

**CONTRACT # 18**  
**RFS # 318.65-00257**  
**FA # 08-25044**  
**Edison # 12051**

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

**VENDOR:**  
**SVC Health Solutions, Inc.**



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

March 15, 2013

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

Attention: Ms. Leni Chick

RE: SXC Health Solutions, Inc. Amendment #4

Dear Mr. Geise:

The Department of Finance and Administration, Division of Health Care Finance and Administration, is submitting for consideration amendment #4 to SXC Health Solutions, Inc, the TennCare competitively procured contract for Pharmacy Benefits Management. Due to the higher than anticipated Cost Avoidance component of the contract, the proposed amendment is needed to increase the maximum liability to provide adequate compensation for Contractor performance for the final months of this contract. This funding increase does not impact the rates submitted in the competitive Cost Proposal.

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

Sincerely,

Casey Dungan  
Chief Financial Officer

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

**Supplemental Documentation Required for  
Fiscal Review Committee**

*Contact Name:	Alma Chilton	*Contact Phone:	615-507-6384	
*Original Contract Number:	FA-08-25044-00	*Original RFS Number:	318.65-257	
Edison Contract Number: (if applicable)	12051	Edison RFS Number: (if applicable)	31865-00257	
*Original Contract Begin Date:	June 1, 2008	*Current End Date:	May 31, 2013	
Current Request Amendment Number: (if applicable)	4			
Proposed Amendment Effective Date: (if applicable)	May 15, 2013			
*Department Submitting:	Department of Finance and Administration			
*Division:	Health Care Finance and Administration			
*Date Submitted:	March 14, 2013			
*Submitted Within Sixty (60) days:	Yes			
If not, explain:	N/A			
*Contract Vendor Name:	SXC Health Solutions, Inc.			
*Current Maximum Liability:	\$59,500,000.00			
*Current Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet) Attached				
FY: 2009	FY: 2010	FY: 2011	FY: 2012	FY 2013
\$ 9,709,300.00	\$12,596,190.00	\$13,163,210.00	\$14,031,300.00	\$ 10,000,000.00
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from STARS or FDAS report) Attached				
FY: 2009	FY: 2010	FY: 2011	FY: 2012	FY 2013
\$8,118,812.03	\$ 10,031,362.21	\$10,947,717.00	\$15,506,794.25	\$ 11,739,339.29 (through 02/2013)
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:		This competitively procured contract includes fixed amounts for specific rates submitted by the Contractor in their original RFP Cost Proposal. Additionally, there are associated costs included in contractor reimbursement that are actual costs which cannot be determined prior to actual expenditures that also are included in the contract. The maximum liability included these projected costs at the inception of the contract and any unused dollars will roll forward to be used as needed for these costs as they occur through the duration of the contract.		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		If the amount spent on this contract is less than the budgeted amount and contributes to a net surplus for the bureau, surplus funds would be carried forward subject to authority granted in Section 48, Item 3 of the General Appropriations Act.		

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Fiscal Review Committee

<b>IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:</b>		N/A		
<b>*Contract Funding Source/Amount:</b>	<b>State:</b>	\$29,750,000.00	<b>Federal:</b>	\$29,750,000.00
<b>Interdepartmental:</b>			<b>Other:</b>	
If "other" please define:				
<b>Dates of All Previous Amendments or Revisions: (if applicable)</b>		<b>Brief Description of Actions in Previous Amendments or Revisions: (if applicable)</b>		
Amendment #1 – July, 2010		Adds Disclosure of Ownership, Disclosure of Business Transactions, and Health Care Related Criminal Conviction Disclosures as required by CMS, and clarifies Liquidated Damages as specified in the contract.		
Amendment #2 – May, 2011		Extend term and provide funding.		
Amendment #2 – May, 2012		Extend term and provide funding.		
<b>Method of Original Award: (if applicable)</b>		Request for Proposal		
<b>*What were the projected costs of the service for the entire term of the contract prior to contract award?</b>		The projected costs associated with this contract were based on Cost Proposals submitted with Request for Proposal. Prior to completion of RFP, costs could not be projected. These documents are public information and available upon request.		

## Supplemental Documentation Required for Fiscal Review Committee

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

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

**Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures. (Section C.3 of original contract attached)**

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

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

b. The Contractor shall be compensated based upon the following payment rates:

(1) For service performed from June, 2008, through September 30, 2008, the following rates shall apply:

Service Description	Amount (per compensable increment)
Installation Cost (Paid in Three Equal Installments) 1/3 Due Three Months Prior to Delivery of Services 1/3 Due Two Months Prior to Delivery of Services 1/3 Due Upon Delivery of Services	\$ 0

(2) For service performed from October 1, 2008, through September 30, 2009, the following rates shall apply:

Service Description	Amount (per compensable increment)
Monthly Administrative Fee	\$ 692,250 / month
Clinical Pharmacist Based in Nashville	\$ 16,830 / month
Clinical Pharmacist Based in Nashville	\$ 16,830 / month
Provider Educator Based in Nashville	\$ 16,830 / month
Provider Educator Based in Field	\$ 16,830 / month
Provider Educator Based in Field	\$ 16,830 / month
Provider Educator Based in Field	\$ 16,830 / month
Data Research Analyst Based in Nashville	\$ 9,180 / month
Program Coordinator Based in Nashville	\$ 13,006 / month

**Supplemental Documentation Required for  
Fiscal Review Committee**

System Liaison Based in Contractor's Home Office	\$ 9,180 / month
Contract Manager Based in Contractor's Home Office	\$ 11,476 / month

(3) For service performed from October 1, 2009, through September 30, 2010, the following rates shall apply:

Service Description	Amount (per compensable increment)
Monthly Administrative Fee	\$ 727,598 / month
Clinical Pharmacist Based in Nashville	\$ 17,672 / month
Clinical Pharmacist Based in Nashville	\$ 17,672 / month
Provider Educator Based in Nashville	\$ 17,672 / month
Provider Educator Based in Field	\$ 17,672 / month
Provider Educator Based in Field	\$ 17,672 / month
Provider Educator Based in Field	\$ 17,672 / month
Data Research Analyst Based in Nashville	\$ 9,639 / month
Program Coordinator Based in Nashville	\$ 13,656 / month
System Liaison Based in Contractor's Home Office	\$ 9,639 / month
Contract Manager Based in Contractor's Home Office	\$ 12,049 / month

(4) For service performed from October 1, 2010, through May 31, 2011, the following rates shall apply:

Service Description	Amount (per compensable increment)
Monthly Administrative Fee	\$ 763,977 / month
Clinical Pharmacist Based in Nashville	\$ 18,555 / month
Clinical Pharmacist Based in Nashville	\$ 18,555 / month
Provider Educator Based in Nashville	\$ 18,555 / month
Provider Educator Based in Field	\$ 18,555 / month
Provider Educator Based in Field	\$ 18,555 / month
Provider Educator Based in Field	\$ 18,555 / month
Data Research Analyst Based in Nashville	\$ 10,121 / month
Program Coordinator Based in Nashville	\$ 14,339 / month
System Liaison Based in Contractor's Home Office	\$ 10,121 / month
Contract Manager Based in Contractor's Home Office	\$ 12,652 / month

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Fiscal Review Committee**

(5) Should the Contract be amended for Extension of Services, for the services performed from June 1, 2011, through May 31, 2012, the following rates shall apply:

