

The Procurement Division of Knox County, Tennessee will receive sealed proposals for the provision of **Workers' Compensation Bill Review/Utilization Review Services** as requested by Knox County. Proposals must be received by **2:00 p.m. on November 14, 2024**. Late proposals will neither be considered nor returned.

DELIVER PROPOSALS TO:

**Proposal Number 3601
Knox County Procurement Division
Suite 100
1000 North Central Street
Knoxville, Tennessee 37917**

The Proposal Envelope must show the Company Name, Proposal Number, Proposal Name & Proposal Closing Date.

SECTION I GENERAL TERMS AND CONDITIONS

- 1.1 ADDITIONAL INFORMATION:** Knox County wants requests for additional information routed to Jay Garrison, CPPPO, CPPB, Procurement Coordinator, at 865.215.5767 or emailed to jay.garrison@knoxcounty.org. If you have not heard from the Buyer in a reasonable amount of time, please call for further assistance. Information about the Knox County Procurement Division and current bids may be obtained on the internet at www.knoxcounty.org/procurement.
- 1.2 ACCEPTANCE:** Proposers shall hold all pricing and percentages proposed firm and subject to acceptance by Knox County for a period of ninety (90) business days from the date of the proposal closing, unless otherwise indicated in their proposal.
- 1.3 ALTERNATIVE PROPOSALS:** Knox County will not accept alternate proposals (those not equal to specifications) unless authorized by the Request for Proposal (RFP).
- 1.4 AUDIT HOTLINE:** Knox County has established an Audit Hotline to report potential fraud and waste. To report potential fraud, waste or abuse, you can file a report online by accessing <http://www.knoxcounty.org/hotline/index.php>. **Vendors are hereby cautioned that this Audit Hotline does not replace the Award Protest Procedures found in Section VI, Item M of the Knox County Procurement Regulations.**
- 1.5 AWARD:** Award will be made to the most responsive, responsible proposer(s) meeting specifications, and which presents the product and/or service that is in the best interest of Knox County. Knox County also reserves the right to not award this proposal. Award will be made in accordance with the evaluation criteria specified herein.
- 1.6 BUSINESS OUTREACH PROGRAM:** Knox County has established a Business Outreach Program which has the responsibility of increasing opportunity for small, minority and women owned businesses. This is being accomplished through community education programs, policy edification, active recruitment of interested businesses and process re-engineering. Knox County is committed to ensuring full and equitable participation for all disadvantaged businesses. Knox County welcomes submittals from those disadvantaged businesses that have an interest in providing goods and/or services listed herein. In addition, Knox County strongly encourages the inclusion of disadvantaged businesses by non-disadvantaged Contractors who may wish to partner or subcontract portions of this agreement in order to accomplish the successful delivery of goods and/or services.
- If you are a disadvantaged business and would like additional information about our Business Outreach Program, please contact:
- Diane Woods, CPPB
Administrator of Business Outreach
Telephone: 865.215.5760
Fax: 865.215.5778
Email: diane.woods@knoxcounty.org
- 1.7 CONFLICT OF INTEREST:** Proposers must have read and complied with the "Non-Conflict of Interest" statement provided in the vendor registration process prior to the closing of this solicitation.

- 1.8 **COPIES:** Knox County requires that proposals submitted by hand be submitted with one (1) marked original and one (1) exact copy. Proposers must submit with their written response an exact electronic version of their proposal in electronic format. **Knox County requests this electronic copy version be in one (1) complete file.**
- 1.9 **DECLARATIVE STATEMENT:** Any statement or words (i.e.: must, shall, will, etc.) are declarative statements and proposers **must** comply with the condition. Failure to comply with any such condition will result in their proposal being non-responsive and disqualified.
- 1.10 **ELECTRONIC TRANSMISSION OF PROPOSALS:** Due to the nature of this proposal, the Knox County Procurement Division will **NOT** accept electronically transmitted proposals through the County's On-Line Procurement System. Email and facsimile submission are strictly prohibited.
- 1.11 **HOW TO DO BUSINESS:** Knox County utilizes a web-based Procurement software system, "KnoxBuys." The system provides our clients (vendors, county departments and the citizens of Knox County) with a more enhanced and end-user friendly means of accessing our services. The system allows for on-line vendor registration and maintenance, electronic receipt of purchase orders, on-line retrieval and submittal of quotes, bids and proposals for our vendor-clients and on-line requisitioning and receiving for our county departments. In order for the County to maximize its investment and minimize the cost associated with office operations, we need your help. When doing business with Knox County we are urging you to please go to our website at www.knoxcounty.org/procurement, register as a vendor in our on-line Procurement system, "KnoxBuys," if you have not done so and whenever possible to conduct your business with the County through this site. If you have any questions, please contact the Procurement Division Representative listed in Section 1.1 of this document.
- 1.12 **INCURRED COSTS:** Knox County will not be responsible for any costs incurred by the proposer in the preparation of their proposal.
- 1.13 **MULTIPLE PROPOSALS:** Knox County will consider multiple proposals that meet specifications.
- 1.14 **NON-COLLUSION:** Proposers, by submitting a signed proposal, certify that the accompanying proposal is not the result of, or affected by, any unlawful act of collusion with any other person or company engaged in the same line of business or commerce, or any other fraudulent act punishable under Tennessee or United States law.
- 1.15 **PAYMENT:** Knox County utilizes two (2) methods of placing orders for products. The first is the use of Purchase Orders. These Purchase Orders will be issued from the Knox County Procurement Division via the method selected by the Vendor during registration. The Purchase Order will detail the quantity, specific item(s) and the contracted price for each item.
- The second method is the use of the Knox County Credit Card (VISA). Orders placed on the credit card will list the same information as the Purchase Order. Vendors will be given the card information and approval to process the transaction for the requesting department. Vendors must indicate in their bid response if the Vendor will accept the Knox County Credit Card (VISA) as form of payment. Proposers are prohibited to charge Knox County any type of merchant fee from their financial institution to accept this type of payment.
- 1.16 **POSSESSION OF WEAPONS:** All vendors and their employees and their agents are prohibited from possessing any weapons on Knox County property without prior written consent from the County. In the case of a vendor whose Contract requires possession of firearms or other weapons to successfully complete their Contract, vendor must provide personnel who are bonded to bear said weaponry.
- 1.17 **PROCESSING TIME FOR PAYMENT:** Vendors are advised that a minimum of thirty (30) days is required to process invoices for payment.
- 1.18 **PROOF OF FINANCIAL AND BUSINESS CAPABILITY:** Proposers must, upon request, furnish satisfactory evidence of their ability to fulfill all obligations of the contract in accordance with the terms and conditions of these specifications. Knox County will make the final determination as to the proposer's ability.
- 1.19 **PROPOSAL DELIVERY:** Knox County requires proposers, when hand delivering proposals, to time and date stamp the envelope before depositing it in the bid box. Knox County will not be responsible for any lost or misdirected mail sent by common carrier, nor will Knox County be responsible for proposals delivered to addresses other than the delivery address specified at the top of this solicitation. The time clock in the Procurement Division shall serve as the official record of time.

Solicitations must be in a sealed envelope/box prior to entering the Procurement Division office. Procurement Division personnel are not allowed to see the submittal nor assist in placing documents in an envelope/box. Additionally, the Procurement Division is not responsible for providing materials (e.g. envelopes, boxes, tape) for submittals.

- 1.20 **RECYCLING:** Knox County, in its continuing efforts to lessen the amount of landfill waste and to further recycling efforts, requests that proposals being submitted on paper shall:
- 1.20.1 Be submitted on recycled paper
 - 1.20.2 Not include pages of unnecessary advertising
- 1.21 **RESTRICTIVE OR AMBIGUOUS SPECIFICATIONS:** It is the responsibility of the prospective proposer to review the entire Request for Proposal packet and to notify the Procurement Division if the specifications are formulated in a manner that would unnecessarily restrict competition. Any such protest or question regarding the specifications or proposal procedures must be received in the Procurement Division by **October 29, 2024 @ 4:30 p.m.** local time. These requirements also apply to specifications that are ambiguous.
- 1.22 **SIGNING OF PROPOSALS:** In order to be considered, all proposals must be signed. Please sign the original in blue ink. By signing the proposal document, the proposer acknowledges and accepts the term and conditions stated in the document.
- 1.23 **TAXES:** Knox County purchases are not subject to taxation. Tax exemption certificates will be provided upon request.
- 1.24 **TITLE VI OF THE CIVIL RIGHTS ACT:** "Nondiscrimination in Federally Assisted Programs"- "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. section 2000 et seq. It is the policy of Knox County Government that all its services and activities be administered in conformance with the requirements of Title VI.
- 1.25 **UNFORSEEN CIRCUMSTANCES:** During periods of closure due to unforeseen circumstances in Knox County or closures at the direction of the Knox County Mayor, the Procurement Division will enact the following procedures in regard to solicitations and closures:
- If the Mayor closes the Administrative offices prior to the time set for solicitation opening of any business day, all solicitations due that same day will be moved to the next operational business day.
 - Other unforeseen circumstances shall be at the sole discretion of the Procurement Director.
 - Knox County shall not be liable for any commercial carrier's decision regarding deliveries during any unforeseen circumstances.
- 1.26 **USE OF PROPOSAL FORMS:** Vendors are to complete the proposal forms contained in the proposal package. Failure to complete the proposal forms may result in proposal rejection.
- 1.27 **VENDOR DEFAULT:** Knox County reserves the right, in case of vendor default, to procure the goods or services from other sources and hold the defaulting vendor responsible for any excess costs occasioned thereby. Should vendor default be due to a failure to perform or because of a request for a price increase, Knox County reserves the right to remove the vendor from the County's bidders list for twenty-four (24) months.
- 1.28 **VENDOR REGISTRATION:** Prior to the closing of this proposal, **ALL PROPOSERS** must be registered with the Procurement Division. Please register on-line at our website at www.knoxcounty.org/procurement and click on "Online Vendor Registration." Vendors must be registered with the Procurement Division *prior* to submitting their proposal. Knox County shall not be responsible for technical difficulties experienced by vendors trying to register electronically less than twenty-four (24) hours prior to the proposal closing time.
- 1.29 **WAIVING OF INFORMALITIES:** Knox County reserves the right to waive minor informalities or technicalities when it is in the best interest of Knox County.

SECTION II OBLIGATIONS, RIGHTS AND REMEDIES

These terms and conditions shall be part of the Contract. Knox County reserves the right to negotiate other terms and conditions it deems appropriate and necessary under the circumstances to protect the public's trust.

