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Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2013	\$1,675,660.00	\$1,675,660.00			\$3,351,320.00
2014	\$3,921,032.50	\$3,921,032.50			\$7,842,065.00
2015	\$3,974,963.50	\$3,974,963.50			\$7,949,927.00
2016	\$1,323,298.50	\$1,323,298.50			\$2,646,597.00
TOTAL:	\$10,894,954.50	\$10,894,954.50			\$21,789,909.00

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

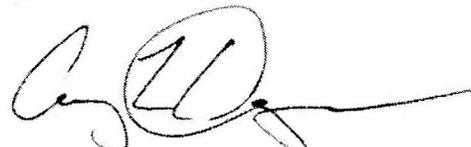
Ownership/Control

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

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

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

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



OCR USE - FA

FA-13-34597-00

Speed Chart (optional) TN00000163	Account Code (optional) 70803000
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**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF FINANCE AND ADMINISTRATION,
BUREAU OF TENNCARE
AND
KEYSTONE PEER REVIEW ORGANIZATION, INC.**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Division of Health Care Finance and Administration, Bureau of TennCare, hereinafter referred to as the "State" or "TennCare" and Keystone Peer Review Organization, Inc, hereinafter referred to as the "Contractor," is for the provision of a TennCare Member appeals process that fully complies with constitutional due process and with applicable state and federal law, as further defined in the "SCOPE OF SERVICES."

The Contractor is a For-Profit Corporation.
Contractor Place of Incorporation or Organization: Pennsylvania
Contractor Edison Registration ID # 0000013433

A. SCOPE OF SERVICES:

A.1. The Contractor shall provide all service and deliverables as required, described, and detailed herein and shall meet all service and delivery timelines as specified by this Contract.

Medical Appeals

- A.2. The Contractor shall hire and maintain staff and management for the TennCare Medical Solutions Unit (MSU) in accordance with the terms of this Contract. The MSU shall operate within the TennCare Division of Member Services (DMS), which includes, among other units which may be designated from time to time at TennCare's sole discretion, the Administrative Solutions Unit (ASU), the TennCare Solutions Unit (TSU), the Directive Solutions Unit (DSU) and the Legal Solutions Unit (LSU). All Contractor medical appeals staff will be located at the Bureau of TennCare's central office, 310 Great Circle Road, Nashville, Tennessee. All Contractor staff must be preapproved in writing by TennCare and must work pursuant to a TennCare-approved written job description.
- A.3. The Contractor must provide a proposed staffing plan within 30 days following the start date of the contract for review and approval by TennCare that shall include, at a minimum, the key staff identified below and the corresponding job descriptions contained in Attachment 1:
- a. An on-site, Tennessee licensed, Medical Director to assume operational responsibilities of the MSU and to provide medical leadership and expertise in conformity with TennCare Rules and policies, state and federal regulations, laws, court orders, and in accord with the direction of the Bureau of TennCare Chief Medical Officer;
 - b. An on-site Executive Director to oversee the MSU and coordinate operations with TennCare, and
 - c. An on-site Information Systems Manager to oversee the Contractor's reporting requirements as set forth herein and to oversee the continued development and operation of the existing centralized appeals tracking system. The Contractor's Information Systems Manager shall work in conformity with TennCare Rules and policies, state and federal regulations, laws, court orders, and in accord with the direction of the Bureau of TennCare Chief Information Officer.
 - d. Failure to provide and maintain key staff may result in Liquidated Damages as described in Attachment 2.



- e. As part of the staffing plan, Contractor shall designate the key staff member or other employee who will serve as the litigation hold officer for Contractor. This litigation hold officer will be responsible for receiving notice of any litigation holds including document custodians who are Contractor key staff members, medical staff, employees or subcontractors, and for monitoring compliance with each litigation hold as instructed by TennCare.

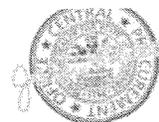
A.4 The Contractor shall provide a medical staff charged with the following tasks:

- a. Conduct medical reviews in strict accordance with;
 - (1) Federal regulatory requirements,
 - (2) Federal court orders and consent decrees,
 - (3) Tennessee's Section 1115 waiver including subsequent amendments thereto,
 - (4) Federal and state law, and
 - (5) TennCare Rules and policies.
- b. Consult each beneficiary's pertinent medical case history and medical records to ensure an individualized determination of medical necessity is provided consistent with TennCare rules and policy,
- c. Provide expert medical staff to testify on the State's behalf at both appeal hearings and court hearings as requested, concerning both medical reviews and appeals lodged by or on behalf of TennCare beneficiaries concerning coverage and benefit determinations and Member Appeals. The Contractor shall data mine and trend medical appeal data as requested by TennCare so as to identify possible issues of concern and identify reasonable and cost effective solutions. Contractor-provided witnesses shall not offer legal advice during testimony and will refrain from speculating and from rendering personal opinions which subvert TennCare Rules or policy,
- d. Maintain continuous proficiency concerning TennCare's operational protocol, its attendant governing rules, and the pertinent medical policies prescribed by TennCare and its contracted agents,
- e. Must be able to read and speak the English language fluently, and
- f. Failure to provide the requirements listed in this Section A.4. may result in Liquidated Damages as described in Attachment 2.

A.5. The Contractor shall provide to TennCare documentation verifying that all medical staff employed by the Contractor or employed as a sub-contractor are licensed to practice in their area of specialty within the United States. Documentation must also be provided to confirm that none of the medical staff are currently on the excluded status lists compiled by Medicare, Medicaid or the U.S. Office of Inspector General. This documentation shall be supplied at the execution of this Contract and annually thereafter, due on September 15 of each year of this Contract and any and all amendments thereto. Failure to provide documentation verifying that all medical staff employed by the Contractor, or employed as a sub-contractor is licensed may result in Liquidated Damages as described in Attachment 2.

A.6. The Contractor shall provide TennCare with copies of resumes and job descriptions for all persons employed under this Contract, and any and all amendments thereto within 30 days following the contract start date. TennCare reserves the right, at its sole discretion, to restrict any person employed under this Contract, and any and all amendments thereto, from working on TennCare matters who fails to meet TennCare's approval. TennCare reserves the right, at its sole discretion, to request dismissal of Contractor staff and sub-contracted physician reviewers from this project based on performance deficiencies and/or lack of knowledge, skills, or demonstrated expertise necessary to perform contracted activities.

A.7. The Contractor shall reallocate non-medical staffing resources based on current TennCare program needs and the direction of TennCare management.



- A.8. The Contractor shall ensure that all Contractor staff and sub-contracted physician reviewers are trained and knowledgeable regarding all applicable:
- a. Federal regulatory requirements
 - b. Federal court orders and consent decrees
 - c. Tennessee's Section 1115 waiver including subsequent amendments thereto
 - d. Federal and state laws
 - e. TennCare Rules and policies
 - f. All workflows, policies, and procedures pertaining to medical appeals processing (including ASU, TSU, MSU, LSU, DSU, and SSAU).
 - g. A training plan must be submitted and approved by TennCare within 10 days of the execution of this contract. Contractor will be responsible for providing training to any newly hired Contractor staff and sub-contracted physician reviewers prior to those individuals performing any medical reviews. Training for newly hired Contractor staff and sub-contracted physician reviewers must be consistent with the Contractor's training plan.
 - h. Contractor shall cooperate with TennCare regarding mandatory TennCare-led training required for Contractor staff. Failure of Contractor staff to attend required training may result in liquidated damages as set forth in Attachment A.
- A.9. The Contractor shall provide staff who are up-to-date and knowledgeable in their respective areas of expertise. This staff shall provide quality consultation and technical assistance services regarding all matters pertaining to medical appeals processing.
- A.10. The Contractor shall maintain staff hours that match those of the State (8:00-4:30 CST Monday – Friday) and additional hours required to fulfill the scope of services specified in this Contract. Any training or meeting off-site during business hours, organized by the Contractor for Contractor or sub-contractor staff, must be approved by the TennCare Director of Member Services at least seventy-two (72) hours in advance.
- A.11 Under the Contractor's management, the operational responsibilities of the MSU shall be to:
- a. Work as an essential partner of the TennCare DMS;
 - b. Maintain ready access to information such as clinical practice guidelines, health technology assessments, research studies, and policies and recommendations of reputable health care agencies/organizations that will be used in conducting medical reviews and providing expert medical testimony at hearings related to Member Appeals;
 - c. Assiduously maintain and monitor medical evidence and any and all reasonably pertinent information regarding both the appropriate diagnosis and treatment of conditions prevalent in the TennCare population and the safety and efficacy of items and services frequently prescribed for or appealed by TennCare enrollees;
 - d. Upon TennCare approval, review, update, and implement policies and procedures for the operation of the MSU;
 - e. Ensure that MSU (and selected limited TennCare staff) maintains proficiency in conducting requisite internet-based medical research and in quickly accessing a complete array of the latest pertinent available medical research, whether or not such medical research is only accessible by paid subscription. The Contractor shall maintain the ability to quickly conduct TennCare-requested ad hoc medical research projects. To this end, the Contractor shall stay continuously apprised concerning those medical developments reasonably expected to affect TennCare and shall actively initiate well-reasoned and thorough discussion with TennCare concerning such pertinent medical developments and concerning the implications of TennCare's acting or failing to act on