Service Description	Amount (per compensable increment)
Monthly Administrative Fee	\$ 802,176 / month
Clinical Pharmacist Based in Nashville	\$ 19,483 / month
Clinical Pharmacist Based in Nashville	\$ 19,483 / month
Provider Educator Based in Nashville	\$ 19,483 / month
Provider Educator Based in Field	\$ 19,483 / month
Provider Educator Based in Field	\$ 19,483 / month
Provider Educator Based in Field	\$ 19,483 / month
Data Research Analyst Based in Nashville	\$ 10,627 / month
Program Coordinator Based in Nashville	\$ 15,056 / month
System Liaison Based in Contractor's Home Office	\$ 10,627 / month
Contract Manager Based in Contractor's Home Office	\$ 13,284 / month

c. Rebate Bonus - Per Section A.3.5.2., Annual Rebates for each year of the contract shall be calculated on the basis of any rebates obtained outside of the OBRA rebates. Annually, if the Contractor exceeds the upper figure of the allowed supplemental rebate percentage range they shall receive an annual bonus based on the following table:

Exceed by less than one percent (1%)	One hundred thousand dollars (\$100,000)
Exceed by more than or equal to one percent (1%), but less than two percent (2%)	Two hundred thousand dollars (\$200,000)
Exceed by more than or equal to two percent (2%), but less than three percent (3%)	Six hundred thousand dollars (\$600,000)
Exceed by more than or equal to three percent (3%)	One million, two hundred thousand dollars (\$1,200,000)

d. Rebate Bonus - Per Section A.3.5.2., Annual Rebates for each year of the contract shall be calculated on the basis of any rebates obtained outside of the OBRA rebates. The Table below lists the Contractor's Annual Allowed Supplemental Percentage for each year of the contract:

	October 1, 2008- September 30, 2009	October 1, 2009- September 30, 2010	October 1, 2010-May 31, 2011	June 1, 2011- May 31, 2012	June 1, 2012- May 31, 2013
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## Supplemental Documentation Required for Fiscal Review Committee

<b>Annual Allowed Supplemental Rebate Percentage</b>	8.35%	8.35%	8.35%	8.35%	8.35%
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C.3.e Third Party Liability Point of Service Edit – Per Section A.2.4.k, monthly savings due to cost avoidance from the TPL POS edit shall be calculated based on claims denied for the sole reason of TPL. The Contractor shall receive payment in the amount of 25% of the calculated cost avoidance savings due to the TPL POS edit.

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

This contract amendment does not include proposed savings, however, it is a competitively procured contract based on best technical and cost proposal, which includes drug rebates realized by the State. This amendment provides funding to support the Cost Avoidance component of the contract through the final end date.

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

SXC Health Solutions, Inc. was awarded the competitively procured contract for pharmacy management and preferred drug list services for the TennCare program. Pursuant to State of Tennessee contract rules, an RFP is the optimum state procurement method and no other options were explored. All technical and cost proposals submitted as a result of this RFP are available for public inspection.

SXC Health Solutions (Catamaran)  
EDISON CONTRACT #12051  
CONTRACT PAYMENTS BY FISCAL YEAR  
(Payment Detail Attached)

<b>FY 2009</b>	<b>\$8,118,812.03</b>	
<b>FY 2010 (Pre-Edison)</b>	\$861,307.85	
<b>FY 2010 (Edison)</b>	\$9,170,054.36	
<b>FY 2010 (Total)</b>	<u>\$10,031,362.21</u>	
<b>FY 2011</b>	<b>\$10,947,717.00</b>	
<b>FY 2012</b>	<b>\$15,506,794.25</b>	
<b>FY 2013</b>	<u>\$11,739,339.29</u>	(Through February 2013)
<b>TOTAL</b>	<u><u>\$56,344,024.78</u></u>	

**SXC Health Solutions (Catamaran)**  
**FA0825044 - Expenditures by Fiscal Year**

Dept	Division	Funding Year	Reference Document	Date	Expenditures
318	65	2009	FA0825044	10/31/2008	\$836,072.00
318	65	2009	FA0825044	11/30/2008	\$1,244,852.21
318	65	2009	FA0825044	12/31/2008	\$862,762.69
318	65	2009	FA0825044	1/31/2009	\$860,373.26
318	65	2009	FA0825044	2/28/2009	\$836,109.80
318	65	2009	FA0825044	3/31/2009	\$884,025.42
318	65	2009	FA0825044	4/30/2009	\$862,012.02
318	65	2009	FA0825044	5/31/2009	\$862,421.69
318	65	2009	FA0825044	6/30/2009	\$870,182.94

**\$8,118,812.03 FY 2009 Total**

Dept	Division	Funding Year	Reference Document	Date	Expenditures
318	65	2010	FA0825044	7/31/2009	\$861,307.85

**PAYMENTS MADE THROUGH EDISON:**

318	65	2010	FA0825044	8/31/2009	\$866,388.94
318	65	2010	FA0825044	9/30/2009	\$860,538.22
318	65	2010	FA0825044	10/31/2009	\$907,339.55
318	65	2010	FA0825044	11/30/2009	\$906,206.17
318	65	2010	FA0825044	12/31/2009	\$902,229.08
318	65	2010	FA0825044	1/31/2010	\$302,139.13
318	65	2010	FA0825044	2/28/2010	\$911,361.27
318	65	2010	FA0825044	3/31/2010	\$878,613.00
318	65	2010	FA0825044	4/30/2010	\$878,613.00
318	65	2010	FA0825044	5/31/2010	\$878,013.00
318	65	2010	FA0825044	6/30/2010	\$878,613.00

**\$10,031,362.21 FY 2010 Total**

**SXC Health Solutions (Catamaran)**  
**FA0825044 - Expenditures by Fiscal Year**

Dept	Division	Funding Year	Reference Document	Date	Expenditures
318	65	2011	FA0825044	7/31/2010	\$878,613.00
318	65	2011	FA0825044	8/31/2010	\$878,613.00
318	65	2011	FA0825044	9/30/2010	\$878,613.00
318	65	2011	FA0825044	10/31/2010	\$922,540.00
318	65	2011	FA0825044	11/30/2010	\$922,540.00
318	65	2011	FA0825044	12/31/2010	\$922,540.00
318	65	2011	FA0825044	1/31/2011	\$903,985.00
318	65	2011	FA0825044	2/28/2011	\$903,985.00
318	65	2011	FA0825044	3/31/2011	\$922,540.00
318	65	2011	FA0825044	4/30/2011	\$922,540.00
318	65	2011	FA0825044	5/31/2011	\$922,540.00
318	65	2011	FA0825044	6/30/2011	\$968,668.00

**\$10,947,717.00**      **FY 2011 Total**

Dept	Division	Funding Year	Reference Document	Date	Expenditures
318	65	2012	FA0825044	7/31/2011	\$968,668.00
318	65	2012	FA0825044	8/31/2011	\$968,668.00
318	65	2012	FA0825044	8/31/2011	\$302,792.15
318	65	2012	FA0825044	9/30/2011	\$1,090,861.95
318	65	2012	FA0825044	10/31/2011	\$1,143,012.64
318	65	2012	FA0825044	11/30/2011	\$1,124,421.94
318	65	2012	FA0825044	2/21/2012	\$1,169,192.67
318	65	2012	FA0825044	3/8/2012	\$1,441,909.48
318	65	2012	FA0825044	3/29/2012	\$1,505,398.12
318	65	2012	FA0825044	5/23/2012	\$1,444,305.47
318	65	2012	FA0825044	7/2/2012	\$1,524,077.07
318	65	2012	FA0825044	7/3/2012	\$1,366,981.21
318	65	2012	FA0825044	7/23/2012	\$1,456,505.55