- 2.1 ALTERATIONS OR AMENDMENTS:** No alterations, amendments, changes, modifications or additions to this Contract shall be binding on Knox County without the prior written approval of the County.
- 2.2 APPROPRIATION:** In the event no funds are appropriated by Knox County for the goods or services in any fiscal year or insufficient funds exist to purchase the goods or services, then the Contract shall expire upon the expenditure of previously appropriated funds or the end of the current fiscal year, whichever occurs first, with no further obligations owed to or by either party.
- 2.3 ASSIGNMENT:** Contractor shall not assign or sub-contract this agreement, its obligations or rights hereunder to any party, company, partnership, incorporation or person without the prior written specific consent of Knox County.
- 2.4 BOOKS AND RECORDS:** Contractor shall maintain all books, documents, accounting records and other evidence pertaining to the goods and services provided under this Contract and make such materials available at its offices at all reasonable times during the Contract period and for five (5) years from the date of the final payment under this agreement for inspection by County or by any other governmental entity or agency participating in the funding of this agreement, or any authorized agents thereof; copies of said records to be furnished, if requested.
- Such records shall not include those books, documents and accounting records that represent the Contractor's costs of manufacturing, acquiring or delivering the products and services governed by this agreement.
- 2.5 CHILD LABOR:** Contractor agrees that no products or services will be provided or performed under this Contract that have been manufactured or assembled by child labor.
- 2.6 COMPLIANCE WITH ALL LAWS:** Contractor is assumed to be familiar with and agrees to observe and comply with all federal, state, and local laws, statutes, ordinances, and regulations in any manner affecting the provision of goods and/or services, and all instructions and prohibitive orders issued regarding this work and shall obtain all necessary permits.
- 2.7 DEFAULT:** If Contractor fails to perform or comply with any provision of this Contract or the terms or conditions of any documents referenced and made a part hereof, Knox County may terminate this Contract, in whole or in part, and may consider such failure or noncompliance a breach of Contract. Knox County expressly retains all its rights and remedies provided by law in case of such breach, and no action by Knox County shall constitute a waiver of any such rights or remedies. In the event of termination for default, Knox County reserves the right to purchase its requirements elsewhere, with or without competitive bidding.
- 2.8 GOVERNING LAW; VENUE:** This agreement shall be exclusively construed, governed, and controlled by the Laws of the State of Tennessee without regard to principles of law, including conflicts of law, of any other jurisdiction, territory, country, and/or province. Any dispute arising out of or relating to this agreement shall exclusively be brought in the Chancery Court or the Circuit Court of Knox County, Tennessee. Each party consents to personal jurisdiction thereto and waives any defenses based on personal jurisdiction, venue and inconvenient forum.
- 2.9 INCORPORATION:** All specifications, drawings, technical information, Request for Proposal, Proposal, Award and similar items referred to or attached or which are the basis for this Contract are deemed incorporated by reference as if set out fully herein.
- 2.10 INDEMNIFICATION/HOLD HARMLESS:** Contractor shall indemnify, defend, save and hold harmless Knox County, its officers, agents and employees from all suits, claims, actions or damages of any nature brought because of, arising out of, or due to breach of the agreement by Contractor, its subcontractors, suppliers, agents, or employees or due to any negligent act or occurrence or any omission or commission of Contractor, its subcontractors, suppliers, agents or employees.
- 2.11 INDEPENDENT CONTRACTOR:** Contractor shall acknowledge that it and its employees serve as independent contractors and that Knox County shall not be responsible for any payment, insurance or incurred liability.
- 2.12 INSPECTION AND ACCEPTANCE:** Warranty periods shall not commence until Knox County inspects and formally accepts the goods and/or services. The terms, conditions and timing of acceptance shall be determined by Knox County. Knox County reserves the right to reject any or all items or services not in conformance with applicable specifications, and Contractor assumes the costs associated with such nonconformance. Acceptance of goods or services does not constitute a waiver of latent or hidden defects or defects not readily detectable by a reasonable person under the circumstances.

- 2.13 IRAN DIVESTMENT ACT:** By submission of this proposal, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each proposer is not on the list created pursuant to Tennessee Code Annotated § 12-12-106.
- 2.14 LIMITATIONS OF LIABILITY:** In no event shall Knox County be liable for any indirect, incidental, consequential, special or exemplary damages or lost profits, even if Knox County has been advised of the possibility of such damages.
- 2.15 NO BOYCOTT OF ISRAEL:** Pursuant to Tennessee Code Annotated Title 12, Chapter 4, Part 1, by submission of a response to this solicitation, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint response each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each proposer is not currently engaged in, and will not for the duration of the contract engage in, a boycott of Israel.
- 2.16 NON-DISCRIMINATION AND NON-CONFLICT STATEMENT:** Contractor agrees that no person on the grounds of handicap, age, race, color, religion, sex, national origin, or any individual trait or characteristic found to be an illegal consideration shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this agreement or in the employment practices of Vendor. Contractor shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination. Contractor covenants that it complies with the Fair Wage and Hour Laws, the National Labor Relations Act, and other federal and state employment laws as applicable. Contractor covenants that it does not engage in any illegal employment practices.
- Contractor covenants that it has no public or private interest and shall not acquire directly or indirectly any interest, which would conflict in any manner with the provision of its goods or performance of its services. Contractor warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of Knox County as wages, compensation, or gifts in exchange for acting as officer, agent, employee, sub-contractor or consultant to Contractor in connection with any goods provided or work contemplated or performed relative to the agreement.
- 2.17 ORDER OF PRECEDENCE:** In the event of inconsistent or conflicting provision of this Contract and referenced documents, the following descending order of precedence shall prevail: (1) Written Contract, (2) Request for Proposal, (3) Contractor's Response, (4) Award, (5) Special Terms and Conditions, (6) General Terms and Conditions, (7) Specifications, (8) Drawings.
- 2.18 REMEDIES:** Knox County shall have all rights and remedies afforded under the U.C.C. and Tennessee law in contract and in tort, including but not limited to, rejection of goods, rescission, right offset-off, refund, incidental, consequential and compensatory damages and reasonable attorney's fees.
- 2.19 RIGHT TO INSPECT:** Knox County reserves the right to make periodic inspections of the manner and means the service is performed or the goods are supplied.
- 2.20 SEVERABILITY:** If any provision of this Contract is declared illegal, void or unenforceable, the remaining provisions shall not be affected but shall remain in force and in effect.
- 2.21 TAX COMPLIANCE:** Pursuant to Resolution R-07-1-903 passed by the Commission of Knox County, Tennessee, Contractor hereby acknowledges, by submission of its proposal and signature that it is current in its respective Federal, State, County, and City taxes of whatever kind or nature and is not delinquent in any way. Delinquent status must be disclosed or risk debarment by the Knox County Procurement Division.
- 2.22 TERMINATION:** Notwithstanding any other provision of this Contract to the contrary, County may terminate this Contract with or without cause, upon written notice of not less than thirty (30) business days. Upon termination, County will pay for services satisfactorily completed but not yet invoiced. Contractor shall not perform additional work without the expressed permission of County.

In the event Contractor intends to interrupt or discontinue service under this Contract, Contractor agrees to give Knox County at least one hundred twenty (120) business day advance written notice of said interruption or discontinuance of service prior to interrupting or discontinuing same. Any interruption or discontinuance of service without said advance notice shall constitute a material breach of this Contract.

2.23 **WARRANTY:** Contractor warrants to Knox County that all items delivered and all services rendered shall conform to the specifications, drawings, proposal and/or other descriptions furnished and/or incorporated by reference, and will be fit for the particular purpose purchased, of merchantable quality, good workmanship, and free from defects. Contractor extends to Knox County all warranties allowed under the U.C.C. Contractor shall provide copies of warranties to the County upon request. Return of merchandise not meeting warranties shall be at contractor's expense.

SECTION III SPECIAL TERMS AND CONDITIONS

3.1 **INTENT:** Knox County is seeking a qualified provider of Workers' Compensation Medical Bill Review and Utilization Review Services for the County's self-insured workers' compensation program. Award will be based on Best Value. Best Value means more than low cost. It includes the initial cost, service quality and other factors detailed herein.

3.2 **ADDITION OR DELETION OF SERVICES:** Knox County reserves the right to add or delete services as the need arises. If items are to be added, Knox County and the Contractor will arrive at a mutually agreed price.

3.3 **AWARD STATUS:** Knox County intends to issue an initial three (3) year award. Upon the mutual agreement of each Contractor and Knox County, the award may be extended for one (1) additional two (2) year term for a possible total of five (5) years. Knox County reserves the right to purchase these items from other sources if the need arises.

3.4 **CHANGES AFTER AWARD:** It is possible that after award, Knox County might change its needs or requirements. Knox County reserves the right to make such changes after consultation with the vendor. Should additional costs arise, Knox County reserves the right to consider accepting these charges provided the vendor can document the increased costs. Knox County also reserves the right to accept proposed service changes from the vendor if they will lower the cost to Knox County and/or provide improved service.

3.5 **COMPLIANCE WITH ALL APPLICABLE REGULATIONS:** Successful proposer agrees and covenants that the company, its agents and employees will comply with all City, County, State and Federal codes, laws, ordinances, rules and regulations applicable to the business to be conducted under this Contract. If the vendor performs any work knowing it to be contrary to such codes, laws, ordinances, rules and regulations, the vendor shall bear all costs arising from them.

3.6 **CONTACT PERSONNEL:** It shall be essential to the success of this Contract to develop a good working relationship with the Contractor. It is imperative that the Knox County account be handled efficiently and professionally. Knox County should be assigned no more than two (2) Contractor contacts to handle billing inquiries and service-related issues. In the event one (1) or both contacts leave the Knox County account, the Contractor shall formally introduce the new contacts to County personnel. These contacts must be knowledgeable of the Knox County account to avoid any interruption of service.

3.7 **CONTRACT EXECUTION:** The award of this proposal may result in a Contract between Knox County and the successful proposer(s). The Knox County Procurement Division will draft this Contract and no vendor forms (i.e. Terms and Conditions, Service Agreements, or other standard Company forms, etc.) will be accepted as Contract attachments. The submission of such forms may cause the disqualification of the vendor's proposal.

3.8 **EVALUATION CRITERIA:** This proposal will be evaluated using the following criteria:

3.8.1 Qualifications (35 points)

- a. Experience with Bill Review and Utilization Review Services to the workers' compensation industry
- b. Experience performing Bill Review and Utilization Review Services to self-insured and/or self-administered public agencies for workers' compensation.
- c. Quality of recently performed services including scope and outcomes.

3.8.2. Approach and Methodology (25 points)

- a. Understanding of the services to be provided, the tasks to be performed and the deliverables and outcomes desired by the County.
- b. Clarity of staff roles and responsibilities.
- c. Ability to effectively implement systems, manage workflow, analyze and problem solve issues, communicate on multiple levels including interpersonal, oral, and written; and with people of diverse backgrounds, abilities and expectations.
- d. Ability to demonstrate time and resource commitment to perform the necessary work and provide the necessary services efficiently, effectively and within the guidelines required by the State of Tennessee

3.8.3 Cost (40 points)

- a. Cost on a per bill basis for bill review.
- b. Cost on percentage of incremental savings to a PPO or other amount beneath Tennessee Medical Fee Schedule.
- c. Cost for Utilization Review on a per review basis based upon type of review specifically: initial review and peer review.