such medical developments. Any training required to obtain this expertise is the financial responsibility of the Contractor;

- f. Maintain an adequate network of licensed physicians and dentists (either through direct employment or sub-contract arrangements) to conduct all medical reviews and provide associated legal testimony within required timelines. At a minimum, the Contractor's physician/dentist network must include physicians/dentists with training and expertise in pediatrics; internal medicine; child and adult behavioral health; and pediatric dentistry, including orthodontia. In addition, the Contractor must maintain the ability to consult with medical staff in a wide array of specialties that will supplement the expertise of the core staff identified above;
 - g. Medical reviews concerning all TennCare-referred Member Appeals, shall, without exception, fully satisfy TennCare's requirements concerning timely completion; Medical reviews shall be timely submitted in writing to TSU in a TennCare pre-approved format. Timeliness requirements are mandated by applicable court orders, and federal and state laws and regulations which mandate unwavering resolution timeframes. The Contractor must comply with such applicable court orders, and federal and state laws and regulations which are subject to change. The Contractor shall comply with such changes. Contractor agrees that its obligations under this Contract, and any and all amendments thereto, may require urgent completion upon extremely short notice, and;
 - h. Medical hardship reviews shall be conducted as directed by TennCare when enrollees request to change Managed Care Contractors. These reviews shall be conducted in accordance with TennCare rules, policy and regulation. For the purposes of payment, medical hardship reviews will count as a medical necessity review.
- A.12. The Contractor shall continually maintain and be able to provide any and all information relating to the TennCare appeals process, including, but not limited to, developing, maintaining and updating a TennCare policy library. Contractor shall be able to provide this information upon request from TennCare on short notice with an immediate response.
- A.13. The Contractor shall ensure that all contractor and sub-contractor medical appeal consultant reviewers are current and proficient regarding the medical evidence pertaining to the nature and scope of physical, behavioral and/or dental health services for which they conduct medical reviews.
- A.14. The Contractor shall conduct medical necessity reviews solely on the basis of medical necessity in accordance with evidence-based medical necessity criteria, MCC clinical criteria and TennCare Rules and policies. A medical necessity review will be deemed completed when it is received by TennCare in the TennCare approved format. Such reviews shall be completed within the following timeframes:
- a. four (4) days for expedited appeals; and
 - b. eleven (11) days for standard appeals.
 - c. failure to expedite medical necessity review filed within four (4) calendar days of receipt for expedited appeals or eleven (11) calendar days for standard appeals may result in Liquidated Damages as described in Attachment 2.
- A.15. The Contractor shall provide an independent decision based upon the Managed Care Contractors' (MCCs) clinical criteria and/or guidelines regarding whether a requested service is, in fact, medically necessary. The Contractor shall also maintain current knowledge of policies and clinical criteria in effect for the TennCare pharmacy benefit program, and conduct reviews regarding pharmacy appeals in accordance with applicable policies and clinical criteria. If MSU's decision differs from that of the MCC, MSU should review the plan's decision, including clinical criteria and/or guidelines based on the most current medical evidence available and the member's individual medical circumstances.



- A.16. The Contractor and MSU shall conduct research as necessary regarding the current body of medical evidence for a particular medical item or service to ensure that MCC criteria and/or guidelines are evidence-based. The Contractor must include appropriate citations to medical literature, which are updated as frequently as necessary to ensure they represent the most current body of medical evidence. To the extent MSU identifies a deficiency in the MCC's criteria or guidelines, such deficiency should be brought to the attention of the MCC's Medical Director and the Bureau of TennCare Medical Director for appropriate action within 30 days of identifying the deficiency.
- A.17. If the Contractor or its sub-contractors do not have sufficient medical records to make a medical necessity determination, the MSU shall immediately identify the specific medical information that is needed, and either attempt to obtain such information directly, or request assistance in writing from the TSU Reviewer. Only after at least two (2) reasonable failed and documented attempts to gather additional medical information should the Contractor's reviewer proceed on the basis of the information that has been provided in order to ensure that the review is completed within contractual timelines specified herein.
- A.18. The Contractor shall base each decision that a requested service is not, in fact, medically necessary on clinical criteria and/or guidelines applied to the determination, with specific facts personal to the beneficiary and clear explanation regarding why such clinical criteria and/or guidelines were not met. The Contractor shall not direct TennCare or its MCCs to provide any service that is not a TennCare-covered service or is not the service at question in the medical appeal.
- A.19. The Contractor shall conduct all medical necessity reviews for children on the basis of medical necessity as it is applied under Early Periodic Screening, Diagnostic and Treatment (EPSDT) requirements. EPSDT requires provision of services to treat or ameliorate a health problem, including maintenance services that prevent conditions from worsening or prevent the development of additional health problems. All medical necessity reviews shall be performed in accordance with all applicable regulatory and legal obligations.
- A.20. The Contractor shall provide expert testimony as requested by TennCare regarding why a service failed to satisfy medical necessity criteria or when applicable, that a service is not within the scope of defined benefits for the population in which the Member is enrolled (i.e., the service is non-covered).
- A.21. The Contractor shall coordinate the activities of the MSU with TennCare and other state agencies as follows:
- a. Review and coordinate policies and procedures within the MSU and between the MSU and each of those units designated by TennCare in its sole discretion. The Contractor shall provide staff designated by TennCare with training and shall establish and conduct quality monitoring of staff output as required by TennCare;
 - b. Provide staffing as requested for the purpose of properly documenting and disseminating resolutions and activities agreed upon in the course of interactions with TennCare. TennCare will continue to provide staffing to support TennCare benefit design and clinical studies conducted between TennCare and other state agencies and/or universities.
 - c. Actively create and assist TennCare as requested concerning the ongoing implementation of all policies, decisions, processes and appeals within TennCare and the MSU;
 - d. Work with any individuals, entities and/or law firm(s) designated by TennCare concerning, among other issues, legal compliance matters arising out of federal court orders and any and all attendant policies and procedures. The Contractor shall strictly abide by any directions concerning legal privilege or confidentiality communicated by TennCare and/or individuals, entities or law firm(s) designated as TennCare's agent;