**\$15,506,794.25**      **FY 2012 Total**

**SXC Health Solutions (Catamaran)**  
**FA0825044 - Expenditures by Fiscal Year**

<b>Dept</b>	<b>Division</b>	<b>Funding Year</b>	<b>Reference Document</b>	<b>Date</b>	<b>Expenditures</b>
318	65	2013	FA0825044	8/23/2012	\$1,605,547.94
318	65	2013	FA0825044	10/19/2012	\$1,448,581.79
318	65	2013	FA0825044	11/7/2012	\$1,394,455.74
318	65	2013	FA0825044	12/31/2012	\$1,407,542.12
318	65	2013	FA0825044	12/31/2012	\$1,446,960.00
318	65	2013	FA0825044	2/1/2013	\$1,432,581.70
318	65	2013	FA0825044	Pending	\$1,507,324.76
318	65	2013	FA0825044	Pending	\$1,496,345.24

**\$11,739,339.29    FY 2013 Total**

# Non-Competitive Amendment Request

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

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

APPROVED

CENTRAL PROCUREMENT OFFICER

<b>Request Tracking #</b>	31865-00257	
<b>Procuring Agency</b>	Department of Finance and Administration Bureau of TennCare	
<b>Contractor</b>	SXC Health Solutions, Inc.	
<b>Contract #</b>	FA-08-25044-00	
<b>Proposed Amendment #</b>	4	
<b>Edison ID #</b>	12051	
<b>Contract Begin Date</b>	June 1, 2008	
<b>Current Contract End Date</b> – with ALL options to extend exercised	May 31, 2013	
<b>Proposed Contract End Date</b> – with ALL options to extend exercised	May 31, 2013	
<b>Current Maximum Contract Cost</b> – with ALL options to extend exercised	\$ 59,500,000.00	
<b>Proposed Maximum Contract Cost</b> – with ALL options to extend exercised	\$62,000,000.00	
<b>Office for Information Resources Endorsement</b> – information technology service (N/A to THDA)	xx Not Applicable	<input type="checkbox"/> Attached
<b>eHealth Initiative Support</b> – health-related professional, pharmaceutical, laboratory, or imaging service	xx Not Applicable	<input type="checkbox"/> Attached
<b>Human Resources Support</b> – state employee training service	xx Not Applicable	<input type="checkbox"/> Attached
<b>Explanation Need for the Proposed Amendment</b>		
<p>This competitively procured contract is being amended to provide additional funds sufficient to reimburse the Contractor as they carry out the obligations of this contract. Due to the higher than anticipated Cost Avoidance component of the contract, the proposed amendment is needed to increase the maximum liability to provide adequate compensation to the Contractor for the final</p>		

<b>Request Tracking #</b>	<b>31865-00257</b>
months of this contract.	
<b>Name &amp; Address of the Contractor's Principal Owner(s)</b> – NOT required for a TN state education institution	
<p>Mark A. Thierer, President and Chief Operating Officer  SXC Health Solutions, Inc.  2441 Warrenville Road  Suite 610  Lisle, IL 60532</p>	
<b>Evidence Contractor's Experience &amp; Length Of Experience Providing the Service</b>	
<p>SXC Health Solutions Corp. has been a leading provider of pharmacy benefits management (PBM) services and Health Care Information Technology (HCIT) solutions to the healthcare benefits management industry for over 27 years. The Company's product offerings and solutions combine a wide range of PBM services and software applications, application service provider (ASP) processing services and professional services, designed for many of the largest organizations in the pharmaceutical supply chain, such as health plans, employers, federal, provincial, and, state and local governments, pharmacy benefit managers, retail pharmacy chains and other healthcare intermediaries. SXC is headquartered in Lisle, Illinois with multiple locations in the US and Canada. SXC currently has a competitively procured contract for pharmacy benefits management with the Bureau of TennCare.</p>	
<b>Efforts to Identify Reasonable, Competitive, Procurement Alternatives</b>	
<p>Based on combined Technical and Cost scores, SXC Health Solutions, Inc. was awarded the competitively procured contract for Pharmacy Management and Preferred drug list server for the Bureau of TennCare, the State of Tennessee's Medicaid program.</p>	
<b>Justification</b> – specifically explain why non-competitive negotiation is in the best interest of the state	
<p>SXC Health Solutions, Inc. was awarded the competitively procured contract for Pharmacy Management and Preferred drug list server for the Bureau of TennCare, the State of Tennessee's Medicaid program. Due to the higher than anticipated Cost Avoidance component of the contract, this amendment provides funding to ensure sufficient funds are available for contractor payments. The Bureau of TennCare would appreciate favorable review and approval of this amendment by the Commissioner of Finance and Administration.</p>	
<b>Agency Head Signature and Date</b> – MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances	
<p><i>Mark A. Thierer</i> 3/13/13</p>	



## CONTRACT AMENDMENT

<b>Agency Tracking #</b> 31865-00257	<b>Edison ID</b> 12051	<b>Contract #</b> FA0825044	<b>Amendment #</b> 04
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<b>Contractor Legal Entity Name</b> SXC Health Solutions, Inc.	<b>Edison Vendor ID</b> 68120
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**Amendment Purpose & Effect(s)**  
Increases Maximum Liability

**Amendment Changes Contract End Date:**     YES     NO    **End Date:**    May 31, 2013

**TOTAL Contract Amount INCREASE or DECREASE per this Amendment** (zero if N/A):    **\$ 2,500,000.00**

Funding —					
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2008	\$0.00	\$0.00			\$0.00
2009	\$4,854,650.00	\$4,854,650.00			\$9,709,300.00
2010	\$6,298,095.00	\$6,298,095.00			\$12,596,190.00
2011	\$6,581,605.00	\$6,581,605.00			\$13,163,210.00
2012	\$7,015,650.00	\$7,015,650.00			\$14,031,300.00
2013	\$6,250,000.00	\$6,250,000.00			\$12,500,000.00
<b>TOTAL:</b>	<b>\$31,000,000.00</b>	<b>\$31,000,000.00</b>			<b>\$62,000,000.00</b>

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

<p><b>Budget Officer Confirmation:</b> There is a balance in the appropriation from which obligations hereunder are required to be paid that is not already encumbered to pay other obligations.</p> <div style="text-align: center; margin-top: 20px;"> </div>	<p>OCR USE</p>
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<b>Speed Chart (optional)</b> TN00000066	<b>Account Code (optional)</b> 70803000
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**AMENDMENT #4  
OF CONTRACT FA-08-25044-00  
BETWEEN THE STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE  
AND  
SXC HEALTH SOLUTIONS, INC.**

This Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Bureau of TennCare, hereinafter referred to as the "State" or "TennCare" and SXC Health Solutions, Inc., hereinafter referred to as the "Contractor" or "PBM." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract section C.1 is deleted in its entirety and replaced with the following:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Sixty-Two Million Dollars (\$62,000,000.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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

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

Amendment Effective Date. The revisions set forth herein shall be effective May 15, 2013. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.