Knox County may select an Evaluation Committee for this solicitation to thoroughly review and score all submitted responsive and responsible proposals. Each evaluator will have the ability to award up to 100 points, based on the Evaluation Criteria, per submission.

3.9 EVALUATION REVIEW: Knox County reserves the right to use all pertinent information (including that learned from sources other than disclosed in the RFP process) that might affect the County's judgment as to the appropriateness of an award to a qualified vendor. This information may be appended to the proposal evaluation process results. Information on a service provider from reliable sources, and not within the service provider's proposal, may also be noted and made part of the evaluation file. Knox County shall have sole responsibility for determining a reliable source. Knox County reserves the right to conduct written and/or oral discussions/interviews after the proposal closing. The purpose of such discussions/interviews is to provide clarification and/or additional information to make an award that is in the best interest of Knox County.

3.10 EXCEPTIONS TO SPECIFICATIONS: Vendors taking exception to any part or section of these specifications shall indicate such exceptions in their submittal. A failure to indicate any exception(s) shall be interpreted as the Vendor's intent to fully comply with the specifications as written. Conditional or qualified offers are subject to rejection in whole or in part. Any exceptions shall be included in Section V, Tab VIII of the submittal. **Do not strike through or in any other way alter the RFP. Exceptions listed within other sections of the submittal shall not be reviewed or considered.**

3.11 GRATUITIES AND KICKBACKS: It shall be a breach of ethical standards for any person or company to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim, or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore.

It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this Contract, a breach of ethical standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under Knox County contracts.

3.12 HIPAA, BUSINESS ASSOCIATE AGREEMENT, AND RECORD RETENTION (AS APPLICABLE): Based on the determination of Knox County Government, the functions to be performed in accordance with this Contract may constitute Business Associate functions as defined by HIPAA. The Contractor shall execute a business associate agreement (BAA) as required by Knox County government per HIPAA regulations in 45 C.F.R. §164.504. If a BAA is applicable, Knox County's BAA must be executed and incorporated into any contract awarded in conjunction with this solicitation.

As stated in section 2.6 of this Proposal, Contractor is assumed to be familiar with and agrees to observe and comply with all Federal, State, and Local laws, statutes, ordinances, and regulations in any manner affecting the provision of goods and/or services; including Tennessee Code Annotated, as amended, and Records Disposition Authorization specific to protected health information retention.

3.13 INTERPRETATION: No oral interpretation will be made to any proposer regarding the meaning of specifications. All questions are to be submitted in writing or electronically (email) and will be answered in the form of an amendment to the solicitation by the Knox County Procurement Division.

3.14 NEGOTIATIONS: Knox County may select a successful proposer on the basis of initial offers received without discussions. Therefore, each proposal shall contain the proposer's best terms from a service and cost standpoint. Knox County reserves the right to enter into Contract negotiations with the highest-rated proposer. If Knox County and the selected proposer cannot negotiate a successful agreement, Knox County may terminate said negotiations

and begin negotiations with the next highest-rated proposer. This process will continue until a Contract has been executed or all proposals have been rejected. No proposer shall have any rights against Knox County arising from such negotiations.

- 3.15 NEWS RELEASES BY VENDORS:** As a matter of policy, Knox County does not endorse the services of a Contractor. A Contractor will not make news releases concerning any resultant contract from this solicitation without the prior written approval of Knox County.
- 3.16 NO CONTACT POLICY:** After the date and time that the vendor receives this solicitation, any contact initiated by any proposer with any Knox County representative, other than the Procurement Division representative listed herein, concerning this Request for Proposal is strictly prohibited. Any such unauthorized contact may cause the disqualification of the proposer from this procurement transaction.
- 3.17 OFFER WITHDRAWAL:** No proposal can be withdrawn after it is filed unless the offeror makes a request in writing to the Knox County Procurement Division **prior** to the time set for the Request for Proposal or unless the County fails to accept within ninety (90) business days after the date fixed for the closing of the Request for Proposal.
- 3.18 OPEN PROPOSAL INTENDED:** It is the intent and purpose of Knox County that this Request for Proposals promotes competitive solicitations. It shall be the vendor's responsibility to advise the Procurement Division, if any language, requirements, et cetera or any combination thereof, inadvertently restricts or limits this Request for Proposals. Such notification must be submitted in writing and must be received by the Procurement Division no later than **October 29, 2024 @ 4:30 p.m.** local time.
- 3.19 OPEN RECORDS ACT:** Knox County is subject to the Tennessee Open Records Act 10-7-503 et seq. Proposers are cautioned that all documents submitted on behalf of this Request for Proposal shall be open to the public for viewing and inspection, and Knox County will comply with all legitimate requests.
- 3.20 ORAL PRESENTATION/INTERVIEW:** Knox County may require proposers to give oral presentations/interviews in support of their proposal or to exhibit or otherwise demonstrate the information contained therein. Due to the conditions surrounding the COVID-19 pandemic, these presentations/interviews may be conducted virtually through video conferencing. A schedule of presentations/interviews will be determined after the closing of the RFP. At that time, it will be determined whether the presentations/interviews will be in-person or virtual.
- Knox County reserves the right to request oral presentations and/or interviews during the initial evaluation phase. The County also reserves the right to complete the initial evaluation phase and then request oral presentations and/or interviews from all proposers or the highest rated proposers. In this case, the evaluations may be revised based on additional information received.
- 3.21 OWNERSHIP OF DOCUMENTS:** Any reports, specifications, drawings, blueprints, negatives, electronic files or other documents prepared by the successful proposer shall be the exclusive property of Knox County, and all such materials shall be returned to Knox County upon completion, termination, or cancellation of this Contract within a reasonable timeframe as determined by Knox County.
- 3.22 PROPOSAL EVALUATION:** In evaluating the proposals, Knox County reserves the right to use any or all of the ideas from the proposals submitted without limitation and to accept any part or all, of the successful proposal in selecting an operation which is judged to be in the best interest of the Knox County. All material submitted becomes the property of Knox County.
- 3.23 PROPOSAL FORMAT:** This solicitation is in the Request for Proposal format. At the specified date and time, each Proposer's name will be publicly read aloud. No further information will be given at that time. Evaluation of the proposals will proceed as expeditiously as possible and successful, as well as unsuccessful, notification will be given.
- 3.24 REFERENCES:** Proposers must submit a list of three (3) references with which you have performed this type of service within the past three (3) years. Show the name of the agency or institution, person to contact, their current telephone number, current fax number, current email address and the nature and size of the contract. Do not list any Knox County Department as a reference.
- 3.25 REJECTION OF PROPOSALS:** Knox County reserves the right to reject any and all proposals received as a result of this request and to waive any informality, technical, defect or clerical error in any proposal, as the interests of the County may require. Non-acceptance of any proposal will be devoid of any criticism of the proposal and of any implication that the proposal is deficient in any manner.

Non-acceptance of any proposal shall be construed as meaning simply that the County does not deem the proposal to be acceptable or that another proposal was deemed to be more advantageous to Knox County for the particular services proposed.

3.26 RELEASE OF RECORDS: To the extent permitted by law, all documents pertaining to this Request for Proposal shall be kept confidential until the proposal evaluation is complete and a notice of Intent to Award is sent to the successful proposer. No information about any submission of proposals shall be released until the process is complete, except to the members of the Evaluation Committee and other appropriate Knox County staff. All information provided shall be considered by the Evaluation Committee in making a recommendation to enter into an agreement with the selected consultant.

3.27 SUBMIT QUESTIONS: Prospective proposers may submit questions concerning this solicitation until **October 29, 2024 @ 4:30 p.m. local time**. Submit questions as noted in Section 1.1.

SECTION IV SPECIFICATIONS

4.1 PURPOSE: Knox County is seeking a qualified provider to provide Workers' Compensation Bill Review/Utilization Review Services for the County's self-insured workers' compensation program.

The essential features and requirements for the Workers' Compensation Bill Review and Utilization Review contractor are set forth below.

4.2 BACKGROUND INFORMATION: The Knox County Law Director- Workers Compensation Division (WCD) administers workers compensation claims on behalf of Knox County Government and Knox County Schools. Knox County Government comprises approximately 3,000 regular full-time employees and a varying number of part-time employees with a substantial number of law enforcement personnel and roads, grounds, and facilities maintenance staff. Knox County Schools employs more than 8,000 full-time educators and classified staff.

Knox County administers claims in-house with the following goals: (1) render quick compensability decisions to injured county workers within 14 days of receipt of notice of injury; (2) ensure injured workers receive prompt and appropriate treatment according to the severity of their injuries; (3) ensure injured workers receive prompt lost time benefits as County programs may require and in accordance with Tennessee Workers Compensation law; and (4) effective assistance with recovery and timely workforce reintegration consistent with their injury and treatment plan.

The WCD currently processes approximately 4,100 bills annually through its current Medical Bill Review vendor.

4.3 CONFIDENTIAL COUNTY DATA (AS APPLICABLE): "Confidential County Data" is defined as data deemed confidential by State or Federal statute or regulation. Contractor shall ensure Confidential County Data, including backup data, is housed in the continental United States, and is encrypted at rest and in transit using the current version of the Federal Information Processing Standard (FIPS) 140-2 validated encryption technologies. Contractor shall enable, by default, Multi-Factor Authentication for any access to Confidential County Data, in accordance with the current version of National Institute of Standards and Technology (NIST) Publication 800-63-3.

Upon termination of this Contract and in consultation with the County, Contractor shall destroy all Confidential County Data it holds, including any copies and backups, in accordance with the current version of National Institute of Standards and Technology (NIST) Special Publication 800-88. Contractor shall provide a written confirmation of destruction to the County within ten business days after destruction.

Contractor warrants to Knox County that it and any data centers used by the Contractor to host County data, including those of all Subcontractors, will cooperate with the County throughout the term of the Contract so that all parties will be in compliance with Knox County Information Technology's (KCIT) enterprise security policies and requirements, and any other state and federal computer security regulations including cooperation and coordination with KCIT's security management team and compliance officers required by its regulations.

Contractor agrees to maintain information systems and applications on a current, manufacture-supported Operating System, in addition to performing updates and installing patches. Operating System is defined as the software that supports a computer's basic functions, such as scheduling tasks, executing applications, and controlling peripherals.

Contractor agrees to perform penetration tests (in the form of attacks on the Contractor's computer system, with the purpose of discovering security weaknesses) and vulnerability assessments (designed and executed to define, identify, and classify vulnerabilities in the processing environment) on an annual basis and remedy any weaknesses or vulnerabilities discovered.