- e. At TennCare's discretion and direction, actively participate in meetings to address operational issues and facilitate communication;
 - f. At TennCare's discretion and direction, actively participate in monthly and quarterly meetings with MCC Medical Directors, EPSDT coordination and care meetings, staff meetings and other provider meetings as requested by TennCare;
 - g. Work to facilitate and streamline communications, processes and operations among TennCare-designated units and agents concerning medical appeals and attendant quality issues;
 - h. Report to the Office of Inspector General, the Office of Medical Director and the Director of Pharmacy (as appropriate), and TennCare's Program Integrity Unit any suspected cases of fraud and abuse identified during fulfillment of Contract requirements, and
 - i. Provide ongoing assistance to TennCare concerning the review of current processes and structure within TennCare-designated units and managers thereof.
 - j. At TennCare's discretion and direction, the Contractor's Medical Director will serve on the CoverKids Appeals Committee. The Medical Director will advise the Committee on medical issues and ensure that approval of requested services are consistent with state rules and regulations.
- A.22. The Contractor is responsible for the requirements of this contract only and shall in no way assume day-to-day management responsibility for TennCare units or employees.
- A.23. The Contractor shall maintain and update the existing ProLaw Legal, Pre-Reform, Reform and 2011 Pro-Law Systems and their custom codes and interfaces with TennCare-designated units, including but not limited to the DMS, the TennCare Office on Compliance and Contract Performance (OCCP), the TennCare Office of General Counsel (OGC) and the TennCare Management Information Systems. The Contractor shall, according to an approved timetable, build, test, coordinate and implement Pro-Law 2011 into those TennCare units designated by TennCare and shall maintain the AAU ProLaw System for archival and research purposes.
- A.24. The Contractor shall provide an Information Systems Manager, who shall oversee the maintenance and support of the Pro-Law, RightFax and TennCare File Tracking System. The Contractor shall ensure system functionality for detailed reporting and analysis regarding all significant workflow and notice processes as well as:
- a. be responsible for coordinating with TennCare Information Systems staff in the acquisition and/or replacement of computer equipment to ensure that Office of Information Systems (OIR) standards are met;
 - b. coordinate any upgrades, field additions, and/or additional reports to be generated by the database system with the designated TennCare Information Systems staff. TennCare Information Systems staff will coordinate with OIR any resources that may be needed, and
 - c. any such system or application developed under this Contract, and any and all amendments thereto, becomes the property of the State of Tennessee and may not be distributed, shared or revised without written permission from TennCare.
- A.25. The Contractor shall ensure that system updates are completed according to an established systems change process, including prior approval of all system modifications by the unit manager, TSU Director and Director of Member Services prior to implementation. The Contractor shall develop a prioritization and tracking system for all system modifications including estimated completion dates, and notification to all approved parties when a requested modification is complete.



- A.26. The Contractor shall provide TennCare Information Systems with the names and contact information for all application software support staff that are involved in the application software support of all applications under the jurisdiction of the Contractor by this Contract, and any and all amendments thereto. TennCare Information Systems will work in conjunction with Contractor staff with these vendors to review and approve proposed configurations and recommendations made to ensure that maximum performance is achieved.
- A.27. The Contractor shall conduct a weekly eligibility verification process through a HIPAA compliant 270/271 transaction with the State's MMIS. Any Member with an open appeal who has lost eligibility will be reported to state staff for review and resolution.
- A.28. The Contractor shall submit detailed plans and timelines for all approved process changes or implementations and shall adhere to major milestones approved by TennCare, as well as submit annual milestones to TennCare for approval by March 1 of Year One of the Contract and December 1 of each year thereafter.
- A.29. As requested by TennCare, the Contractor shall participate in established TennCare meetings and shall provide relevant information and recommendations to support operational issue decision-making including, but not limited to, minutes of all meetings.
- A.30. The Contractor shall provide, in the form and substance acceptable to TennCare, at a minimum, the following:
- a. monthly report including timelines for all current and future work products to be submitted under this Contract; progress toward completion of milestones including the number of appeals received during the prior month and the number of appeals resolved; a report of vacant positions and any staff turnover, strategy for completing the work products of the vacant position, and timeline for filling the position; reporting of medical appeal trends; any policies or work products which require review by TennCare; a listing of any pending items which were previously submitted to TennCare for approval, and other information as requested by TennCare;
 - b. bi-weekly reports with current data regarding pending appeals;
 - c. advance notice to unit managers regarding all appeals approaching LSU deadlines, provide notice to unit managers, TSU Director and Director of Member Services regarding appeals at or beyond LSU deadlines, conduct root problem analysis regarding each instance where a timeline is missed, and assist in the development of Corrective Action Plans to address identified problems;
 - d. conduct, develop and produce accurate weekly reporting regarding specific identifiers for senior medical appeals managers;
 - e. all required reports regarding compliance with federal court orders, consent decrees, Waiver Special Terms and Conditions, as determined by TennCare, shall be provided in advance of established deadlines so they may be reviewed and discussed with TennCare senior medical appeals managers and any necessary modification to the reports may be made, prior to the established deadlines for submission of such reports in final form;
 - f. review, on at least an annual basis, the need for modifications, regarding standard monthly reporting requirements;
 - g. routinely review with Senior TSU staff how data elements are captured in ProLaw to ensure that information needed to produce routine and ad hoc reports is appropriately captured and easily accessible to enable quick turnaround of ad hoc requests to ensure accuracy in data reporting;
 - h. develop processes and conduct ongoing monitoring and reporting for identification of systemic violations regarding all aspects of medical appeals processing;



- i. conduct time studies and issue findings to TennCare and provide staffing recommendations (number of staff needed to perform specific functions) to TennCare based on time studies, as requested by TennCare;
 - j. provide ad hoc reports as requested by the Senior TennCare staff and/or unit managers, coordinating with the unit managers regarding how the requested data will be captured and reviewing the preliminary results with unit managers prior to dissemination to ensure that reports accurately capture requested data elements; and
 - k. develop reports as needed to assist in litigation as requested by TennCare.
 - l. No reports or data shall be released to sources outside of TennCare without written consent of TennCare Director of Member Services.
 - m. Failure to provide timely reports may result in Liquidated Damages as described in Attachment 2.
- A.31. The Contractor shall be responsible for training and evaluating training effectiveness for all TennCare and Contractor positions/functions pertaining to medical appeals processing, including the following:
- a. preparation of comprehensive TennCare employee training package for all positions/functions pertaining to medical appeals processing;
 - b. develop an application-based competency test to measure retention of training materials for review and approval of the Unit Manager prior to implementation;
 - c. conduct routine periodic application-based, function-specific competency testing (at least every one hundred eighty (180) days or as requested by the TennCare);
 - d. conduct ongoing assessment of TennCare staff training needs pertaining to all aspects of medical appeals processing (i.e. ASU, TSU, LSU, and DSU);
 - e. develop targeted training with clear training objectives in response to identified needs for review and approval of TennCare prior to implementation;
 - f. conduct workload analysis to establish quantitative and qualitative benchmarks for employee performance;
 - g. conduct routine periodic monitoring and reporting (at least every sixty (60) days or as requested) for senior medical appeals managers regarding individual and unit performance, including but not limited to accuracy and completeness of Prolaw documentation;
 - h. identify individual and unit deficiencies for targeted training and technical assistance;
 - i. develop targeted training and technical assistance regarding identified deficiencies for review and approval of TennCare prior to implementation;
 - j. conduct follow-up monitoring and reporting at two (2) week, six (6) week and three (3) month intervals following such targeted training and technical assistance for TennCare senior medical appeals managers to verify deficiencies have been corrected; and
 - k. provide prompt written notification to TennCare regarding staff who persistently trigger audits and/or who fail periodic competency testing, including specific documentation of deficiencies in performance and/or testing results.