**IN WITNESS WHEREOF,**

**SXC HEALTH SOLUTIONS, INC.:**

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**SIGNATURE**

**DATE**

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**PRINTED NAME AND TITLE OF SIGNATORY (above)**

**DEPARTMENT OF FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE:**

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**Mark A. Emkes, Commissioner**

**DATE**



GENERAL ASSEMBLY OF THE STATE OF TENNESSEE  
FISCAL REVIEW COMMITTEE

320 Sixth Avenue, North – 8<sup>th</sup> Floor  
NASHVILLE, TENNESSEE 37243-0057  
615-741-2564

Sen. Bill Ketron, Chairman  
Senators

Douglas Henry           Reginald Tate  
Brian Kelsey            Ken Yager  
Eric Stewart  
Randy McNally, *ex officio*  
Lt. Governor Ron Ramsey, *ex officio*

Rep. Curtis Johnson, Vice-Chairman  
Representatives

Tommie Brown           David Shepard  
Jim Coley                Tony Shipley  
Charles Curtiss         Curry Todd  
Johnny Shaw             Mark White  
Charles Sargent, *ex officio*  
Speaker Beth Harwell, *ex officio*

MEMORANDUM

TO:                    The Honorable Mark Emkes, Commissioner  
                          Department of Finance and Administration

FROM:                 Senator Bill Ketron, Chairman  
                          Representative Curtis Johnson, Vice-Chairman

DATE:                 February 13, 2012

SUBJECT:             CORRECTED Contract Comments  
                          (Fiscal Review Committee Meeting 1/31/12)

BK  
CJ

RFS# 318.65-00257 (Edison # 12051)  
Department: Finance & Administration/Bureau of TennCare  
Vendor: SXC Health Solutions, Inc.

Summary: The vendor is responsible for pharmacy benefit management and preferred drug list services. The proposed amendment extends the current contract one year through May 31, 2013, and increases the maximum liability by \$10,000,000.

Current maximum liability: \$49,500,000  
Proposed maximum liability: \$59,500,000

After review, the Fiscal Review Committee voted to recommend approval of the contract amendment.

cc: The Honorable Darin Gordon, Deputy Commissioner  
      Ms. Jessica Robertson, Chief Procurement Officer  
      Mr. Robert Barlow, Director, Office of Contracts Review



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

January 13, 2012

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

Attention: Ms. Leni Chick

RE: Bureau of TennCare Managed Care Organization Contract Amendments  
SXC Health Solutions, Inc., #3  
Public Consulting Group, Inc. #1  
Health Management Associates, Inc. #1

Mr. Lucian Geise:

The Department of Finance and Administration, Bureau of TennCare, is submitting for consideration by the Fiscal Review Committee the following Managed Care Organization (MCO) amendments to these competitively procured contracts for the provision of medical and behavioral services for TennCare enrollees. These amendments are necessary to add language consistent with the proposed budget presented to the Governor by TennCare. The language clarifies that each MCO will receive full risk capitation payments for up to 12 months prior to the member's enrollment in the plan for members who are determined to receive retro eligibility. Beyond the 12 month period, rather than the full capitation rate, the MCO will invoice TennCare for actual expenditures. By making this language change to all of the MCO contracts, TennCare is projected to realize a moderate reduction in payments.

AMERIGROUP Tennessee, Inc.	FA-07-16936-11
UnitedHealthCare Plan of River Valley, Inc.	FA-07-16937-11
UnitedHealthCare Plan of the River Valley, Inc (West Region)	FA-08-24979-08
Volunteer State Health Plan (West Region)	FA-08-24978-08
UnitedHealthCare Plan of the River Valley, Inc. (East Region)	FA-08-24984-08
Volunteer State Health Plan (East Region)	FA-08-24983-08

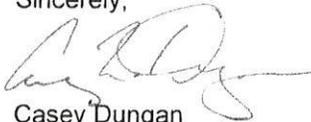
January 13, 2012  
Mr. Lucian Geise, Director  
Page 2

Secondly, TennCare is submitting for consideration amendment #3 to **SXC Health Solutions, Inc.**, the contract for Pharmacy Management and Preferred drugs list server for the Bureau of TennCare. This competitively procured contract amendment extends the term of the contract for the 5<sup>th</sup> and final year and provides funding to support this extension. The Bureau is developing language to release an RFP to competitively identify a contractor to assume the Pharmacy management contract when this current term ends.

Finally, we are submitting for consideration amendments to the existing contracts with Public Consulting Group, Inc. and Health Management Associates, Inc., for the purpose of providing additional funding for policy and operational consulting services regarding health insurance exchanges and for making evidence-based recommendations to the State. Since the execution of these competitively procured contracts, one of the three competitively procured Contractors (Dell) that received a contract award under the initial Request for Proposal has indicated that it is unable to perform functions specified in the scope of work due to loss of key subject matter consulting staff. This inability to perform work for the State results in the need for redistribution of unused funds to the PCG and HMA contracts. Additionally, the State has received additional planning funds to analyze evolving federal guidance regarding the exchange marketplaces. Because of the continuing policy changes at the federal level and the magnitude of the market impacts in Tennessee, the State sought additional planning funds which were awarded on November 29, 2011. We now need the corresponding technical assistance that these two competitively procured contracts can provide to analyze the emerging issues in the market and revise our recommendations if and as appropriate. The State indicated in both the RFP and resulting contract that contract funding would be increased as needed and as availability of additional federal funding dictated.

The Bureau of TennCare would greatly appreciate the consideration and approval of these amendments by the Fiscal Review Committee.

Sincerely,



Casey Dungan  
Chief Financial Officer

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

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**Supplemental Documentation Required for  
Fiscal Review Committee**

*Contact Name:	Alma Chilton	*Contact Phone:	615-507-6384		
*Original Contract Number:	FA-08-25044-00	*Original RFS Number:	318.65-257		
Edison Contract Number: <i>(if applicable)</i>	12051	Edison RFS Number: <i>(if applicable)</i>	31865-00257		
*Original Contract Begin Date:	June 1, 2008	*Current End Date:	May 31, 2012		
Current Request Amendment Number: <i>(if applicable)</i>	3				
Proposed Amendment Effective Date: <i>(if applicable)</i>	May 31, 2012				
*Department Submitting:	Department of Finance and Administration				
*Division:	Bureau of TennCare				
*Date Submitted:	January 13, 2011				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>	N/A				
*Contract Vendor Name:	SXC Health Solutions, Inc.				
*Current Maximum Liability:	\$49,500,000.00				
<b>*Current Contract Allocation by Fiscal Year:</b> <i>(as Shown on Most Current Fully Executed Contract Summary Sheet) Attached</i>					
FY: 2009	FY: 2010	FY:2011	FY: 2012	FY	FY
\$ 9,709,300.00	\$12,596,190.00	\$13,163,210.00	\$14,031,300.00	\$	\$
<b>*Current Total Expenditures by Fiscal Year of Contract:</b> <i>(attach backup documentation from STARS or FDAS report) Attached</i>					
FY: 2009	FY: 2010	FY: 2011	FY: 2012	FY	FY
\$8,118,812.03	\$ 10,031,362.21	\$10,947,717.00	\$5,598,424.68 <i>(thru 11/30/2011)</i>	\$	\$
<b>IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:</b>		This competitively procured contract includes fixed amounts for specific rates submitted by the Contractor in their original RFP Cost Proposal. Additionally, there are associated costs included in contractor reimbursement that are actual costs which cannot be determined prior to actual expenditures that also are included in the contract. The maximum liability included these projected costs at the inception of the contract and any unused dollars will roll forward to be used as needed for these costs as they occur through the duration of the contract.			
<b>IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:</b>		If the amount spent on this contract is less than the budgeted amount and contributes to a net surplus for the bureau, surplus funds would be carried forward subject to authority granted in Section 48, Item 3 of the General Appropriations Act.			