4.4 WORKERS' COMPENSATION BILL REVIEW/ UTILIZATION REVIEW SERVICES: Proposer's staff shall have current certification and/or licensure for the services they are performing as required by the State of Tennessee. For all services to be provided to Knox County, the vendor shall be expected to provide proper documentation of all activities and proper communication to the Knox County Law Director- Workers Compensation Division. The Proposer must be able to comply with the scope of work for Bill Review and Utilization Review set forth herein, which includes, but is not limited to:

4.4.1 Medical Bill Review and Repricing Services

- a. Receive all medical bills and records in digital format via SFTP server on a daily basis.
- b. Deliver all adjudicated and/or repriced bills including data and .pdf files via data bridge with Knox County's claims software, Origami Risk, for accessing, processing and storing.
- c. Indexing of all medical bills and reports.
- d. Requesting needed documents for incomplete bills from providers.
- e. Verifying all billing CPT codes comply with actual treatment provided.
- f. Identifying treatment that is not appropriate under the AMA guidelines.
- g. Monitoring and identifying duplicate bills. Sending those previously reviewed bill(s) to providers along with EOR marked duplicate. Send zero payment EOR to provider and provide justification for zero payment.
- h. Repricing of bills in accordance with State fee schedule and/or PPO contracts.
- i. Repricing of bills pursuant to amounts agreed by contract between Knox County and certain medical providers.
- j. Completing the review process for all medical providers' bills within 5 working days of contractor's receipt of bills; and for all hospital bills within 10 working days of contractor's receipt of bills.
- k. Reviewing appeals of medical bills from providers and making recommendations to Knox County.
- l. Assisting with testimony and/or other professional services on all medical bill issues on litigated cases including justification of payment and payment amount, up-coding or down-coding and any other required services related to this contract and requested by Knox County.
- m. Providing on a per claim basis all scanned documents in PDF format only including medical bills and reports to Knox County.

4.4.2 Utilization Review Services for medical necessity, appropriateness and duration for any medical treatment, including but not limited to:

- a. Pre-authorization to verify the medical necessity, appropriateness and duration of all prescribed treatments upon request by Knox County.
- b. Retrospective review of medical treatment not previously reviewed.
- c. All utilization review is subject to industry standard evidence-based guidelines used pursuant Tennessee workers' compensation law.
- d. Utilization Review Services must be performed and completed within the time limits and in the manner as set forth under Tennessee Comp. R. & Regs. 0800-02-06 and Tenn. Code Ann. §§ 50-6-101 et seq.
- e. Proposed staff's required medical licensure to provide Utilization Review services in compliance with State of Tennessee requirements and direct experience working with Utilization Review.

4.4.3 Reporting. Submit to the Knox County Law Director- Workers Compensation Division periodic electronic reports (on a monthly, quarterly or other agreed upon basis) that shall include, but not be limited to, the following information:

- a. Reports for Bill Review
 - 1. The Contractor shall submit an electronically *comprehensive Monthly Net Savings Report* within thirty (30) days of each month end to the Risk Management Department. ***Stated report shall include the following reporting categories:***
 - i. Total dollar amount of bills submitted for audit.
 - ii. Bill review reductions.
 - iii. PPO reductions.
 - iv. Recommended allowance.
 - v. Gross savings.
 - vi. Gross percentage of savings
 - vii. Total monthly fee for service.
 - viii. Overall net savings.
 - ix. Net percentage of savings.

x. *Bidders shall offer a sample report(s), encompassing the nine (9) categories listed above, with their response/bid. **This is a mandatory requirement.***

b. Reports for Utilization Review (all monthly)

1. UR Savings
2. UR Follow-up Savings
3. Peer Review Savings
4. Peer Review Follow-up Savings
5. UR Summary Report
6. Sample copies of all notices and/or communications made during Utilization Review process and sample peer review report.

4.4.4 Administrative Services. Contractor shall also do the following:

- a. Interface with Knox County's workers compensation claims management software, Origami Risk, LLC, to transmit electronic data including pertinent claims data, bill and payment information, and bill imaging on a daily basis.
- b. Provide an electronic billing portal and/or solution to permit Knox County's compliance with e-billing portal or other resources pursuant to Tennessee Rules and Regulations 0800-2-26.
- c. Provide all necessary services needed to coordinate, oversee, and communicate with all medical providers, County employees, their legal representatives and staff of the Knox County Law Director-Workers Compensation Division.
- d. Provide periodic training for the Knox County Law Director- Workers Compensation Division staff, as needed, including but not limited to, how to interface with the Contractor's bill review software, utilization review legal requirements, and other programmatic updates/changes. The training will be conducted at the request of the Workers' Compensation Division to be held on-site at the Knox County Law Director- Workers Compensation Division at no cost. A minimum of 10 hours of training is to be provided per calendar year.
- e. Interface with the County's Claims' Software, Origami Risk, application for payment processing.
- f. Provide all communication materials as above specified for services in 4a.
- g. Respond to and resolve conflicts with or complaints from medical providers concerning bill review and utilization review recommendations in an expeditious and satisfactory manner. Respond to appeals of bill review decisions within 20 working days of notice of appeal. Respond to Utilization Review appeals within the time periods set forth under Tennessee law. Contractor shall also assist Knox County in any litigation arising from its bill review and utilization review recommendations, including testifying before the Tennessee Department of Labor and Workforce Development Administrative Review process or in Court when requested by the County or County Attorney.
- h. Notify County within 24 hours when Contractor's backlog of Bill Review will result in processing times longer than the required 5 working days. Notify County within 24 hours if UR conducted in excess of 3 days, the amount of penalty that must be paid and the reason for delay and resulting penalty.
- i. Transmit all digital bills and associated medical reports on a monthly basis.
- j. Reimburse County for any/all penalties for which the County may be found liable as a result of the Contractor's failure to comply with regulatory timeframes as covered under Tennessee law, if any, relating to penalties associated with Contractor's failure to perform any bill review or reporting function timely.
- k. Provide Knox County Law Director- Workers Compensation Division staff daily electronic access to all Bill Review and Utilization Review databases to review status of recommendations (EOB's), associated medical reports and approval or denial of recommendations including payment of provider bills and UR billing.

4.5 DATA: The County shall be the owner of all claims data and other data collected and generated on behalf of the County for services provided by proposer, and the successful proposer shall at the County's direction make any or all claims and other data available, including but not limited to: eligibility files, all date and cost fields, diagnosis and service codes, patient identifiers, and provider information, case management records and notes, electronically (or in report form if requested) to our data warehouse vendor. Please provide the proposed file formats (eligibility, claims, and billing) for review. The successful proposer shall not charge for providing the data extracts. Proposer shall not use data for any purpose except for administration of the County's program with written consent. Proposer shall sign a Business Associate Agreement in form acceptable to Knox County.

**SECTION V PROPOSAL FORMAT RFP 3601
WORKERS' COMPENSATION BILL REVIEW/UTILIZATION REVIEW SERVICES**

PROPOSAL INFORMATION: The following guidelines should be followed when responding to the Request for Proposal. Negligence in adhering to the criteria listed below will be considered when reviewing the responses and evaluating the proposers. Knox County reserves the right to reject any proposal for failure to comply with the requested response specifications. The County reserve the right to amend the Request for Proposal by addendum prior to the final date of proposal submission.

- Knox County requests proposals be in sufficient detail to address all requirements.
- The County requests responses be submitted in a three-ring binder containing sections separated by tabs. Do not submit spiral bound or glued responses.
- Please submit one (1) marked original and one (1) exact copy.
- Page numbers should be placed on the bottom center of pages.
- Proposers shall also submit an exact copy of the original proposal on a Flash drive. **This shall be in one (1) complete pdf file. Do not include multiple folders on the CD/Flash drive.**

TAB I TABLE OF CONTENTS

TAB II SIGNED COVER LETTER AUTHORIZING SUBMISSION OF THE PROPOSAL

TAB III PROPOSER INFORMATION

Company Name, Address, Knox County Vendor Number, Primary Contact Person, Contact Telephone Number, Contact Email, copy of Knox County Business License (if applicable), State of Tennessee Sales Tax Number (if applicable), Federal Tax Identification Number (EIN), statement as to whether or not you will accept payment via credit card, acknowledgement of addenda.

TAB IV QUALIFICATIONS (35 points)

- a. Experience with Bill Review and Utilization Review Services to the workers' compensation industry exceeding the Minimum Qualifications.
- b. Experience performing Bill Review and Utilization Review Services to self-insured and/or self-administered public agencies for workers' compensation.
- c. Quality of recently performed services including scope and outcomes.
- d. Proposed staff's required medical licensure to provide Utilization Review services in compliance with State of Tennessee requirements and direct experience working with Utilization Review.
- e. Proposers must include the attached References document under this Tab. Failure to use the attached Reference Check Form will be considered during the evaluation and may result in the references not being considered.

TAB V APPROACH AND METHODOLOGY (25 POINTS)

- a. Understanding of the services to be provided, the tasks to be performed and the deliverables and outcomes desired by the County.
- b. Clarity of staff roles and responsibilities.
- c. Ability to effectively implement systems, manage workflow, analyze and problem solve issues, communicate on multiple levels including interpersonal, oral, and written; and with people of diverse backgrounds, abilities and expectations.
- d. Ability to demonstrate time and resource commitment to perform the necessary work and provide the necessary services efficiently, effectively and within the guidelines required by the State of Tennessee.
- e. Bidders shall offer a sample report(s), encompassing the nine (9) categories listed in Section 4.4.3.a.1, with their response/bid. **This is a mandatory requirement.**
- f. Sample copies of all notices and/or communications made during Utilization Review process and sample peer review report.

TAB VI COST (40 POINTS)

Proposers must include Attachment A under this Section.

- a. Cost on a per bill basis for bill review.
- b. Cost on percentage of incremental savings to a PPO or other amount beneath Tennessee Medical Fee Schedule.

c. Cost for UR on a per review basis based upon type of review specifically: initial review and peer review.

TAB VII **AFFIDAVITS**

Iran Divestment Act/No Boycott of Israel: Attachment C
Non-Collusion Affidavit: Attachment D

TAB VIII **EXCEPTIONS**

Proposers must list any exceptions taken to the terms and conditions of this RFP in this section. Failure to list any exceptions will be considered as the proposer's acceptance of the terms and conditions as stated. Do not mark through or otherwise alter the language of this RFP in your response.

Failure to include any of the above information or any other information requested may result in the proposer being disqualified.