- I. Failure to provide training as described in this section may result in Liquidated Damages as described in Attachment 2.
- A.32. The Contractor shall assist in the development and monitoring of detailed workflows, policies and procedures regarding all aspects of medical appeals processing including the following:
- a. identify and recommend monitoring processes to ensure adherence to established workflows, policies and procedures;
 - b. routinely conduct monitoring regarding workflow processes, policies and procedures, and
 - c. recommend efficiencies and improvements regarding workflow processes, policies and procedures.
 - d. All workflows, policies and procedures developed must be approved by TennCare's Director of Member Services prior to implementation.
- A.33. The Contractor shall develop and maintain clear policies and procedures regarding the process for conducting medical necessity reviews which shall be submitted to TennCare for review and approval prior to implementation.
- A.34. The Contractor shall provide consultation as requested, education, training and technical support in the areas of quality of care initiatives, utilization management, disease management, HEDIS/CAHPS, and NCQA accreditation for the Division of Quality Oversight as follows:
- a. provide expert support concerning the planning, direction, implementation, analysis, and reporting of medical appeals, including developing, implementing and managing standards, benchmarks, trending, and profiling systems, and overseeing achievement of medical appeal program targets.
 - b. Failure to provide consultation, education, training and technical support as described in this section may result in Liquidated Damages as described in Attachment 2.
- A.35. The Contractor shall prepare a transition plan for transfer of the Contractor's services to another vendor two (2) months prior to the final expiration of this Contract and shall include the following:
- a. define transition approach, all tasks and subtasks, and provide a schedule for the transition effort to achieve State requirements;
 - b. transfer all equipment, title to equipment, files, data, service contracts, and other materials developed under this Contract, and any and all amendments thereto, to the State or its designated agent;
 - c. provide copies of all procedures for performing the functions of the MSU;
 - d. provide training to the State or its designated agent in the performance of all contract-related functions including, but not limited to, the procedures for the MSU;
 - e. provide an estimated inventory of all work in progress and its projected status at the end of the contract one (1) month before final termination of this Contract;
 - f. update the work in progress and inventory estimates weekly throughout the Transition Phase;
 - g. provide a final, detailed, inventory and accounting of all work in progress and all completed work within seven (7) working days of final contract expiration;



- h. provide current specifications for all reports generated for TennCare on a regular basis, including the monthly Grier Report and Centers for Medicare and Medicaid Services (CMS) reports as well as daily and weekly reports for each unit, and
- i. prepare and submit a final report summarizing transition task results and certifying the completion of all transition.

A.36 The Contractor shall provide all of the following for any and all staff assigned to perform the contracted services:

- a. general operating supplies (e.g., tablet, paper, binders, file folders, fasteners, writing instruments, etc) required to perform those obligations prescribed under the scope of this contract;
- b. all overnight/priority mail usage costs for the MSU; and
- c. software development and deployment of applications; application changes and upgrade will be done in conjunction with TennCare Information Systems Staff.

Eligibility Appeals

A.37. Starting March 1, 2013, the Contractor shall assist in the development and monitoring of detailed workflows, policies and procedures regarding all aspects of establishing an eligibility appeals process including the following:

- a. identify and recommend monitoring processes to ensure adherence to established workflows, policies and procedures;
- b. routinely conduct monitoring regarding workflow processes, policies and procedures, and
- c. recommend efficiencies and improvements regarding workflow processes, policies and procedures.
- d. All workflows, policies, processes, procedures and any other materials developed pursuant to this Section A.37 shall be approved by TennCare's Director of Member Services prior to implementation.

A.38. The Contractor shall monitor the TennCare Member-appeals process to ensure their compliance with constitutional due process; state and federal laws, regulatory requirements, court orders and consent decrees and TennCare Rules and policies. The Contractor shall be responsible for ensuring that, when a TennCare Member appeals an eligibility determination, the appeals process adheres to the State's obligations (as interpreted by authorized State officials) under the pertinent federal consent decrees entered between the State and the applicable plaintiff class. As of August 2012, the State handles approximately one thousand three hundred (1,300) eligibility appeals per month under current Medicaid regulations. Due to the change in regulations from the CMS related to the simplification of Medicaid eligibility determinations, the State cannot predict the volume of appeals it will receive beginning in January 2014.

A.39. Eligibility monthly reimbursement becomes effective September 1, 2013, at which time the Contractor shall hire and maintain staff and management for the Eligibility Appeals Unit (EAU) in accordance with the terms of this Contract. The EAU shall operate within the TennCare Division of Member Services (DMS), which includes, among other units which may be designated from time to time at TennCare's sole discretion, the TennCare Solutions Unit (TSU), the Directive Solutions Unit (DSU) and the Legal Solutions Unit (LSU). Contractor staff will be located at the Bureau of TennCare central office, 310 Great Circle Road, Nashville, Tennessee. If Eligibility Appeals staff is located in another physical location in the Nashville area, the Contractor staff related to Eligibility will be co-located with those staff members at the alternate location.



Contractor staff must receive TennCare's prior approval and must work pursuant to a TennCare-approved written job description.

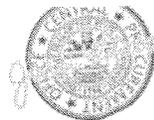
- A.40. The Contractor shall provide TennCare with copies of resumes and job descriptions for all persons employed under this Contract, and any and all amendments thereto. TennCare reserves the right, at its sole discretion, to restrict any person employed under this Contract, and any and all amendments thereto, from working on TennCare matters who fails to meet TennCare's approval. TennCare reserves the right, at its sole discretion, to request dismissal of Contractor staff and sub-contracted physician reviewers from this project based on performance deficiencies and/or lack of knowledge, skills, or demonstrated expertise necessary to perform contracted activities.
- A.41. The Contractor shall reallocate non-medical staffing resources based on current TennCare program needs and the direction of TennCare management.
- A.42. The Contractor shall ensure that all Contractor staff are trained and knowledgeable regarding all applicable:
 - a. Federal regulatory requirements
 - b. Federal court orders and consent decrees
 - c. Tennessee's Section 1115 waiver including subsequent amendments thereto
 - d. Federal and state law
 - e. TennCare Rules and policies
 - f. All workflows, policies, and procedures pertaining to eligibility appeals processing
 - g. A training plan must be submitted and approved by TennCare within ten (10) days of the execution of this Contract. Contractor shall be responsible for providing training to any newly hired Contractor staff prior to those individuals performing any tasks associated with this contract. Training for newly hired Contractor staff must be consistent with the Contractor's training plan.
 - h. Contractor shall cooperate with TennCare regarding mandatory TennCare-led training required for Contractor staff.A.43. The Contractor shall provide staff who are up-to-date and knowledgeable in their respective areas of expertise. This staff shall provide quality consultation and technical assistance services regarding all matters pertaining to eligibility appeals processing.
- A.44. The Contractor shall maintain staff hours that match those of the State (8:00 a.m. - 4:30 p.m. CST Monday – Friday) and additional hours required to fulfill the scope of services specified in this Contract. Any training or meeting off-site during business hours, organized by the Contractor for Contractor or sub-contractor staff, must be approved by the Director of Member Service at least seventy-two (72) hours in advance.
- A.45. The Contractor shall make necessary modifications to the current ProLaw system to facilitate management and tracking of eligibility appeals starting January 1, 2014. Such modifications will be consistent with work flows for eligibility processing.
- A.46. The Contractor shall be responsible for training and evaluating training effectiveness for all TennCare and Contractor positions/functions pertaining to eligibility appeals processing, including, but not limited to, the following:
 - a. preparation of comprehensive TennCare employee training package for all positions/functions pertaining to eligibility processing;
 - b. develop an application-based competency test to measure retention of training materials for review and approval of the Unit Manager prior to implementation;
 - c. conduct routine periodic application-based, function-specific competency testing (at least every one hundred eighty (180) days or as requested by the TennCare);



- d. conduct ongoing assessment of TennCare staff training needs pertaining to all aspects of eligibility appeals processing;
- e. develop targeted training with clear training objectives in response to identified needs for review and approval of TennCare prior to implementation;
- f. conduct workload analysis to establish quantitative and qualitative benchmarks for employee performance;
- g. conduct routine periodic monitoring and reporting (at least every sixty (60) days or as requested) for senior eligibility appeals managers regarding individual and unit performance, including but not limited to accuracy and completeness of ProLaw documentation;
- h. identify individual and unit deficiencies for targeted training and technical assistance;
- i. develop targeted training and technical assistance regarding identified deficiencies for review and approval of TennCare prior to implementation;
- j. conduct follow-up monitoring and reporting at two (2) week, six (6) week and three (3) month intervals following such targeted training and technical assistance for TennCare senior eligibility appeals managers to verify deficiencies have been corrected; and
- k. provide prompt written notification to TennCare regarding staff who persistently trigger audits and/or who fail periodic competency testing, including specific documentation of deficiencies in performance and/or testing results.
- l. Failure to provide training as described in this section may result in Liquidated Damages as described in Attachment 2.
- m. Contractor shall cooperate with TennCare regarding mandatory TennCare led training required for Contractor staff. Failure of Contractor staff to attend required training may result in liquidated damages as set forth in Attachment A hereto.