Supplemental Documentation Required for  
Fiscal Review Committee

IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		N/A		
*Contract Funding Source/Amount:	State:	\$24,750,000.00	Federal:	\$24,750,000.00
Interdepartmental:			Other:	
If "other" please define:				
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
Amendment #1 – July, 2010		Adds Disclosure of Ownership, Disclosure of Business Transactions, and Health Care Related Criminal Conviction Disclosures as required by CMS, and clarifies Liquidated Damages as specified in the contract.		
Amendment #2 – May, 2011		Extend term and provide funding.		
Method of Original Award: <i>(if applicable)</i>		Request for Proposal		
*What were the projected costs of the service for the entire term of the contract prior to contract award?		The projected costs associated with this contract were based on Cost Proposals submitted with Request for Proposal. Prior to completion of RFP, costs could not be projected. These documents are public information and available upon request.		

## Supplemental Documentation Required for Fiscal Review Committee

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

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

**Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures. (Section C.3 of original contract attached)**

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

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

b. The Contractor shall be compensated based upon the following payment rates:

(1) For service performed from June, 2008, through September 30, 2008, the following rates shall apply:

Service Description	Amount (per compensable increment)
Installation Cost (Paid in Three Equal Installments) 1/3 Due Three Months Prior to Delivery of Services 1/3 Due Two Months Prior to Delivery of Services 1/3 Due Upon Delivery of Services	\$ 0

(2) For service performed from October 1, 2008, through September 30, 2009, the following rates shall apply:

Service Description	Amount (per compensable increment)
Monthly Administrative Fee	\$ 692,250 / month
Clinical Pharmacist Based in Nashville	\$ 16,830 / month
Clinical Pharmacist Based in Nashville	\$ 16,830 / month
Provider Educator Based in Nashville	\$ 16,830 / month
Provider Educator Based in Field	\$ 16,830 / month
Provider Educator Based in Field	\$ 16,830 / month
Provider Educator Based in Field	\$ 16,830 / month
Data Research Analyst Based in Nashville	\$ 9,180 / month
Program Coordinator Based in Nashville	\$ 13,006 / month

## Supplemental Documentation Required for Fiscal Review Committee

System Liaison Based in Contractor's Home Office	\$ 9,180 / month
Contract Manager Based in Contractor's Home Office	\$ 11,476 / month

(3) For service performed from October 1, 2009, through September 30, 2010, the following rates shall apply:

Service Description	Amount (per compensable increment)
Monthly Administrative Fee	\$ 727,598 / month
Clinical Pharmacist Based in Nashville	\$ 17,672 / month
Clinical Pharmacist Based in Nashville	\$ 17,672 / month
Provider Educator Based in Nashville	\$ 17,672 / month
Provider Educator Based in Field	\$ 17,672 / month
Provider Educator Based in Field	\$ 17,672 / month
Provider Educator Based in Field	\$ 17,672 / month
Data Research Analyst Based in Nashville	\$ 9,639 / month
Program Coordinator Based in Nashville	\$ 13,656 / month
System Liaison Based in Contractor's Home Office	\$ 9,639 / month
Contract Manager Based in Contractor's Home Office	\$ 12,049 / month

(4) For service performed from October 1, 2010, through May 31, 2011, the following rates shall apply:

Service Description	Amount (per compensable increment)
Monthly Administrative Fee	\$ 763,977 / month
Clinical Pharmacist Based in Nashville	\$ 18,555 / month
Clinical Pharmacist Based in Nashville	\$ 18,555 / month
Provider Educator Based in Nashville	\$ 18,555 / month
Provider Educator Based in Field	\$ 18,555 / month
Provider Educator Based in Field	\$ 18,555 / month
Provider Educator Based in Field	\$ 18,555 / month
Data Research Analyst Based in Nashville	\$ 10,121 / month
Program Coordinator Based in Nashville	\$ 14,339 / month
System Liaison Based in Contractor's Home Office	\$ 10,121 / month
Contract Manager Based in Contractor's Home Office	\$ 12,652 / month

## Supplemental Documentation Required for Fiscal Review Committee

(5) Should the Contract be amended for Extension of Services, for the services performed from June 1, 2011, through May 31, 2012, the following rates shall apply:

Service Description	Amount (per compensable increment)
Monthly Administrative Fee	\$ 802,176 / month
Clinical Pharmacist Based in Nashville	\$ 19,483 / month
Clinical Pharmacist Based in Nashville	\$ 19,483 / month
Provider Educator Based in Nashville	\$ 19,483 / month
Provider Educator Based in Field	\$ 19,483 / month
Provider Educator Based in Field	\$ 19,483 / month
Provider Educator Based in Field	\$ 19,483 / month
Data Research Analyst Based in Nashville	\$ 10,627 / month
Program Coordinator Based in Nashville	\$ 15,056 / month
System Liaison Based in Contractor's Home Office	\$ 10,627 / month
Contract Manager Based in Contractor's Home Office	\$ 13,284 / month

c. Rebate Bonus - Per Section A.3.5.2., Annual Rebates for each year of the contract shall be calculated on the basis of any rebates obtained outside of the OBRA rebates. Annually, if the Contractor exceeds the upper figure of the allowed supplemental rebate percentage range they shall receive an annual bonus based on the following table:

Exceed by less than one percent (1%)	One hundred thousand dollars (\$100,000)
Exceed by more than or equal to one percent (1%), but less than two percent (2%)	Two hundred thousand dollars (\$200,000)
Exceed by more than or equal to two percent (2%), but less than three percent (3%)	Six hundred thousand dollars (\$600,000)
Exceed by more than or equal to three percent (3%)	One million, two hundred thousand dollars (\$1,200,000)

d. Rebate Bonus - Per Section A.3.5.2., Annual Rebates for each year of the contract shall be calculated on the basis of any rebates obtained outside of the OBRA rebates. The Table below lists the Contractor's Annual Allowed Supplemental Percentage for each year of the contract:

	October 1, 2008- September 30, 2009	October 1, 2009- September 30, 2010	October 1, 2010-May 31, 2011	June 1, 2011- May 31, 2012	June 1, 2012- May 31, 2013
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## Supplemental Documentation Required for Fiscal Review Committee

<b>Annual Allowed Supplemental Rebate Percentage</b>	8.35%	8.35%	8.35%	8.35%	8.35%
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C.3.e Third Party Liability Point of Service Edit – Per Section A.2.4.k, monthly savings due to cost avoidance from the TPL POS edit shall be calculated based on claims denied for the sole reason of TPL. The Contractor shall receive payment in the amount of 25% of the calculated cost avoidance savings due to the TPL POS edit.

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

This contract amendment does not include proposed savings, however, it is a competitively procured contract based on best technical and cost proposal, which includes drug rebates realized by the State. Per the RFP and current competitively procured contract language, this amendment to SXC Health Solutions, Inc., the pharmacy management and preferred drug list contractor, extends the term for an additional year and adds funding to support the term extension based on competitive rates submitted in the contractor's Cost Proposal when the original contract was competitively procured.

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

SXC Health Solutions, Inc. was awarded the competitively procured contract for pharmacy management and preferred drug list services for the TennCare program. Pursuant to State of Tennessee contract rules, an RFP is the optimum state procurement method and no other options were explored. All technical and cost proposals submitted as a result of this RFP are available for public inspection.