**ATTACHMENT A
COST
RFP 3601
WORKERS' COMPENSATION BILL REVIEW/UTILIZATION REVIEW SERVICES**

Company Name: _____

Proposer shall indicate a fixed per bill fee for processing County's bill to the Tennessee Medical Fee Schedule (appr. 223 per month over the last two years) \$ _____/bill

Proposer shall indicate a fixed percentage of "net savings" fee for adjusting County's bill to a PPO or other amount beneath the Tennessee Medical Fee Schedule rate: _____%

Are you willing to charge a nominal per bill fee for "passing through" any bills for services you may receive in which County has pre-negotiated a particular rate (for ex. Pharmacy bills, Physical Therapy bills, etc.)? If so, please identify: \$ _____/bill

Proposer shall indicate a fixed fee for Utilization Review and/or Physician Peer Clinical Review: _____/ request

Proposer shall indicate whether it has an existing data bridge with Origami Risk, LLC for other clients, and/or a fixed fee, if any, for implementing a data bridge with Origami Risk, LLC: _____

**ATTACHMENT B
REFERENCES
REQUEST FOR PROPOSALS NUMBER 3601
WORKERS' COMPENSATION BILL REVIEW/UTILIZATION REVIEW SERVICES**

Vendor: _____

Proposers shall submit a list of three (3) projects of similar size which have been in service during the last three (3) years. Each vendor is responsible for obtaining approval to submit and confirming the contact information provided for each reference. Knox County will not be responsible for gathering additional information for references that are incomplete or incorrect. Reference checks will be sent via email only. Reference Forms that cannot be delivered with the contact information listed, not returned prior to the deadline listed on the form, or not returned at all will be scored accordingly. Do not use Knox County Government as a reference.

Name of Firm: _____	
Contact Person: _____	Phone Number: _____
Email Address: _____	
Nature of Contract: _____	
Services Provided: _____	
Contract start date: _____	Contract end date: _____

Name of Firm: _____	
Contact Person: _____	Phone Number: _____
Email Address: _____	
Nature of Contract: _____	
Services Provided: _____	
Contract start date: _____	Contract end date: _____

Name of Firm: _____	
Contact Person: _____	Phone Number: _____
Email Address: _____	
Nature of Contract: _____	
Services Provided: _____	
Contract start date: _____	Contract end date: _____

**ATTACHMENT C
KNOX COUNTY PROCUREMENT DIVISION
IRAN DIVESTMENT ACT/NO BOYCOTT OF ISRAEL**

By submission of a response to this solicitation, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint response each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each proposer is not on the list created pursuant to Tennessee Code Annotated § 12-12-106.

Authorizing Signature:

(sign in blue ink)

Title: _____ Date: _____

Pursuant to Tennessee Code Annotated Title 12, Chapter 4, Part 1, by submission of a response to this solicitation, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint response each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each proposer is not currently engaged in, and will not for the duration of the contract engage in, a boycott of Israel.

Authorizing Signature:

(sign in blue ink)

Title: _____ Date: _____

**ATTACHMENT D
NON-COLLUSION AFFIDAVIT**

STATE OF _____

COUNTY OF _____

_____, being first duly sworn, deposes and says that:

1. He/She is _____ of _____, the Proposer that has submitted the attached Proposal;
2. He/She is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;
3. Such Proposal is genuine and is not a collusive or sham Proposal;
4. Neither the said Proposer nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived, or agreed, directly or indirectly with any other Proposer, firm or person to submit a collusive or sham Proposal in connection with the Contract for which the attached Proposal has been submitted or to refrain from bidding in connection with such Contract, or has in any manner, directly or indirectly, sought by agreement or collusion or communication or conference with any other bidder, firm or person to fix the price or prices in the attached Proposal or of any other proposer, or to secure through any other proposer, or to fix any overhead, profit or cost element of the proposal price or the proposal price of any other proposer, or to secure through any collusion, conspiracy, connivance or unlawful agreement any advantage against Knox County, TN or any person interested in the proposed Contract; and
5. The price or prices quoted in the attached Proposal are fair and proper and are not tainted by a collusion, conspiracy, connivance or unlawful agreement on the part of the Proposer or any of its agents, representatives, owners, employees, or parties in interest, including this affiant.

(Signed) _____

(Title) _____

Subscribed and sworn to before me

this _____ day of _____, 20_____

(Signature)

My commission expires _____

Knox County Government

and

(Contractor Name)

This Contract, made and entered into by and between the Knox County Government, hereinafter referred to as the “County” and (Contractor Name) hereinafter referred to as “Contractor”.

Whereas, the County requested proposals for Workers’ Compensation Bill Review/Utilization Review Services for Knox County Government (Request for Proposal #3601) and;

Whereas, Contractor submitted a bid in accordance with said requested specifications, the response of which is the most responsible and responsive bid meeting specifications accepted by the County;

Whereas, Contractor agrees and undertakes to provide said services for the County, as set forth in the Request for Proposals, and at the price quoted for said services by Contractor. Further, in accordance with the lawful directions of the County, the Contractor agrees in all respects, to be governed by the Request for Proposals’ specifications and the Contractor’s proposal and response.

Now, therefore in consideration of mutual covenants and promises contained herein, the parties hereto wish to enter into this Contract to set forth their respective rights and obligations and do mutually agree that;

Witnesseth:

1. Terms of this Contract. This Contract commences on the 1st day of September 2024 and ends the 31st day of August 2027 unless terminated in conformity with the terms of this Contract as contained in paragraphs 4 and 5. Knox County intends to issue an initial three (3) year award. Upon the mutual agreement of each Contractor and Knox County, the award may be extended for one (1) additional two (2) year term for a possible total of five (5) years. The County reserves the right to purchase these goods/services from other sources if the need arises. The County reserves the right to revoke the award if a pattern of unavailability arises with the Contractor.

2. Payment. The County shall pay Contractor the amount as agreed upon in the County’s Request for Proposals for Workers’ Compensation Bill Review/Utilization Review Services per the Contractor’s response to Request for Proposals #3601; pursuant to all payments being subject to the County’s review and approval. The Contractor shall receive, upon the need of the County, written notification to proceed. The Contractor shall pursue all work diligently until completion as directed by the County.

3. Invoicing and reporting requirements. Contractor shall invoice the County for Strategic Planning Services pursuant to Request for Proposals #3601.

TBD

4. Termination. The County may terminate this Contract with or without cause, upon written notice of not less than thirty (30) days. Upon termination, the County will pay for services satisfactorily completed but not yet invoiced. Contractor shall not perform additional work without the expressed permission of the County.

Should the Contractor fail to provide the Strategic Planning Services detailed herein, the County will communicate the problem(s) to the Contractor both verbally and in writing and keep a written record as to what the problem(s) are and when the Contractor was contacted. The Contractor shall rectify the problem within thirty (30) business days of notification of the problem. If the same or other problems persist or reoccur, the County may terminate the Contract.

In the event Contractor intends to interrupt or discontinue service under this Contract, Contractor agrees to give the County at least one hundred twenty (120) day advance written notice of said interruption or discontinuance of service prior to interrupting or discontinuing same. Any interruption or discontinuance of service without said advance notice shall constitute a material breach of this Contract.

5. Appropriations. In the event no funds are appropriated by the County for the Workers’ Compensation Bill Review/Utilization Review Services in any fiscal year or insufficient funds exist to provide the services, then the Contract shall expire upon the expenditure of previously appropriated funds or the end of the current fiscal year, whichever occurs first, with no further obligations owed to or by either party.

6. Independent contractor. Contractor acknowledges that Contractor and employees serve as independent contractors and that the County shall not be in any manner responsible for any payment, insurance, or incurred liability.

7. Compliance with all federal, state, and municipal laws. Contractor is assumed to be familiar with and agrees to observe and comply with all federal, state, and local laws, statutes, ordinances, and regulations in any manner affecting the provision of the Workers’ Compensation Bill Review/Utilization Review Services, and all instructions and prohibitive orders issued regarding this work and shall obtain all necessary permits.

8. Severability clause. If any provision of this Contract is declared illegal, void, or unenforceable the remaining provisions shall not be affected but shall remain in force and in effect.

9. Prohibition against assignment. Contractor shall not assign this Contract to any party, company, partnership, incorporation, or person without prior specific written consent of the County.

10. **This Contract** shall be exclusively construed, governed, and controlled by the Laws of the State of Tennessee without regard to principles of law, including conflicts of law, of any other jurisdiction, territory, country, and/or province. Any dispute arising out of or relating to this agreement shall exclusively be brought in the Chancery Court or the Circuit Court of Knox County, Tennessee. Each party consents to personal jurisdiction thereto and waives any defenses based on personal jurisdiction, venue and inconvenient forum.

11. **Right to inspect.** The County reserves the right to make periodic inspections of the manner and means the services are performed.

12. **Nondiscrimination and non-conflict statements.** Contractor agrees that no person on the grounds of handicap, age, race, color, religion, sex, national origin or any individual trait or characteristic found to be an illegal consideration, shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract, or in the employment practices of Contractor. Contractor shall upon request show proof of such non-discrimination and shall post in conspicuous places available to all employees and applicants notices of non-discrimination.

13. **Books and records.** Contractor shall maintain all books, documents, accounting records and other evidence pertaining to the service under this Contract and make such materials available at their offices at all reasonable times during the contract period and for three (3) years from the date of the final payment under the Contract for inspection by the County or by any other governmental entity or agency participating in the funding of this Contract, or any authorized agents thereof; copies of said records to be furnished if requested. Such records shall not include those books, documents and accounting records that represent the Contractor's costs of manufacturing, acquiring or delivering the products and services governed by this Contract.

14. **Contractor** shall indemnify, defend, save and hold harmless, County, its officers, agents and employees from all suits, claims, actions or damages of any nature brought because of, arising out of, or due to breach of the Contract by Contractor, its subcontractors, agents or employees or due to any negligent act, occurrence, omission, commission of Contractor, its subcontractors, agents, or employees.

15. **Delivery.** Contractor shall render the Workers' Compensation Bill Review/Utilization Review Services for the County in accordance with Request for Proposal #3601.

16. **Tax Compliance.** Pursuant to Resolution R-07-1-903 passed by the Commission of Knox County, Tennessee, Contractor hereby acknowledges, by submission of its bid and signature that it is current in its respective Federal, State, County, and City taxes of whatever kind or nature and is not delinquent in any way. Delinquent status must be disclosed or risk debarment by the Knox County Procurement Division.

17. **Limitations of liability.** In no event shall the County be liable for any indirect, incidental, consequential, special or exemplary damages or lost profits, even if the County has been advised of the possibility of such damages

18. **Contract documents.** It is mutually agreed by both parties that the following documents are made part of this Contract and are incorporated herein by reference:

- A. Request for Proposals #3601
- B. Contractor's Response to Request for Proposal #3601

It is agreed that this Contract, represents the **entire Contract** between the parties and no prior representations, promises, and agreements, oral or otherwise, not embodied herein, shall be of any force or effect.

In witness whereof, the parties hereto have caused this Contract to be executed in one original copy on the day and year last written below.

KNOX COUNTY GOVERNMENT

MAYOR – Signature

GLENN JACOBS
MAYOR

Date: _____

Contract #: _____

Approved as to Legal Form:

(Signature: Knox County Law Director's Office)

(Printed Name)

Date: _____

VENDOR

AUTHORIZED SIGNATURE

VENDOR – Printed Name

CONTRACTOR
COMPANY NAME

Date: _____

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered into by and between Knox County Government Knox County Tennessee by and through its governing body and its authorized representatives, Covered Entity ("CE"), and _____, Business Associate ("BA").