A.47. The Contractor shall provide, in the form and substance acceptable to TennCare, at a minimum, the following:

- a. monthly report including timelines for all current and future work products to be submitted under this Contract; progress toward completion of milestones including the number of appeals received during the prior month and the number of appeals resolved; a report of vacant positions and any staff turnover, strategy for completing the work products of the vacant position, and timeline for filling the position; reporting of appeal trends; any policies or work products which require review by TennCare; a listing of any pending items which were previously submitted to TennCare for approval, and other information as requested by TennCare;
- b. bi-weekly reports with current data regarding pending appeals;
- c. advance notice to unit managers regarding all appeals approaching appeal deadlines, provide notice to unit managers, Eligibility Appeals Director and Director of Member Services regarding appeals at or beyond appeal deadlines, conduct root problem analysis regarding each instance where a timeline is missed, and assist in the development of Corrective Action Plans to address identified problems;
- d. conduct, develop and produce accurate weekly reporting regarding specific identifiers for senior appeals managers;



- e. all required reports regarding compliance with federal court orders, consent decrees, Waiver Special Terms and Conditions, as determined by TennCare, shall be provided in advance of established deadlines so they may be reviewed and discussed with TennCare senior appeals managers and any necessary modification to the reports may be made, prior to the established deadlines for submission of such reports in final form;
- f. review, on at least an annual basis, the need for modifications, regarding standard monthly reporting requirements;
- g. routinely review with Senior appeals managers how data elements are captured in ProLaw to ensure that information needed to produce routine and ad hoc reports is appropriately captured and easily accessible to enable quick turnaround of ad hoc requests to ensure accuracy in data reporting;
- h. develop processes and conduct ongoing monitoring and reporting for identification of systemic violations regarding all aspects of appeals processing;
- i. conduct time studies and issue findings to TennCare and provide staffing recommendations (number of staff needed to perform specific functions) to TennCare based on time studies, as requested by TennCare;
- j. provide ad hoc reports as requested by the Senior TennCare staff and/or unit managers, coordinating with the unit managers regarding how the requested data will be captured and reviewing the preliminary results with unit managers prior to dissemination to ensure that reports accurately capture requested data elements; and
- k. develop reports as needed to assist in litigation as requested by TennCare.
- l. No reports or data shall be released to sources outside of TennCare without written consent of TennCare Director of Member Services.
- m. Failure to provide timely reports may result in Liquidated Damages as described in Attachment 2.

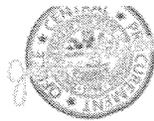
A.48. It is the State's intention to replace the ProLaw system during this contract term. Once the State has procured a vendor to develop and implement a new appeals tracking system, the Contractor will provide all workflows and other information necessary to support the State's efforts to implement a new appeals tracking system. The Contractor will not be responsible for developing the new system under this contract.

TennCare's Responsibilities:

A.49. TennCare shall designate agents responsible for addressing and articulating TennCare policy and for making decisions on its behalf as related to TennCare's contractual obligations. These designated agents shall work with Contractor on the development of issue resolution and provide timely feedback and review of all Contractor recommendations.

A.50. TennCare shall provide the following for all Contractor on-site staff:

- a. Data and voice system connectivity to the TennCare's mainframe and communication systems and ongoing data and voice system technical support;
- b. Computer, work station and computer printers;



- c. Postage envelopes with TennCare return address will be provided for all mailing systems, thereby allowing use of state postal system;
 - d. Copiers, copier paper;
 - e. Printing and reproduction costs as they relate to TennCare policy and procedure manuals, beneficiary notices and MCC notices, as necessary and only with TennCare pre-approval and review; and
 - f. Monthly local and long distance telephone charges.
- A.51. TennCare will perform the following activities related to the transition of the services under this Contract to TennCare or to another vendor selected through a Request for Proposal process:
- a. Review and approve the transition plan and schedule to facilitate and organize the transfer of the Contractor's functions to a new Contractor;
 - b. Assign State staff and/or designated Contractor staff available for training the new Contractor in the operation of the MSU and EAU functions; and
 - c. Review and approve Contractor's transition progress reports, which document the completion of each transition task.
- A.52. TennCare Information Systems shall maintain all hardware and software that is used by the Contractor on the State's infrastructure, including personal computer (PC) workstations, workstation printers, network printers, network file and database server(s). This shall include, but not be limited to, the installation of all hardware and software needed to support the operations of the unit, including access to the network and all server installation of all applications.
- A.53. TennCare Information Systems shall direct and coordinate with the Office of Information Resources regarding network and server support and shall work jointly with the Contractor on all related issues.
- A.54. TennCare shall assign Information systems staff that shall be involved in the development, design, configuration and implementation of all aspects of the application, including interfacing with vendors, OIR and the contractor to ensure maximum performance of the application as well as provide the Contractor written request for any changes needed to the application.
- A.55. On-site computing shall be limited to State PCs, laptops and mobile devices unless prior written approval is obtained from TennCare. State data shall not reside on hardware hard drives.
- B. CONTRACT PERIOD:**
- B.1. This Contract shall be effective for the period beginning January 15, 2013, and ending on October 31, 2015. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.
- 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 five (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 effected 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 State under this Contract exceed Twenty-One Million Seven Hundred Eighty-Nine Thousand Nine Hundred Nine Dollars (\$21,789,909.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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

C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.

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

a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in section A.

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

<u>SERVICE</u>	Completed Medical Necessity Reviews	<u>PAYMENT RATE</u>	<u>PAYMENT RATE **</u>
		01/15/2013-10/31/2015	11/01/2015 - 10/31/2017
Contractor Operations including Medical Necessity Reviews for Appeals	Up to and including 350 Medical Necessity reviews per month	<u>\$600,117.00</u> Per Month	<u>\$646,026.00</u> Per Month
Monthly Medical Necessity Review for Each Appeal over 350	Each Review over 350	<u>\$1,013.51</u> Each	<u>\$1,091.05</u> Each



The following payment rates apply to the Eligibility Determination Appeals Processes beginning September 1, 2013.

<u>SERVICE</u>	<u>PAYMENT RATE</u>	
	09/01/2013- 10/31/2015	11/01/2015 - 10/31/2017
Monthly Eligibility Appeals Process and Monitoring (begin September 1, 2013)	\$53,931.00 Per Month	\$58,057.00 Per Month

** Rates for extension should the contract be amended for term extension pursuant to Section B.2.

A "month" shall be defined as a minimum of one hundred sixty (160) hours of service. The Contractor shall not bill more than the monthly rate even if the contractor works more than 160 hours in a calendar month. The Contractor shall not be compensated for travel time to the primary location of service provision. In addition to monthly rates specified above, medical appeals processed will constitute additional monthly rates as specified above based solely on volume and in accordance with amounts submitted in Cost Proposal.

The Contractor shall submit monthly invoices for completed work, in form and substance acceptable to the State with all of the necessary supporting documentation, prior to any payment. Such invoices shall, at a minimum, include the name of each individual, the individual's job title, the number of hours worked during the period, the applicable Payment Rate, the total compensation requested for the individual, and the total amount due the Contractor for the period invoiced.

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

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

- a. Each invoice shall clearly and accurately detail all of the following required information (calculations must be extended and totaled correctly).
- (1) Invoice Number (assigned by the Contractor)
 - (2) Invoice Date
 - (3) Contract Number (assigned by the State)
 - (4) Customer Account Name: Department of Finance and Administration, Bureau of TennCare
 - (5) Customer Account Number (assigned by the Contractor to the above-referenced Customer)
 - (6) Contractor Name
 - (7) Contractor Tennessee Edison Registration ID Number Referenced in Preamble of this Contract
 - (8) Contractor Contact for Invoice Questions (name, phone, and/or fax)



- (9) Contractor Remittance Address
- (10) Description of Delivered Service
- (11) Complete Itemization of Charges, which shall detail the following:

- i. Service or Milestone Description (including name & title as applicable) of each service invoiced
- ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced
- iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced
- iv. Amount Due by Service
- v. Total Amount Due for the invoice period

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

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

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

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

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

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

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

D. STANDARD TERMS AND CONDITIONS:

D.1. Required Approvals. The State is not bound by this Contract until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but are not



limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).