**SXC Health Solutions**  
**FA0825044 - Expenditures by Fiscal Year**

Dept	Division	Funding Year	Reference Document	Date	Expenditures
318	65	2009	FA0825044	10/31/2008	\$836,072.00
318	65	2009	FA0825044	11/30/2008	\$1,244,852.21
318	65	2009	FA0825044	12/31/2008	\$862,762.69
318	65	2009	FA0825044	1/31/2009	\$860,373.26
318	65	2009	FA0825044	2/28/2009	\$836,109.80
318	65	2009	FA0825044	3/31/2009	\$884,025.42
318	65	2009	FA0825044	4/30/2009	\$862,012.02
318	65	2009	FA0825044	5/31/2009	\$862,421.69
318	65	2009	FA0825044	6/30/2009	\$870,182.94

**\$8,118,812.03 FY 2009 Total**

318	65	2010	FA0825044	7/31/2009	\$861,307.85
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**PAYMENTS MADE THROUGH EDISON:**

318	65	2010	FA0825044	8/31/2009	\$866,388.94
318	65	2010	FA0825044	9/30/2009	\$860,538.22
318	65	2010	FA0825044	10/31/2009	\$907,339.55
318	65	2010	FA0825044	11/30/2009	\$906,206.17
318	65	2010	FA0825044	12/31/2009	\$902,229.08
318	65	2010	FA0825044	1/31/2010	\$302,139.13
318	65	2010	FA0825044	2/28/2010	\$911,361.27
318	65	2010	FA0825044	3/31/2010	\$878,613.00
318	65	2010	FA0825044	4/30/2010	\$878,613.00
318	65	2010	FA0825044	5/31/2010	\$878,013.00
318	65	2010	FA0825044	6/30/2010	\$878,613.00

**\$10,031,362.21 FY 2010 Total**

318	65	2011	FA0825044	7/31/2010	\$878,613.00
318	65	2011	FA0825044	8/31/2010	\$878,613.00
318	65	2011	FA0825044	9/30/2010	\$878,613.00
318	65	2011	FA0825044	10/31/2010	\$922,540.00
318	65	2011	FA0825044	11/30/2010	\$922,540.00
318	65	2011	FA0825044	12/31/2010	\$922,540.00
318	65	2011	FA0825044	1/31/2011	\$903,985.00
318	65	2011	FA0825044	2/28/2011	\$903,985.00
318	65	2011	FA0825044	3/31/2011	\$922,540.00
318	65	2011	FA0825044	4/30/2011	\$922,540.00
318	65	2011	FA0825044	5/31/2011	\$922,540.00
318	65	2011	FA0825044	6/30/2011	\$968,668.00

**\$10,947,717.00 FY 2011 Total**

**SXC Health Solutions**  
**FA0825044 - Expenditures by Fiscal Year**

Dept	Division	Funding Year	Reference Document	Date	Expenditures
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318	65	2012	FA0825044	7/31/2011	\$968,668.00
318	65	2012	FA0825044	8/31/2011	\$968,668.00
318	65	2012	FA0825044	8/31/2011	\$302,792.15
318	65	2012	FA0825044	9/30/2011	\$1,090,861.95
318	65	2012	FA0825044	10/31/2011	\$1,143,012.64
318	65	2012	FA0825044	11/30/2011	\$1,124,421.94

**\$5,598,424.68**    **FY 2012 Total**

# Non-Competitive Amendment Request

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

Route a completed request, as one file in PDF format, via e-mail attachment sent to: [AgSprs.Agspr@sate.tn.us](mailto:AgSprs.Agspr@sate.tn.us)

APPROVED

COMMISSIONER OF FINANCE & ADMINISTRATION

Request Tracking #	31865-00257	
Procuring Agency	Department of Finance and Administration Bureau of TennCare	
Contractor	SXC Health Solutions, Inc.	
Contract #	FA-08-25044-00	
Proposed Amendment #	3	
Edison ID #	12051	
Contract Begin Date	June 1, 2008	
Current Contract End Date – with ALL options to extend exercised	May 31, 2012	
Proposed Contract End Date – with ALL options to extend exercised	May 31, 2013	
Current Maximum Contract Cost – with ALL options to extend exercised	\$ 49,500,000.00	
Proposed Maximum Contract Cost – with ALL options to extend exercised	\$59,500,000.00	
Office for Information Resources Endorsement – information technology service (N/A to THDA)	xx Not Applicable <input type="checkbox"/> Attached	
eHealth Initiative Support – health-related professional, pharmaceutical, laboratory, or imaging service	xx Not Applicable <input type="checkbox"/> Attached	
Human Resources Support – state employee training service	xx Not Applicable <input type="checkbox"/> Attached	
<b>Explanation Need for the Proposed Amendment</b>		
Per language in the Request for Proposal (RFP) and resulting competitively procured contract, this proposed amendment extends the term for the 5 <sup>th</sup> and final year of the competitively procured contract and provides funding to support the term extension.		
<b>Name &amp; Address of the Contractor's Principal Owner(s)</b> – NOT required for a TN state education institution		

<b>Request Tracking #</b>	<b>31865-00257</b>
<p>Mark A. Thierer, President and Chief Operating Officer  SXC Health Solutions, Inc.  2441 Warrenville Road  Suite 610  Lisle, IL 60532</p>	
<p><b>Evidence Contractor's Experience &amp; Length Of Experience Providing the Service</b></p> <p>SXC Health Solutions Corp. has been a leading provider of pharmacy benefits management (PBM) services and Health Care Information Technology (HCIT) solutions to the healthcare benefits management industry for over 27 years. The Company's product offerings and solutions combine a wide range of PBM services and software applications, application service provider (ASP) processing services and professional services, designed for many of the largest organizations in the pharmaceutical supply chain, such as health plans, employers, federal, provincial, and, state and local governments, pharmacy benefit managers, retail pharmacy chains and other healthcare intermediaries. SXC is headquartered in Lisle, Illinois with multiple locations in the US and Canada. SXC currently has a competitively procured contract for pharmacy benefits management with the Bureau of TennCare.</p>	
<p><b>Efforts to Identify Reasonable, Competitive, Procurement Alternatives</b></p> <p>SXC Health Solutions, Inc. was awarded the competitively procured contract for Pharmacy Management and Preferred drug list server for the Bureau of TennCare, the State of Tennessee's Medicaid program. Per RFP and contract language, this competitively procured contract is being extended for the 5<sup>th</sup> and final year of the contract and funding to support the term extension is being added.</p>	
<p><b>Justification</b> – <i>specifically explain why non-competitive negotiation is in the best interest of the state</i></p> <p>SXC Health Solutions, Inc. was awarded the competitively procured contract for Pharmacy Management and Preferred drug list server for the Bureau of TennCare, the State of Tennessee's Medicaid program. This competitively procured contract amendment extends the term of the contract and provides funding to support this extension. The Bureau is developing language to release an RFP to competitively identify a contractor to assume the Pharmacy Management contract when this term ends. The Bureau of TennCare would appreciate favorable review and approval of this amendment by the Commissioner of Finance and Administration.</p>	
<p><b>Agency Head Signature and Date</b> – <i>MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances</i></p> <p><i>Mark A. Thierer 1/11/2012</i></p> <p style="text-align: right;">☺</p>	