PURPOSE

- A. Covered Entity ("CE") operates a Public Health Facility certified in Knox County, Tennessee
- B. Business Associate ("BA") is contractually obligated to provide certain services related to one or more "covered entities" as that term is defined and regulated under HIPAA.
- C. CE and BA intend to protect the privacy of Protected Health Information ("PHI") and electronic Protected Health Information ("e-PHI") disclosed to or created or received by BA pursuant to the Agreement in compliance with applicable provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated there under by the U.S. Department of Health and Human Services, the privacy and security provisions of the American Recovery and Reinvestment Act (Stimulus Act) for Long Term Care, Public Law 111-5, HITECH Act and other applicable laws.
- D. CE and BA agree to comply with the Fair and Accurate Credit Transactions Act of 2003 (FACTA) and its implementing regulations at 16 CFR §681.1 and 16 CFR §681.2.
- E. The purpose of this Agreement is to satisfy certain standards and requirements of HIPAA, including the Standards for Privacy of Individually Identifiable Health Information at 45 CFR parts 160 and 164, Subparts A and E, the standards relating to Notification in the Case of Breach of Unsecured Protected health Information at 45 CFR Parts 160 and 164, Subparts A and D, and the Security Standards for the Protection of electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and D, as such regulations may be amended from time to time (including, without limitation any amendments required by the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act") (collectively "HIPAA Regulations")

In consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

1. **Definitions:** The following definitions are used by this Agreement:

- 1.1 **Agreement** – means this Business Associate Agreement, which is an agreement required under 45 C.F.R. Section 164.314(a) (2) between a Business Associate and a Covered Entity.
- 1.2 **Breach** – means the unauthorized acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under the Privacy Rule which compromises the security or privacy of the protected health information. Except that: a use or disclosure of protected health information that does not include the identifiers listed at 45 CFR 164.514 (e)(2) of the Privacy Rule, date of birth, and zip code does not compromise the security or privacy of the protected health information is deemed not to be a "Breach" for purposes of this agreement. Notwithstanding the foregoing, a Breach does not include: (1) any unintentional acquisition, access, or use of Protected Health Information by an employee or individual acting under the authority of Covered Entity or Business Associate and in the scope of the employment or relationship between the employee or individual and Covered Entity or BA, provided such information is not further acquired, accessed, used, or disclosed by any person without authorization; (2) any inadvertent disclosure by an individual who is authorized to access Protected Health Information at Covered Entity's or BA's facility to another similarly situated individual at the same facility, provided such information is not further acquired, accessed, used, or disclosed by any person without authorization; and (3) a disclosure of Protected Health Information in a situation in which BA has a good faith belief that the person(s) to which the unauthorized disclosure was made would not reasonably have been able to retain such information.
- 1.3 **Business Associate (BA)** – is a person or entity, other than a member of the workforce of a covered entity CE, who performs functions or activities on behalf of a CE that involves access by the BA to protected health information as described in 45 C.F.R. Section 160.103. A BA is also a subcontractor that creates, receives, maintains, or transmits protected health information on behalf of another business associate.
- 1.4 **Covered Electronic Transactions** – shall have the meaning given to the term "transaction" in 45 C.F.R.

Section 160.103.

- 1.5 **Covered Entity (CE)** – as the term referenced to the entity to this agreement is a provider of medical and health services as described in 45 C.F.R. Section 160.103.
- 1.6 **Covered Individual** – means a person who is eligible for payment of certain services or supplies rendered or sold to the person or the person’s eligible dependents under the terms, conditions, limitations, and exclusions of the Plan.
- 1.7 **Data Aggregation** – means, with respect to Protected Health Information created or received by BA in its capacity as a BA (as that term is defined in 45 C.F.R. Section 160.103) of the Plan, the combining of such Protected Health Information by BA with the Protected Health Information received by BA in its capacity as a BA of another covered entity (as those terms are defined in 45 C.F.R. Section 160.103), to permit data analyses that relate to the health care operations of the respective covered entities.
- 1.8 **Designated Record Set** – means a group of records maintained by or for Covered Entity that is (1) the medical records and billing records about Individuals maintained by or for a covered health care provider, (2) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for Covered Entity, or (3) used, in whole or in part, by or for Covered Entity to make decisions about Individuals. As used herein, the term “Record” means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used or disseminated by or for Covered Entity.
- 1.9 **Disclose** - means the release, transfer, provision of access to, or divulging in any other manner of PHI to parties outside the BA’s organization.
- 1.10 **Effective Date** – means the date the Agreement is fully executed, unless specifically noted otherwise herein.
- 1.11 **Electronic Health Record** – means an electronic record of health-related information regarding an Individual that is created, gathered, managed, and consulted by authorized health care clinicians and their staff.
- 1.12 **Electronic Protected Health Information** – shall have the same meaning as the term “electronic protected health information” in 45 C.F.R. Section 160.103, limited to the information created, received, maintained, or transmitted by BA from or on behalf of Covered Entity.
- 1.13 **GINA** - shall mean the Genetic Information Nondiscrimination Act of 2008 (Pub. L. 110-223).
- 1.14 **HITECH** – means Health Information Technology for Economic and Clinical Health Act.
- 1.15 **HHS** – means the United States Department of Health and Human Services.
- 1.16 **Including** – means “including but not limited to.”
- 1.17 **Individual** – shall have the same meaning as the term “individual” in 45 C.F.R. Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. Section 164.502(g).
- 1.18 **Integrity** – means that data or information have not been altered or destroyed in an unauthorized manner.
- 1.19 **Data Set** – shall have the same meaning as the term “limited data set” in 45 C.F.R. Section 164.514(e) (2).
- 1.20 **Plan** – means the group health plan(s) identified in the introductory paragraph to this Agreement.
- 1.21 **Privacy Rule** – means the Standards and Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, subparts A and E and the privacy provisions of HIPAA, as amended.
- 1.22 **Protected Health Information (PHI)** – shall have the same meaning as the term “protected health information” in 45 C.F.R. 160.103, limited to the information created, received, maintained, or transmitted by BA from or on behalf of Covered Entity. PHI includes both Hardcopy and Electronic Protected Health Information (“phi”) and means any information, whether oral or recorded in any form or medium, that
- i. 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,
 - ii. Identifies the individual or there is a reasonable basis to believe the information can be used to identify

the individual; and,

- iii. Is limited to the information created or received by BA from or on behalf of CE.
- iv. Hardcopy Protected Health Information ("paper") is a subset of Protected Health Information and means PHI that is maintained as a paper document.

- 1.23 **Electronic Protected Health Information ("e-PHI")** is a subset of Protected Health Information and means PHI that is transmitted by or maintained in any electronic media.
- 1.24 **Required By Law** – means a mandate contained in law that compels a covered entity to make a use or disclosure of PHI and that is enforceable in a court of law and shall have the same meaning as the term “required by law” in 45 C.F.R. Section 164.103.
- 1.25 **Secretary** – means the Secretary of Health and Human Services or any other officer or employee of HHS to whom the authority involved has been delegated.
- 1.26 **Security Incident** – shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system as provided in 45 CFR 146.304.
- 1.27 **Security Rule** – means the Security Standards and Implementation Specifications at 45 C.F.R. Part 160 and Part 164, subpart C and the security provisions of HIPAA, as amended.
- 1.28 **Standards for Electronic Transactions Rule** – means the final regulations issued by HHS concerning standard transactions and code sets under the Administrative Simplification provisions of HIPAA, 45 C.F.R. Part 160 and Part 162.
- 1.29 **Subcontractor** – means an agent of a BA described in 45 C.F.R. Section 165.103 to whom the BA provides protected health information that the BA creates, receives, maintains, or transmits on behalf of a Covered Entity.
- 1.30 **Unsecured Protected Health Information** – means Protected Health Information that has not been rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary. As of August 24, 2009, the Secretary has specified the following technologies and methodologies that will render Protected Health Information unusable, unreadable, and indecipherable (i.e., secured Protected Health Information): (1) encryption as described in the Secretary’s guidance and determined by the National Institute of Standard and Technology to meet the standards described in such guidance, or (2) destruction, in accordance with the procedures identified in the Secretary’s guidance, of the media on which the Protected Health Information was stored or recorded.
- 1.31 **Use** – means the sharing, employment, application, utilization, examination, or analysis of PHI within the BA’s organization.

2. Privacy Provisions

2.1 **Introduction.** Business Associate, on behalf of Covered Entity, performs or assists in the performance of functions and activities that may involve the use, disclosure, receipt and/or creation of Protected Health Information. The “business associate” provisions of the Privacy Rule govern the terms and conditions under which the BA may use or disclose Protected Health Information. In general, BA agrees and intends to act such that (1) Covered Entity can fulfill its responsibilities under HIPAA; and (2) BA can fulfill its contractual obligations under this Agreement. In addition, BA specifically acknowledges its direct liability for the failure to comply with certain portions of the Privacy Rule as provided under HITECH and the regulations issued thereunder.

2.2 Permitted Uses and Disclosures by Business Associate.

2.2.1 Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law. Business Associate shall comply with the provisions of this Agreement relating to privacy and security of PHI on all present and future provisions of HIPAA, the HITECH Act and HIPAA Regulations that relate to privacy and security of PHI and that are applicable to CE and/or BA. Except as otherwise limited in this Agreement, BA may use or disclose Protected Health Information (i) to perform functions, activities, or services for, or on behalf of, Covered Entity pursuant to any services agreement with the BA, (ii) as permitted or required by this Agreement, and (iii) as Required by Law. BA may disclose Protected Health Information to other BAs of Covered Entity, or to BAs of another covered entity that is part of an organized health care arrangement that includes Covered Entity, to the fullest extent allowed under applicable law. If and when BA discloses or makes

available Protected Health Information to the sponsor of the Plan, BA agrees to disclose or make available Protected Health Information only to the persons identified in the attached Designated Persons Appendix (which may be updated by Covered Entity and communicated to BA from time to time) for the purpose of performing functions, services, or activities for or on behalf of Covered Entity. Upon Covered Entity's request, BA will provide Protected Health Information to other BAs of Covered Entity that assist in administering the group health plans and that are authorized to receive such information.