- D.2. Modification and Amendment. This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Commissioner of Finance and Administration, the Commissioner of Human Resources, and the Comptroller of the Treasury).
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a breach of contract by the State. The State shall give the Contractor at least sixty (60) days written notice before the effective termination date. The Contractor shall be entitled to compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, each shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six months has been, an employee of the State of Tennessee.

- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Tennessee Code Annotated (Tenn. Code Ann.), § 12-4-124, *et seq.*, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.



- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 3, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
 - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann., § 12-4-124, *et seq.* for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.



- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tenn. Code Ann., §§ 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

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

The State:



Deputy Commissioner
Department of Finance and Administration
Bureau of TennCare
310 Great Circle Road
Nashville, TN 37243
Telephone # (615) 507-6443
FAX # (615) 741-0882
Darin.j.gordon@tn.gov

The Contractor:

Mr. Joseph Dougher, President and CEO
Keystone Peer Review Organization, Inc.
777 East Park Drive
Harrisburg, PA 17105
Telephone # (717) 564-8288 x 7026
Fax # (717) 564-3862
jdougher@kepro.com

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

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in Tenn. Code Ann., § 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to Tenn. Code Ann., Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously



possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

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

E.6. Breach. A party shall be deemed to have breached the Contract if any of the following occurs:

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

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

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

- (1) In event of a Breach by Contractor, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity.
- (2) Liquidated Damages— In the event of a Breach, the State may assess Liquidated Damages. The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced, Attachment 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.7. **Printing Authorization.** The Contractor agrees that no publication coming within the jurisdiction of Tenn. Code Ann., §12-7-101, *et. seq.*, shall be printed pursuant to this contract unless a printing authorization number has been obtained and affixed as required by Tenn. Code Ann., §12-7-103 (d).
- E.8. **State Ownership of Work Products.** The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." The State shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.



- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.
 - b. The Contractor shall furnish such information and data as the State may request, including but not limited to 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.9. Competitive Procurements. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or contracted services. Such procurements shall be made on a competitive basis, where practical. The Contractor shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Contract. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification, approved by the Deputy Commissioner, Department of Finance and Administration, for such decision and non-competitive procurement.
- E.10. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.
- E.11. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below.
- a. this Contract document with any attachments or exhibits (excluding the items listed at subsections b. through e., below);
 - b. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
 - c. the State solicitation, as may be amended, requesting proposals in competition for this Contract;
 - d. any technical specifications provided to proposers during the procurement process to award this Contract;
 - e. the Contractor's proposal seeking this Contract.
- E.12. Workpapers Subject to Review. The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of



the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

- E.13. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.
- E.14. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.
- E.15. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subMembers shall certify and disclose accordingly.

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

- E.16. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
 - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;



- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

- E.17. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's proposal responding to RFP-31865-00350 (Attachment 6.2, Section B) and resulting in this Contract.

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

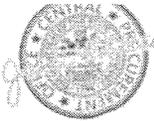
- E.18. Performance Bond. The Contractor shall provide to the State a performance bond guaranteeing full and faithful performance of all undertakings and obligations under this Contract and in the amount equal to One Million Dollars (\$1,000,000.00). The Contractor shall submit the bond no later than the day immediately preceding the Contract start date and in the manner and form prescribed by the State (at Attachment 4 hereto), and the bond shall be issued through a company licensed to issue such a bond in the state of Tennessee. The performance bond shall guarantee full and faithful performance of all undertakings and obligations under this Contract for:

- a. the Contract term and all extensions thereof, or
- b. the first, calendar year of the Contract (ending December 31st following the Contract start date) in the amount of One Million Dollars (\$1,000,000.00) and, thereafter, a new performance bond in the amount of One Million Dollars (\$1,000,000.00) covering each subsequent calendar year of the contract period. In which case, the Contractor shall provide such performance bonds to the State no later than each December 10th preceding the calendar year period covered beginning on January 1st of each year.

Failure to provide to the State the performance bond(s) as required herein prior to the Contract start date and, as applicable, no later than December 10th preceding each calendar year period covered beginning on January 1st of each year, shall result in contract termination. The Contractor understands that the stated amount of the performance bond required hereunder shall not be reduced during the contract period for any reason.

- E.19. 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.20. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on



the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

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

- E.21. 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.
- a. 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 Attachment 2.

- b. 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.
 - c. The State and the Contractor shall sign documents, including but not limited to business associate agreements, as required by HIPAA and HITECH and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA and HITECH.
- E.22. As a party to this Contract, the Contractor hereby acknowledges its designation as a covered entity and/or business associate under the HIPAA regulations and agrees to comply with all applicable HIPAA and HITECH (hereinafter "HIPAA/HITECH") regulations. In accordance with HIPAA/HITECH regulations, the Contractor shall, at a minimum:
- a. Comply with requirements of the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH), including, but not limited to, the transactions and code sets, privacy, security, and identifier regulations, by their designated compliance dates. Compliance includes meeting all required transaction formats and code sets with the specified data sharing agreements required under the regulations;
 - b. Transmit/receive from/to its providers, subcontractors, clearinghouses and TennCare all transactions and code sets required by the HIPAA/HITECH regulations in the appropriate standard formats, utilizing appropriate and adequate safeguards, as specified under the law and as directed by TennCare so long as TennCare direction does not conflict with the law;
 - c. Agree that if it is not in compliance with all applicable standards defined within the transactions and code sets, privacy, security and all subsequent HIPAA/HITECH



standards, that it will be in breach of this Contract and will then take all reasonable steps to cure the breach or end the violation as applicable. Since inability to meet the transactions and code sets requirements, as well as the privacy and security requirements can bring basic business practices between TennCare and the Contractor and between the Contractor and its providers and/or subcontractors to a halt, if for any reason the Contractor cannot meet the requirements of this Section, TennCare may terminate this Contract in accordance with the Business Associate Agreement ancillary to this Contract;

- d. Ensure that Protected Health Information (PHI) exchanged between the Contractor and TennCare is used only for the purposes of treatment, payment, or health care operations and health oversight and its related functions. All PHI not transmitted for these purposes or for purposes allowed under the federal HIPAA/HITECH regulations shall be de-identified to secure and protect the individual enrollee's PHI;
- e. Report to TennCare's Privacy Office immediately upon becoming aware of any use or disclosure of PHI in violation of this Contract by the Contractor, its officers, directors, employees, subcontractors or agents or by a third party to which the Contractor disclosed PHI;
- f. Specify in its agreements with any agent or subcontractor that will have access to PHI that such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Contractor pursuant to this Section;
- g. Make available to TennCare enrollees the right to amend their PHI in accordance with the federal HIPAA regulations. The Contractor shall also send information to enrollees educating them of their rights and necessary steps in this regard;
- h. Make an enrollee's PHI accessible to TennCare immediately upon request by TennCare;
- i. Make its internal policies and procedures, records and other documentation related to the use and disclosure of PHI available to the U.S. Secretary of Health and Human Services for the purposes of determining compliance with the HIPAA/HITECH regulations upon request;
- j. Create and adopt policies and procedures to periodically audit adherence to all HIPAA/HITECH regulations, and for which Contractor acknowledges and promises to perform, including but not limited to, the following obligations and actions:
- k. Agree to ensure that any agent, including a subcontractor, to whom it provides PHI that was created, received, maintained, or transmitted on behalf of TennCare agrees to use reasonable and appropriate safeguards to protect the PHI.
- l. If feasible, return or destroy all PHI, in whatever form or medium (including any electronic medium) and all copies of an any data or compilations derived from and allowing identification of any individual who is a subject of that PHI upon termination, cancellation, expiration or other conclusion of the Agreement, and in accordance with this Section of this Contract. The Contractor shall complete such return or destruction as promptly as possible, but not later than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement. The Contractor shall identify any PHI that cannot feasibly be returned or destroyed. Within such thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement, the Contractor shall: (1) certify on oath in writing that such return or destruction has been completed; (2) identify any PHI which cannot feasibly be returned or destroyed; and (3) certify that it will only use or disclose such PHI for those purposes that make its return or destruction infeasible;
- m. Implement all appropriate administrative, physical and technical safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this