# CONTRACT AMENDMENT

Agency Tracking # 31865-00257	Edison ID 12051	Contract # FA-08-25044	Amendment # 03
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Contractor Legal Entity Name SXC Health Solutions, Inc.	Edison Vendor ID 0000068120
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Amendment Purpose & Effect(s) Amendment extends term and adds funding for an additional year	FEIN or SSN (optional)
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Amendment Changes Contract End Date: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	End Date: May 31, 2013
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Maximum Liability (TOTAL Contract Amount) Increase/Decrease per this Amendment: **\$10,000,000.00**

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2008	\$0.00	\$0.00			\$0.00
2009	\$4,854,650.00	\$4,854,650.00			\$9,709,300.00
2010	\$6,298,095.00	\$6,298,095.00			\$12,596,190.00
2011	\$6,581,605.00	\$6,581,605.00			\$13,163,210.00
2012	\$7,015,650.00	\$7,015,650.00			\$14,031,300.00
2013	\$5,000,000.00	\$5,000,000.00			\$10,000,000.00
<b>TOTAL:</b>	<b>\$29,750,000.00</b>	<b>\$29,750,000.00</b>			<b>\$59,500,000.00</b>

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

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

*Carol L. [Signature]*

OCR USE  
**FA0825044-03**

Speed Code (optional) TN00000066	Account Code (optional) 70803000
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**AMENDMENT #3  
OF CONTRACT FA-08-25044-00  
BETWEEN THE STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE  
AND  
SXC HEALTH SOLUTIONS, INC.**

This Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Bureau of TennCare, hereinafter referred to as the "State" or "TennCare" and SXC Health Solutions, Inc., hereinafter referred to as the "Contractor" or "PBM." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject contract is hereby amended as follows:

1. Contract section B.1 is deleted in its entirety and replaced with the following:
  - B.1. This Contract shall be effective for the period beginning June 1, 2008, and ending on May 31, 2013. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.
  
2. Contract section C.1 is deleted in its entirety and replaced with the following:
  - C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Fifty Nine Million Five Hundred Thousand Dollars (\$59,500,000.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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

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

Amendment Effective Date. The revisions set forth herein shall be effective May 31, 2012. All other terms and conditions of this Contract not expressly amended herein shall remain in full force and effect.



IN WITNESS WHEREOF,

SXC HEALTH SOLUTIONS, INC.:

*[Handwritten Signature]* *1/30/12*  
\_\_\_\_\_  
SIGNATURE DATE  
*Jeff Park, Chief Financial Officer*  
\_\_\_\_\_  
PRINTED NAME AND TITLE OF SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE:

*Mark A Emkes / CD* *2/3/2012*  
\_\_\_\_\_  
Mark A. Emkes, Commissioner DATE



GENERAL ASSEMBLY OF THE STATE OF TENNESSEE  
FISCAL REVIEW COMMITTEE

320 Sixth Avenue, North – 8<sup>th</sup> Floor  
NASHVILLE, TENNESSEE 37243-0057  
615-741-2564

Sen. Bill Ketron, Chairman  
Senators

Douglas Henry                      Reginald Tate  
Brian Kelsey                        Ken Yager  
Eric Stewart  
Randy McNally, *ex officio*  
Lt. Governor Ron Ramsey, *ex officio*

Rep. Curtis Johnson, Vice-Chairman  
Representatives

Tommie Brown                      David Shepard  
Jim Coley                            Tony Shipley  
Charles Curtiss                    Curry Todd  
Johnny Shaw                        Mark White  
Charles Sargent, *ex officio*  
Speaker Beth Harwell, *ex officio*

MEMORANDUM

TO:                                      The Honorable Mark Emkes, Commissioner  
   Department of Finance and Administration

FROM:                                   Bill Ketron, Chairman, Fiscal Review Committee  
   Curtis Johnson, Vice-Chairman, Fiscal Review Committee

DATE:                                   April 12, 2011

SUBJECT:                              **Contract Comments**  
   (Fiscal Review Committee Meeting 4/11/11)

BK  
CJ

**RFS# 318.65-257 (Edison # 12051)**

**Department: Finance & Administration**

**Division: TennCare Bureau**

**Vendor: SXC Health Solutions, Inc.**

**Summary: The vendor is currently providing pharmacy benefit management and preferred drug list services. The proposed amendment extends the current contract for an additional year through May 31, 2012, and increases the maximum liability by \$15,000,000.**

**Current maximum liability: \$34,500,000**

**Proposed maximum liability: \$49,500,000**

After review, the Fiscal Review Committee voted to approve the contract amendment.

cc: The Honorable Darin Gordon, Deputy Commissioner  
      Mr. Robert Barlow, Director, Office of Contracts Review



**State of Tennessee  
Department of Finance and Administration  
Bureau of TennCare  
310 Great Circle Road  
Nashville, Tennessee 37243**

**Bill Haslam  
Governor**

**Mark A. Emkes  
Commissioner**

March 22, 2011

Mr. Jim White, Director  
Fiscal Review Committee  
8<sup>th</sup> Floor, Rachel Jackson Bldg.  
Nashville, TN 37243

Attention: Ms. Leni Chick

RE: Bureau of TennCare Contract Amendment

Dear Mr. White:

The Department of Finance and Administration, Bureau of TennCare, is submitting for consideration by the Fiscal Review Committee amendment #2 to FA-08-25044-00, TennCare's competitively procured contract with SXC Health Solutions, Inc. This Contractor provides pharmacy benefits management services for the Bureau of TennCare enrollee pharmacy program. The proposed amendment clarifies existing language regarding TennCare outputs, POS claims processing and edits, Third Party Liability/Coordination of benefits, step therapy and modified Liquidated Damages. Additionally, as per Request for Proposal (RFP) and current contract language, the term of this competitively procured contract is extended for an additional year and funding added to support the term extension as well as 25% of actual POS cost avoidance savings. The original rates that were submitted by the Contractor in the RFP competitive cost proposals remain unchanged.

The Bureau of TennCare would greatly appreciate the consideration and approval of this amendment by the Fiscal Review Committee.

Sincerely,

Scott Pierce  
Chief Financial Officer

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

Supplemental Documentation Required for  
Fiscal Review Committee

*Contact Name:	Alma Chilton	*Contact Phone:	615-507-6384
*Original Contract Number:	FA-08-25044-00	*Original RFS Number:	318.65-257
Edison Contract Number: <i>(if applicable)</i>	12051	Edison RFS Number: <i>(if applicable)</i>	31865-00257
*Original Contract Begin Date:	June 1, 2008	*Current End Date:	May 31, 2011
Current Request Amendment Number: <i>(if applicable)</i>	2		
Proposed Amendment Effective Date: <i>(if applicable)</i>	May 31, 2011		
*Department Submitting:	Department of Finance and Administration		
*Division:	Bureau of TennCare		
*Date Submitted:	March 22, 2011		
*Submitted Within Sixty (60) days:	Yes		
<i>If not, explain:</i>			
*Contract Vendor Name:	SXC Health Solutions, Inc.		
*Current Maximum Liability:	\$34,500,000.00		
<b>*Current Contract Allocation by Fiscal Year:</b> <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>			
FY: 2009	FY: 2010	FY: 2011	FY: FY FY
\$ 9,709,300.00	\$12,596,190.00	\$12,194,510	\$ \$ \$
<b>*Current Total Expenditures by Fiscal Year of Contract:</b> <i>(attach backup documentation from STARS or FDAS report)</i>			
FY: 2009	FY: 2010	FY: 2011	FY: FY FY
\$8,118,812.03	\$ 10,031,362.21	\$7,200,829.00* thru 2/11	\$ \$ \$
<p><b>IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:</b></p>		<p>This competitively procured contract includes fixed amounts for specific rates submitted by the Contractor in their original RFP Cost Proposal. Additionally, there are associated costs included in contractor reimbursement that are actual costs which cannot be determined prior to actual expenditures that also are included in the contract. The maximum liability included these projected costs at the inception of the contract and any unused dollars will roll forward to be used as needed for these costs as they occur through the duration of the contract.</p>	
<p><b>IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:</b></p>		<p>If the amount spent on this contract is less than the budgeted amount and contributes to a net surplus for the bureau, surplus funds would be carried forward subject to authority granted in Section 48, Item 3 of the General Appropriations Act.</p>	