- 2.2.2 Except as otherwise limited in this Agreement, BA may use or disclose PHI consistent with CE's minimum necessary policies and procedures to perform functions, activities, or Services for, or on behalf of CE as specified in the Agreement, provided such use or disclosure would not violate the Privacy and Security Rule if done by the CE.
- 2.2.3 Disclosure for Management and Administration - Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA or to carry out the legal responsibilities of the BA, provided that:
- i. Disclosures are required by law; or
 - ii. BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and
 - iii. The person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.
- 2.2.4 Data Aggregation - Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation services to CE relating to the health care operations of the CE.
- 2.2.5 Report Violations of Law - Except as otherwise limited in this Agreement, BA may use PHI to report violations of law appropriate to Federal and State authorities consistent with 45 CFR §164.502(j)(1).
- 2.2.6 De-identification. The BA may de-identify any and all PHI that it obtains from the CE, but only if such de-identification is accomplished in accordance with the requirements of 45 CFR 514 (a) and (b).
- 2.2.7 Business Associate will limit the use, disclosure, or request of Protected Health Information, to the extent practicable, (i) to the Limited Data Set, or (ii) if needed by BA, to the minimum necessary (as determined by BA) to accomplish the intended purpose of such use, disclosure, or request, except to the extent a broader use, disclosure, or request of Protected Health Information is allowed by the Privacy Rule. BA's ability to satisfy the requirement of this Section 2.2.7 by use of the Limited Data Set shall be available until the effective date of subsequent guidance issued by the Secretary regarding what constitutes "minimum necessary," at which time BA will take reasonable efforts to limit the use, disclosure, or request of Protected Health Information to the minimum necessary (as defined by such Secretary's guidance) to accomplish the intended purpose of such use, disclosure, or request, except to the extent a broader use, disclosure, or request of Protected Health Information is allowed by the Privacy Rule.
- 2.2.8 Except as otherwise authorized by the Privacy Rule, BA shall not directly or indirectly receive remuneration (whether financial or nonfinancial) in exchange for any Protected Health Information of a Covered Individual unless Covered Entity has received a valid authorization from the Covered Individual that includes a specification of whether the Protected Health Information can be further exchanged for remuneration by the entity receiving Protected Health Information of that Covered Individual. This Section 2.2.8 shall apply to exchanges of Protected Health Information occurring on or after the compliance date applicable under the final regulations issued under HITECH that address this restriction.

3. Limitations on Business Associate's Uses and Disclosures. With respect to Protected Health Information that Covered Entity discloses to BA or BA creates, receives, maintains, or transmits on behalf of Covered Entity, BA will not use or further disclose the Protected Health Information other than as permitted or required by this Agreement or as Required by Law.

4. Additional Obligations of Business Associate. Except as otherwise specified in this Agreement, the provisions of this paragraph apply only to Protected Health Information that Covered Entity discloses to BA or BA creates, receives, maintains, or transmits on behalf of Covered Entity.

4.1 Safeguards. BA agrees to use appropriate safeguards to prevent the use or disclosure of the PHI other than as provided for by this Agreement. Without limiting the generality of the foregoing sentence, BA must comply

with the Security Rule by:

- 4.1.1 Implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI and ePHI as required by the Agreement, and as required by 45 CFR 164.308, 164.310, 164.312, and 164.316 that the BA receives, creates, maintains, or transmits to the same extent as if the BA were a CE. The BA shall undertake such actions in a manner that is consistent with any guidance issued by the Secretary pursuant to the HITECH Act.
- 4.1.2 Ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of the BA agree to comply with the applicable requirements of the Privacy and Security Rules by entering into a contract or other arrangement that complies with the Privacy and Security Rules.
- 4.1.3 Promptly report to CE any Security Incident of which BA becomes aware. In addition, BA agrees to promptly notify CE following the discovery of a Breach of Unsecured PHI. A Breach is considered "discovered" as of the first day on which the Breach is known, or reasonably should have been known, to BA or any employee, officer or agent of BA, other than the individual committing the Breach.
- 4.1.4 BA shall protect PHI from any improper oral or written disclosure by enacting and enforcing safeguards to maintain the security of and to prevent any Use or Disclosure of PHI other than is permitted by this Agreement.

- 4.2 **Reporting and Mitigation.** Business Associate will report to Covered Entity any acquisition, access, use, or disclosure of Protected Health Information of which BA becomes aware, or that is reported to BA by an agent or Subcontractor, that is in violation of this Agreement.

BA agrees to mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA or its employees, officers or agents in violation of the requirements of this Agreement (including, without limitation, any Security Incident or Breach of Unsecured PHI). BA agrees to reasonably cooperate and coordinate with CE in the investigation of any violation of the requirements of this Agreement and/or any Security Incident or Breach. BA shall also reasonably cooperate and coordinate with CE in the preparation of any reports or notices to the individual, a regulatory body or any third party required to be made under HIPAA Regulations, the HITECH Act, or any other Federal or State laws, rules, or regulations, provided that any such reports or notices shall be subject to the prior written approval of CE.

- 4.3 **Agents and Subcontractors.** BA agrees to enter into an agreement with each of its subcontractors pursuant to 45 CFR 164.308(b)(1) and HITECH 13401. BA shall monitor and ensure, in accordance with 45 CFR 164.502(e)(l)(ii) and 164.308(b)(2), that any agents, including subcontractors and subcontractors of subcontractors, that create, received, maintain, or transmit PHI on behalf of the BA agree to the same restrictions, conditions, and requirements that apply to the BA through this Agreement with respect to such information.
- 4.4 **Access to Designated Record Sets.** To the extent that BA possesses or maintains PHI in a Designated Record Set, BA agrees to provide access, at the request of CE, and in the time and manner designated by the CE, to PHI in a Designated Record Set, to Covered Entity or, as directed by CE, to an Individual in order to meet the requirements under HIPAA Regulations. If an Individual makes a request for access to PHI directly to BA, BA shall notify CE of the request within three (3) business days of such request and will cooperate with CE and allow CE to send the response to the Individual.
- 4.5 **Amendment of Designated Record Sets.** To the extent that BA possesses or maintains PHI in a Designated Record Set, BA agrees to make any amendment(s) to PHI in a Designated Record Set that the CE directs or agrees to pursuant to HIPAA Regulations at the request of CE or an Individual, and in the time and manner designated by the CE. If an Individual makes a request for an amendment to PHI directly to BA, BA shall notify CE of the request within three (3) business days of such request and will cooperate with CE and allow CE to send the response to the Individual.
- 4.6 **Disclosure Accounting.** BA agrees to document disclosures of Protected Health Information and information related to such disclosures as is necessary to enable Covered Entity to respond to a request by a Covered Individual for an accounting of disclosures of PHI in accordance with HIPAA Regulations and the HITECH Act. BA agrees to provide to CE or an Individual, in the time and manner designated by the CE, information to permit CE to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA Regulations and the HITECH Act. If an Individual makes a request for an accounting directly to BA, BA shall notify CE of the request within three (3) business days of such request and will cooperate with CE and allow CE to send the response to the Individual. At a minimum, Business Associate shall provide Covered

Entity with the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person; (iii) a brief description of the Protected Health Information disclosed; and, (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. BA hereby agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this section and applicable law. It shall be CE's responsibility to promptly notify BA of the request for an accounting, and to prepare and deliver any such accounting requested. In addition to the forgoing, BA shall track other disclosures and/or make available to CE such information as is necessary for Covered Entity to comply with any additional accounting requirements.

- 4.7 **Access to Business Associate's Internal Records.** BA shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, CE available to CE or the Secretary, for the purposes of the Secretary's determining compliance with HIPAA for Covered Entity and/or BA.
- 4.8 **Electronic Transactions.** In the event the BA transmits or receives any Covered Electronic Transaction on behalf of CE, it shall comply with all applicable provisions of the Standards for Electronic Transactions Rule to the extent Required by Law and shall ensure that any agents and Subcontractors that assist BA in conducting Covered Electronic Transactions on behalf of CE agree in writing to comply with the Standards for Electronic Transactions Rule to the extent Required by Law.
- 4.9 **GINA.** BA agrees not to use or disclose Protected Health Information that contains genetic information if such use or disclosure would violate GINA.

5. Obligations and Rights of Covered Entity.

- 5.1 **Notice of Privacy Practices.** CE shall provide BA with the notice of privacy practices that CE produces in accordance with 45 C.F.R. Section 164.520, as well as any changes to such notice.
- 5.2 **Requests by Covered Entity.** CE shall not request or direct BA to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by CE. This includes, but is not limited to, requests or directions for disclosure of Protected Health Information to the Plan sponsor in a capacity other than acting on behalf of the Plan as CE. To the extent a dispute or difference of opinion exists between the BA and CE regarding whether a use or disclosure is permissible, BA may disclose the Protected Health Information under objection pursuant to the specific, written direction of CE. Any disclosures made pursuant to such specific, written direction shall be subject to the indemnification provisions of the Agreement.
- 5.3 **Authorizations.** CE shall notify Business Associate of any authorization provided by an Individual to use or disclose Protected Health Information (and any changes in or revocation of such an authorization),, to the extent that such information may affect Business Associate's use or disclosure of Protected Health Information. Upon receipt of such notification, BA shall use or disclose Protected Health Information in accordance with the authorization or changes thereto.
- 5.4 **Restrictions.** CE shall notify BA of any restriction on the use or disclosure of Protected Health Information to which CE has agreed in accordance with 45 C.F.R. Section 164.522 or is required to agree under HITECH (and any changes to or termination of such a restriction), to the extent that such restriction may affect BA's use or disclosure of Protected Health Information. Such restrictions include, but are not limited to, a Covered Individual's request not to disclose Protected Health Information for purposes of payment or health care operations where the Protected Health Information relates solely to a health item or service for which the health care provider has been paid in full out-of-pocket by, or on behalf of, the Covered Individual. Upon receipt of such notification, BA shall comply with such a restriction.
- 5.5 **Agreement Breaches by Business Associate.** If CE obtains knowledge of a pattern of activity or practice of BA that constitutes a material breach or violation of BA's obligations under this Agreement, CE will take reasonable steps to cure such breach or end such violation. If CE cannot successfully cure the breach or end the violation, CE shall terminate the Agreement in accordance with Section 8.2 if feasible.

6. Electronic Security Provisions

- 6.1 **Introduction.** This section applies where Business Associate, on behalf of Covered Entity, performs or assists in the performance of functions and activities that may involve the creation, maintenance, receipt, or transmission of Electronic Protected Health Information. This Section 6 along with the other sections of the BA Agreement are (1) intended to meet the requirements of the "business associate" provisions of Security Rule,

and (2) govern the terms and conditions under which the BA may create, maintain, receive, and transmit Electronic Protected Health Information on behalf of CE. In general, BA agrees and intends to act such that (1) CE can fulfill its responsibilities under HIPAA; (2) BA can fulfill its responsibilities under HIPAA; and (3) BA can fulfill its contractual obligations under this Agreement.

6.2 Obligations of Business Associate. In accordance with the Security Rule, BA agrees to:

- 6.2.1 Conduct a security risk assessment (in accordance with 45 C.F.R. Section 164.308(a)(1)(ii)(A)) and adopt and implement policies and procedures designed to ensure compliance with the Security Rule and this Agreement including, but not limited to, identifying security officer and training personnel. This Section 6.2.1 shall be effective as of the compliance date applicable under the final regulations issued under HITECH that address this requirement.
- 6.2.2 Implement administrative, physical and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that BA creates, maintains, receives, or transmits on behalf of CE.
- 6.2.3 Enter into a written contract with any agent or Subcontractor to whom BA provides Electronic Protected Health Information that requires such agent or Subcontractor to comply with the same restrictions and conditions that apply under this Section 6 to BA, including, but not limited to, implementing reasonable and appropriate safeguards to protect such information.
- 6.2.4 Report to CE any Security Incident of which BA becomes aware. BA shall provide such notification on a quarterly basis, unless a prompter notice is otherwise required by this Agreement. With respect to Security Incidents that result from an unsuccessful attempt to access, use, disclose, modify, or destroy Electronic Protected Health Information or interfere with system operations in an information system containing Electronic Protected Health Information, the notification required hereunder need only report the aggregate number of such incidents.
- 6.2.5 Promptly mitigate, to the extent practicable, any harmful effect of a Security Incident that is known to BA.