Contract and, including, but not limited to, privacy, security and confidentiality requirements in 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164;

- n. Set up appropriate mechanisms to limit use or disclosure of PHI to the minimum necessary to accomplish the intended purpose of the use or disclosure;
- o. Create and implement policies and procedures to address present and future HIPAA/HITECH regulatory requirements as needed, including, but not limited to: use and disclosure of data; de-identification of data; minimum necessary access; accounting of disclosures; enrollee's right to amend, access, request restrictions; notice of privacy practices and right to file a complaint;
- p. Provide an appropriate level of training to its staff and employees regarding HIPAA/HITECH-related policies, procedures, enrollee rights and penalties prior to the HIPAA/HITECH implementation deadlines and at appropriate intervals thereafter;
- q. Track training of Contractor staff, employees and subcontractors and maintain signed acknowledgements by staff, employees and subcontractors of the Contractor's HIPAA/HITECH policies;
- r. Be allowed to use and receive information from TennCare where necessary for the management and administration of this Contract and to carry out business operations where permitted under the regulations;
- s. Be permitted to use and disclose PHI for the Contractor's own legal responsibilities;
- t. Adopt the appropriate procedures and access safeguards to restrict and regulate access to and use by Contractor employees and other persons performing work for the Contractor to have only minimum necessary access to PHI/PII within their organization;
- u. Continue to protect and secure PHI/PII relating to enrollees who are deceased;
- v. Be responsible for informing its enrollees of their privacy rights in the manner specified under the regulations;
- w. Make available PHI in accordance with 45 C.F.R. 164.524;
- x. Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. 164.526; and
- y. Obtain a third (3rd) party certification of their HIPAA transaction compliance within ninety (90) calendar days upon request by TennCare. .

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

- E.23. TennCare and the Contractor are "information holders" as defined in Tenn. Code Ann. § 47-8-2107. In the event of a breach of the security of Contractor's information system, as defined by Tenn. Code Ann. § 47-18-2107, the Contractor shall indemnify and hold TennCare harmless for expenses and/or damages related to the breach. Such obligations shall include, but not be limited to, mailing notifications to affected enrollees. Substitute notice to written notice, as defined by Tenn. Code Ann. § 47-18-2107(e)(2)and(3), shall only be permitted with TennCare's express written approval. The Contractor shall notify TennCare's Privacy Office immediately upon becoming aware of any security incident that would constitute a "breach of the security of the system" as defined in Tenn. Code Ann. § 47-18-2107.
- E.24. Notification of Breach and Notification of Provisional Breach - The Contractor shall notify



TennCare's Privacy Office immediately upon becoming aware of any incident, either confirmed or provisional, that represents or may represent unauthorized access, use or disclosure of encrypted or unencrypted computerized data that materially compromises the security, confidentiality, or integrity of enrollee PHI maintained or held by the Contractor, including any unauthorized acquisition of enrollee PHI by an employee or otherwise authorized user of the Contractor's system. This includes, but is not limited to, loss or suspected loss of remote computing or telework devices such as laptops, PDAs, Blackberrys or other Smartphones, USB drives, thumb drives, flash drives, CDs, and/or disks.

- a. The Contractor will use the Loss Worksheet located at http://www.tn.gov/tenncare/forms/phi_piiworksheet.pdf to quickly gather and organize information about the incident. The Contractor must provide TennCare with timely updates as any additional information about the loss of PHI/PII becomes available.
 - b. If the Contractor experiences a loss or breach of said data, TennCare will determine whether or not notice to individuals whose data has been lost or breached shall be provided and the Contractor shall bear any costs associated with the notice or any mitigation.
- E.25. Applicable Laws, Rules and Policies. Contractor agrees to comply with all applicable federal and State laws, rules, regulations and executive orders, including, but not limited to, Constitutional provisions regarding due process and equal protection of the laws.
- E.26. Limitation of Liability. The parties agree that the Contractor's liability under this Contract shall be limited to an amount equal to Two (2) times the Maximum Liability amount detailed in section C.1. and as may be amended, PROVIDED THAT in no event shall this section limit the liability of the Contractor for intentional torts, criminal acts, or fraudulent conduct.
- E.27. Employees Excluded from Medicare, Medicaid or CHIP. The Contractor does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly employ, in the performance of this Contract, employees who have been excluded or terminated from participation in the Medicare, Medicaid, and/or CHIP programs pursuant to Sections 1128 of the Social Security Act. The Contractor further attests that no individual or entity with a 55 or greater ownership interest has been excluded or terminated from participation in Medicare, Medicaid, and/or CHIP programs.
- E.28. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

- a. Reporting of Total Compensation of the Contractor's Executives.
 - (1) The Contractor shall report the names and total compensation of each of its five most highly compensated executives for the Contractor's preceding completed fiscal year, if in the Contractor's preceding fiscal year it received:
 - i. 80 percent or more of the Contractor's annual gross revenues from Federal procurement contracts and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and
 - ii. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and



- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

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

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

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

- b. The Contractor must report executive total compensation described above to the State by the end of the month during which this Contract is awarded.
- c. If this Contract is amended to extend its term, the Contractor must submit an executive total compensation report to the State by the end of the month in which the amendment to this Contract becomes effective.
- d. The Contractor will obtain a Data Universal Numbering System (DUNS) number and maintain its DUNS number for the term of this Contract. More information about obtaining a DUNS Number can be found at: <http://fedgov.dnb.com/webform/>

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

- E.29. Social Security Administration (SSA) Required Provisions for Data Security. The Contractor shall comply with limitations on use, treatment, and safeguarding of data under the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, related Office of Management and Budget guidelines, the Federal Information Security Management Act of 2002 (44 U.S.C. § 3541, *et seq.*), and related National Institute of Standards and Technology guidelines. In addition, the Contractor shall have in place administrative, physical, and technical safeguards for data.



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

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

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

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

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



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

E.30. 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 General Accounting Office, Department of Health and Human Services, CMS, or any other federal agency has or will benefit financially or materially from this procurement. This Contract may be terminated by TennCare 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, his agent, or employees and may result in termination of the Contract as provided in Section D.4.

IN WITNESS WHEREOF,

KEYSTONE PEER REVIEW ORGANIZATION, INC.:

 CONTRACTOR SIGNATURE	11/12/12 DATE
JOSEPH DOUGHER, PRESIDENT AND CHIEF EXECUTIVE OFFICER	



PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE:

Mark A. Emkes / CD

Mark A. Emkes, Commissioner

11/19/2012

DATE



ATTACHMENT 1

JOB DESCRIPTIONS

Chief Medical Officer/Medical Director

- Support the planning, direction, implementation, analysis, and reporting of medical management for Contractor and TennCare; develop, implement, and manage standards, benchmarks, trending, and profiling systems; oversee achievement of program targets.
- Participate in committees and project meetings of Contractor
- Support provider education and contracting arrangements; assist training of the provider networks
- Provide leadership and support design, development, and implementation of new products and services
- Steer management with input into performance and direction of Contractor
- Must possess the skills to Interface and coordinate with TennCare

Qualifications

- Must be Board Certified
- Must be primary care physician or specialist
- Minimum of five years experience as a medical director of a complex managed care organization required
- Experience in Medicaid and Medicare required
- Experience relating to certification and regulatory agencies required
- Must possess complex health care systems and delivery systems.
- Must have advanced knowledge of complex medical, technical, statistical and process components relating to utilization review, quality management, case management and health field business
- Must have the ability to perform detailed and disciplined work using standard methodologies in the analysis, design, development, evaluation, testing, documentation, implementation, in support of corporate health care goals
- Must have the knowledge to ready, comprehend, and follow technical reports and instructions containing concrete or abstract variables at an advanced level



ATTACHMENT 1 (Con't)

Executive Director

- Research policy and provide analysis of the procedural needs of the TennCare program and develop documents based on the needs of the TennCare Bureau
- Work with the Managed Care Organizations and provider network on the appropriate application and implementation of the policies and criteria approved by TennCare
- Direct, monitor and facilitate a system for the development, documentation, approval, and distribution of Contractor policies
- Direct and oversee training/education of Contractor and TennCare staff in policy changes and implementation to those changes
- Direct the work efforts of staff through managers/supervisors
- Assist TennCare in the management of process changes relating to medical service appeals

Qualifications

- Must possess advanced knowledge of complex medical, technical, statistical and process components relating to utilization review, quality management, case management and health field/business requirements and interrelations
- Must have the ability to perform detailed and disciplined work using standard methodologies in analysis, design, development, evaluation, testing, documentation, implementation, and support of corporate health care goals
- Must possess advanced and meticulous organizational leadership and coordination abilities, the ability to read, comprehend, and follow technical reports and instructions containing concrete or abstract variables at an advanced level plus the ability to write correspondence, proposals, review, audit analysis and technical documentation, and the ability to communicate information effectively in small or large groups
- Must possess advanced analytical skills to define problems, collect data, establish fact, draw valid conclusions, and design, implement, and manage appropriate actions, and be able to successfully utilize Microsoft Office and other appropriate software tools
- Must possess extensive knowledge of medical delivery systems and managed care systems with demonstrated success in financial management and business development
- Must have experience relating to certification and regulatory agencies
- Must have experience in Medicaid and Medicare business
- Must be experienced and proficient in internet-based medical research



ATTACHMENT 1 (Con't)

Information Systems Manager

- Coordinate systems
- Interface with management and staff to coordinate assigned projects
- Interface with OIR and TennCare designated units
- Oversee the development and implementation of automated central medical appeals registry system
- Ensure that proper systems testing of software "bugs" and approved change requests are performed prior to new process or change implementation

Qualifications

The Information Systems Manager must:

- Possess special technical knowledge of the techniques and procedures of software and network support for multiple users.
- Understand installation, configuration and troubleshooting processes for software, hardware, networking and accessory equipment.
- Must have a minimum of three to five years work experience in an information systems position.
- Be proficient in the use of relational database systems
- Be proficient in the use of microprocessor based systems, specifically IBM/PC or IBM clone PCs and LANS.



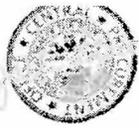
ATTACHMENT 2 LIQUIDATED DAMAGES

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

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

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

	PROGRAM ISSUES	DAMAGE
1.	Failure to provide documentation verifying that all medical staff employed by contractor or sub-contractor are licensed to practice in their specialty within the United States as specified in Section A.5	The damage that may be assessed may be One Thousand Dollars (\$1000) per occurrence.
2.	Failure to provide expert medical witnesses for appeal hearings, either Contractor staff or from the Contractor's network of physician specialists as specified in Section A.4.c.	The damage that may be assessed may be One Thousand Dollars (\$1000) per occurrence.
3.	Failure to provide timely reports as specified in Sections A.30; A.47.	The damage that may be assessed may be Five Hundred Dollars (\$500) per week per deficiency, until reports are submitted and acceptable to TennCare.
4.	Failure to properly expedite a medical necessity review of an appeal within four (4) calendar days of receipt (if the appeal meets all criteria for an expedited appeal) or eleven (11) calendar days for standard appeals as specified in Section A.14.	The damage that may be assessed may be One Thousand Dollars (\$1000) per occurrence.



5.	Failure to provide training for Contractor staff (as well as TennCare staff when requested), or to attend mandatory TennCare training, as specified in Sections A.31; A.8; A.46.	The damage that may be assessed may be One Thousand Dollars (\$1000) per occurrence.
6.	Failure to comply with HIPAA and HITECH Rules resulting in an unauthorized disclosure of PHI as described in Sections E.21; E.22.	The damage that may be assessed shall be up to Five Thousand Dollars (\$5,000) per incident.
7.	Failure to have adequate Privacy and Security Safeguards and Policies resulting in a security incident as described in Sections E.21; E.22; E.23; E.24; E.33.	The damage that may be assessed shall be up to Two Thousand Dollars (\$2,000) per incident.
8.	Failure to obtain a third (3rd) party certification of their HIPAA transaction compliance within ninety (90) calendar days upon request by TennCare as described in Section E.22.	The damage that may be assessed shall be up to Two Thousand Dollars (\$2,000) per incident.
9.	Failure to report a privacy breach or security incident or provisional privacy breach or security incident immediately upon becoming aware as described in Sections E.23; E.24; E.33.	The damage that may be assessed shall be up to Five Thousand Dollars (\$5,000) per incident.
10.	Failure to perform any service deliverables or meet any condition as described in Section A not specifically addressed in items 1 –9 above.	The damage that may be assessed may be Five Hundred Dollars (\$500) per week per deficiency.



ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	34597
CONTRACTOR LEGAL ENTITY NAME:	Keystone Peer Review Organization, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	23-2348176

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.



CONTRACTOR SIGNATURE

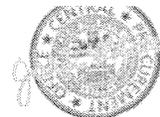
NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

Joseph A. Dougher, Chief Executive Officer

PRINTED NAME AND TITLE OF SIGNATORY

November 11, 2012

DATE OF ATTESTATION



ATTACHMENT 4

PERFORMANCE BOND

The Surety Company issuing bond shall be licensed to transact business in the State of Tennessee by the Tennessee Department of Commerce and Insurance. Bonds shall be certified and current Power-of-Attorney for the Surety's Attorney-in-Fact attached.

KNOW ALL BY THESE PRESENTS:

That we,

(Name of Principal)

(Address of Principal)
as Principal, hereinafter called the Principal, and

(Name of Surety)

(Address of Surety)
as Surety, hereinafter call the Surety, do hereby acknowledge ourselves indebted and securely bound and held unto the State of Tennessee as Obligee, hereinafter called the Obligee, and in the penal sum of

One Million Dollars (\$1,000,000.00) good and lawful money of the United States of America, for the use and benefit of those entitled thereto, for the payment of which, well and truly to be made, we bind ourselves, our heirs, our administrators, executors, successors, and assigns, jointly and severally, firmly by these presents.

BUT THE CONDITION OF THE FOREGOING OBLIGATION OR BOND IS THIS:

WHEREAS, the Obligee has engaged the Principal for a sum not to exceed the Contract Maximum Liability of _____ to complete Work detailed in the Scope of Services detailed in the State of Tennessee Request for Proposals bearing the RFP Number: 31865-00350, a copy of which said Request for Proposals and the resulting Contract are by reference hereby made a part hereof, as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, if the Principal shall fully and faithfully perform all undertakings and obligations under the Contract hereinbefore referred to and shall fully indemnify and hold harmless the Obligee from all costs and damage whatsoever which it may suffer by reason of any failure on the part of the Principal to do so, and shall fully reimburse and repay the Obligee any and all outlay and expense which it may incur in making good any such default, and shall fully pay for all of the labor, material, and Work used by the Principal and any immediate or remote subcontractor or furnisher of material under the Principal in the performance of said Contract, in lawful money of the United States of America, as the same shall become due, then this obligation or bond shall be null and void, otherwise to remain in full force and effect. It is hereby stipulated and agreed that no change, extension of time, alteration, or addition to the terms of the Contract or the Work to be performed there under or the specifications accompanying the same shall in any wise affect the obligation under this bond, and notice is hereby waived of any such change, extension of time, alteration, or addition to the terms of the Contract or the Work or the specifications.

IN WITNESS WHEREOF the Principal has hereunto affixed its signature and Surety has hereunto caused to be affixed its corporate signature and seal, by its duly authorized officers, on this

_____ day of _____,

WITNESS:



(Name of Principal)

(Name of Surety)

(Authorized Signature of Principal)

(Signature of Attorney-in-Fact)

(Name of Signatory)

(Name of Attorney-in-Fact)

(Title of Signatory)

(Tennessee License Number of Surety)