6.3 Obligations of Covered Entity. CE shall not request or direct BA to create, maintain, receive, or transmit Electronic Protected Health Information in any manner that would not be permissible under the Security Rule.

7. Breach Notification Requirements

7.1 Breach Notification. To the extent BA accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses Unsecured Protected Health Information, as set forth in Section 13402(h) of HITECH, BA shall promptly report to CE any Breach of such Unsecured Protected Health Information by it, its subcontractors or agents of which it becomes aware. Prior to notifying CE of the Discovery of a Breach, BA shall take reasonable steps to satisfy itself based upon reasonable diligence that the acquisition, access, use or disclosure of PHI was not unintentional or inadvertent. Notification to CE shall be made without unreasonable delay and in no case later than five (5) business days after the earlier of: (i) the first day on which such Breach is known to BA; or (ii) the first day on which such Breach, by exercising reasonable diligence, would have been known to any person (other than the person committing the Breach) who is an employee, officer or other agent of BA. Notification will be made to the Knox County Privacy Officer. Notification of the Breach may only be delayed if such delay is required by law enforcement purposes as set forth in 45 C.F.R. Section 164.412. If BA has been requested orally or in writing by law enforcement officials that notification of affected individuals may impede a criminal investigation, BA shall inform CE within 24 hours of receiving the request. BA shall exercise reasonable diligence and promptly supplement its report with any additional information as may be obtained by BA. BA, its affiliates, agents and subcontractors shall not provide any notification or information regarding any Breach to any person other than CE, except to the extent such action is: (i) required by law, (ii) required under this Agreement, or (iii) taken pursuant to a prior written consent of Covered Entity. Notwithstanding the foregoing, BA may provide information regarding a Breach to its legal counsel.

7.2 Content of Report. Notification to CE of a Breach shall include, at a minimum, the following:

- 7.2.1 A brief description of what happened, including the date of the incident and the date of the discovery of the incident, if known;

- 7.2.2 A description of the types of Unsecured PHI that were involved in the incident (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information) and that were or are reasonably believed by BA to have been impermissibly accessed, acquired, used or disclosed;
 - 7.2.3 A fact-specific and detailed risk assessment of whether the incident poses a significant risk of financial, reputational, or other harm to the individual whose Unsecured PHI has been (or is reasonable believed by BA to have been) acquired, accessed, used or disclosed;
 - 7.2.4 Identification of the Individuals whose Unsecured PHI has been, or is reasonably believed by BA to have been, accessed, acquired, used or disclosed;
 - 7.2.5 Any steps Individuals should take to protect themselves from potential harm resulting from the incident;
 - 7.2.6 A brief description of what BA is doing to investigate the incident, to mitigate harm to Individuals, and to protect against any further incidents; and
 - 7.2.7 Any other information reasonably requested by CE to be included in the report.
- 7.3 **Documentation and Retention.** BA will document all actions described in this Section 7 and maintain such documentation for at least six years from the date the documentation is created or the date it was last in effect, whichever is later.
- 7.4 **Reimbursement, Mitigation and Cooperation.** BA will reimburse CE for all reasonable and necessary out-of-pocket costs incurred (including without limitation costs associated with providing required notices) as a result of a Breach by the BA, its affiliates, subcontractors or agents. Business Associate further agrees to cooperate with CE as reasonably requested, to mitigate, to the extent practicable, any harmful effect of such a Breach or other use or disclosure of Protected Health Information in violation of the terms and conditions of this Agreement, and fully cooperate with CE on all matters relating to such incident and associated notifications by CE to Individuals, the media, the Secretary, the Federal Trade Commission, or any other governmental entity.
- 7.5 **Continuing Duty to Report.** Nothing in this Agreement shall be construed to relieve BA of its existing reporting obligations under the Agreement and BA shall continue to report to CE in the time and in the manner provided for in the Agreement. The occurrence of a Security Incident of a use or disclosure of PHI in a manner that is not provided for in the Agreement shall not discharge BA's obligations under this Agreement to report a Breach unless such reporting fully and completely satisfies all of the Breach reporting requirements of this Agreement.

8. Term and Termination

- 8.1 **Term.** The Term of this Agreement will begin and become effective on the Effective Date and shall terminate when all of the Protected Health Information provided by CE to BA, or created or received by BA on behalf of CE is destroyed or returned to CE, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section 8
- 8.2 **Termination.** Upon CE's knowledge of a material breach by BA of the terms of this Agreement, CE shall either:
- 8.2.1 Provide an opportunity for BA to cure the breach or end the violation.
 - 8.2.2 If BA does not cure the breach or end the violation within the time specified by CE, CE shall terminate this Agreement;
 - 8.2.3 If BA has breached a material term of this Agreement and cure is not possible, immediately terminate this Agreement; or
 - 8.2.4 If neither termination nor cure is feasible, CE shall report the violation to the Secretary.

8.3 Effect of Relationship Termination.

- 8.3.1 Except as provided in Section 8.3.2 and/or 8.3.3 of this sub-section, upon termination of the Agreement, for any reason, BA shall return or destroy all Protected Health Information received from or created or received by it on behalf of CE and will certify that such return or destruction has been completed no later than 30 calendar days following the effective date of termination. The certificate of return or destruction should be mailed to Knox County Risk Management, Attn. Privacy Officer, 400 Main Street Suite 345, Knoxville TN 37902. This provision shall apply to Protected Health Information that is in the possession of Business Associate and/or its Subcontractors or agents. BA will not retain any copies of Protected Health Information.
- 8.3.2 In the event that BA determines that returning or destroying Protected Health Information is infeasible, BA will notify CE in writing, no later than the date required for certification under section 8.3.1, of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of Protected Health Information is infeasible; BA will extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as BA maintains such Protected Health Information.
- 8.3.3 Should Covered Entity notify Business Associate that the information necessary to comply with the recordkeeping requirements under other applicable law includes the Protected Health Information, BA shall return or provide to CE such information, including Protected Health Information.

9. General Provisions

- 9.1 **Regulatory References.** Any reference in this Agreement to a section in HIPAA, HIPAA Regulations, or the HITECH Act means the section as in effect or amended or modified from time to time, including any corresponding provisions of subsequent superseding laws or regulations.
- 9.2 **Amendment.** The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for CE and/or BA to comply with the requirements of HIPAA and the HITECH Act, as those statutes and their implementing regulations may be amended from time to time. No amendment to this Agreement shall be effective until reduced to writing and duly signed by the authorized representatives of the parties.
- 9.3 **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit each party to comply with HIPAA and the HITECH Act, as those statutes and their implementing regulations may be amended from time to time. The provisions of this Agreement shall prevail over any provision of any other agreement between the BA and the CE that may conflict or be inconsistent with any provision in this Agreement.
- 9.4 **Survival.** The respective rights and obligations of BA under this Agreement shall survive the termination of this Agreement and any related agreement, including a services agreement.
- 9.5 **Indemnity.** The BA agrees to indemnify, hold harmless, and defend the CE and its officers, directors, employees or agents from any claim, cause of action, liabilities, damages, penalties, fines, costs, expenses or other losses (including attorney's fees) arising out of any use or disclosure of PHI by BA or its agents or subcontractors in breach of this Agreement or in violation of State or Federal Law, including without limitation, HIPAA, the HITECH Act, the Privacy Rule, or the Security Rule.

- 9.6 **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties hereto, any rights, remedies, obligations, or liabilities whatsoever.
- 9.7 **Disputes.** If any dispute or claim arises between the parties with respect to this Agreement, the parties will make a good faith effort to resolve such matters informally, it being the intention of the parties that they reasonably cooperate with each other in the performance of the mutual obligations under this Agreement.
- 9.8 **Conformance with Law.** The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the parties to comply with the requirements of HIPAA as they apply to each party.
- 9.9 **Action.** For purposes of this Agreement, whenever action is required by a party to this Agreement, such action must be taken by a person or persons with authority to act on behalf of such party to this Agreement.
- 9.10 **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.
- 9.11 **Notices.** All notices and communications required by this Agreement shall be in writing and shall be effective upon receipt. Such notices and communications shall be given in one of the following forms: (i) by delivery in person, (ii) by a nationally-recognized, next-day courier service, (iii) by first-class, registered or certified mail, postage prepaid; or (iv) by electronic mail to the address that each party specifies in writing. Neither party shall refuse delivery of any notice hereunder.
- 9.12 **Nature of Agreement.** Nothing in this Agreement shall be construed to create a partnership, joint venture, or other joint business relationship between the parties or any of their affiliates, or a relationship of employer and employee between the parties. Rather, it is the intention of the parties that their relationship shall be that of independent contractors.
- 9.13 **Entire Agreement.** This Agreement constitutes the entire agreement between the BA and the CE relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters.
- 9.14 **Counterparts.** This Agreement may be executed in counterparts, each of which so executed shall be construed to be an original, but all of which together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Transmission by facsimile or electronic mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart. This Agreement and any amendment or modification may not be denied legal effect or enforceability solely because it is in electronic form, or because an electronic signature or electronic record was used in its formation.
- 9.15 **Governing Law and Venue.** This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed under the laws of the state of Tennessee. The Chancery Court and/or the Circuit Court of Knox County, Tennessee shall have exclusive and concurrent jurisdiction of any disputes which arise hereunder.
- 9.16 **Compliance with HIPAA Transaction Standards.** When providing its services and/or products, BA shall comply with all applicable HIPAA standards and requirements (including, without limitation, those specified in 45 CFR Part 162) with respect to the transmission of health information in electronic form in connection with any transaction for which the Secretary has adopted a standard under HIPAA("Covered Transactions"). BA represents and warrants that it is aware of all current HIPAA standards and requirements regarding Covered Transactions, and BA shall comply with any modifications to HIPAA standards and requirements which become effective from time to time. BA agrees that such compliance shall be at its sole cost and expense, which expense shall not be passed on to CE in any form, including, but not limited to, increased fees. BA shall require all of its agents and subcontractors (if any) who assist BA in providing its services and/or products to comply with these terms.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below.

COVERED ENTITY:

Knox County Government

By: _____

Print Name: _____

Title: Knox County Legal

Date: _____

By: _____

Print Name: _____

Title: Mayor

Date: _____

BUSINESS ASSOCIATE:

By: _____

Print Name: _____

Title: _____

Date: _____

SAMPLE

Designated Persons Appendix

SAMPLE