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IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		N/A	
*Contract Funding Source/Amount:	State:	\$17,250,000.00	Federal: \$17,250,000.00
Interdepartmental:			Other:
If "other" please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Amendment #1 – July, 2010		Adds Disclosure of Ownership, Disclosure of Business Transactions, and Health Care Related Criminal Conviction Disclosures as required by CMS, and clarifies Liquidated Damages as specified in the contract.	
Method of Original Award: <i>(if applicable)</i>		Request for Proposal	
*What were the projected costs of the service for the entire term of the contract prior to contract award?		The projected costs associated with this contract were based on Cost Proposals submitted with Request for Proposal. Prior to completion of RFP, costs could not be projected. These documents are public information and available upon request.	

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

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

**Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures. (Section C.3 of original contract attached)**

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

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

b. The Contractor shall be compensated based upon the following payment rates:

(1) For service performed from June, 2008, through September 30, 2008, the following rates shall apply:

Service Description	Amount (per compensable increment)
Installation Cost (Paid in Three Equal Installments) 1/3 Due Three Months Prior to Delivery of Services 1/3 Due Two Months Prior to Delivery of Services 1/3 Due Upon Delivery of Services	\$ 0

(2) For service performed from October 1, 2008, through September 30, 2009, the following rates shall apply:

Service Description	Amount (per compensable increment)
Monthly Administrative Fee	\$ 692,250 / month
Clinical Pharmacist Based in Nashville	\$ 16,830 / month
Clinical Pharmacist Based in Nashville	\$ 16,830 / month
Provider Educator Based in Nashville	\$ 16,830 / month
Provider Educator Based in Field	\$ 16,830 / month
Provider Educator Based in Field	\$ 16,830 / month
Provider Educator Based in Field	\$ 16,830 / month
Data Research Analyst Based in Nashville	\$ 9,180 / month
Program Coordinator Based in Nashville	\$ 13,006 / month

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System Liaison Based in Contractor's Home Office	\$ 9,180 / month
Contract Manager Based in Contractor's Home Office	\$ 11,476 / month

(3) For service performed from October 1, 2009, through September 30, 2010, the following rates shall apply:

Service Description	Amount (per compensable increment)
Monthly Administrative Fee	\$ 727,598 / month
Clinical Pharmacist Based in Nashville	\$ 17,672 / month
Clinical Pharmacist Based in Nashville	\$ 17,672 / month
Provider Educator Based in Nashville	\$ 17,672 / month
Provider Educator Based in Field	\$ 17,672 / month
Provider Educator Based in Field	\$ 17,672 / month
Provider Educator Based in Field	\$ 17,672 / month
Data Research Analyst Based in Nashville	\$ 9,639 / month
Program Coordinator Based in Nashville	\$ 13,656 / month
System Liaison Based in Contractor's Home Office	\$ 9,639 / month
Contract Manager Based in Contractor's Home Office	\$ 12,049 / month

(4) For service performed from October 1, 2010, through May 31, 2011, the following rates shall apply:

Service Description	Amount (per compensable increment)
Monthly Administrative Fee	\$ 763,977 / month
Clinical Pharmacist Based in Nashville	\$ 18,555 / month
Clinical Pharmacist Based in Nashville	\$ 18,555 / month
Provider Educator Based in Nashville	\$ 18,555 / month
Provider Educator Based in Field	\$ 18,555 / month
Provider Educator Based in Field	\$ 18,555 / month
Provider Educator Based in Field	\$ 18,555 / month
Data Research Analyst Based in Nashville	\$ 10,121 / month
Program Coordinator Based in Nashville	\$ 14,339 / month
System Liaison Based in Contractor's Home Office	\$ 10,121 / month
Contract Manager Based in Contractor's Home Office	\$ 12,652 / month

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(5) Should the Contract be amended for Extension of Services, for the services performed from June 1, 2011, through May 31, 2012, the following rates shall apply:

Service Description	Amount (per compensable increment)
Monthly Administrative Fee	\$ 802,176 / month
Clinical Pharmacist Based in Nashville	\$ 19,483 / month
Clinical Pharmacist Based in Nashville	\$ 19,483 / month
Provider Educator Based in Nashville	\$ 19,483 / month
Provider Educator Based in Field	\$ 19,483 / month
Provider Educator Based in Field	\$ 19,483 / month
Provider Educator Based in Field	\$ 19,483 / month
Data Research Analyst Based in Nashville	\$ 10,627 / month
Program Coordinator Based in Nashville	\$ 15,056 / month
System Liaison Based in Contractor's Home Office	\$ 10,627 / month
Contract Manager Based in Contractor's Home Office	\$ 13,284 / month

c. Rebate Bonus - Per Section A.3.5.2., Annual Rebates for each year of the contract shall be calculated on the basis of any rebates obtained outside of the OBRA rebates. Annually, if the Contractor exceeds the upper figure of the allowed supplemental rebate percentage range they shall receive an annual bonus based on the following table:

Exceed by less than one percent (1%)	One hundred thousand dollars (\$100,000)
Exceed by more than or equal to one percent (1%), but less than two percent (2%)	Two hundred thousand dollars (\$200,000)
Exceed by more than or equal to two percent (2%), but less than three percent (3%)	Six hundred thousand dollars (\$600,000)
Exceed by more than or equal to three percent (3%)	One million, two hundred thousand dollars (\$1,200,000)

d. Rebate Bonus - Per Section A.3.5.2., Annual Rebates for each year of the contract shall be calculated on the basis of any rebates obtained outside of the OBRA rebates. The Table below lists the Contractor's Annual Allowed Supplemental Percentage for each year of the contract:

	October 1, 2008-September 30, 2009	October 1, 2009-September 30, 2010	October 1, 2010-May 31, 2011	June 1, 2011-May 31, 2012	June 1, 2012-May 31, 2013
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Fiscal Review Committee

<b>Annual Allowed Supplemental Rebate Percentage</b>	8.35%	8.35%	8.35%	8.35%	8.35%
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**Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.**

This amendment to SXC Health Solutions, Inc., the competitively procured contract for pharmacy management and preferred drug list services, clarifies existing language regarding TennCare outputs, POS claims processing and edits, Third Party Liability/Coordination of benefits, step therapy and modified Liquidated Damages. Per the RFP and current contract language, the term of this competitively procured contract is extended for an additional year and funding added to support the term extension as well as negotiated 25% of actual POS cost avoidance savings. The maximum liability is factored based on the rates submitted in the contractor's Cost Proposal when the original contract was competitively procured.

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

SXC Health Solutions, Inc. was awarded the competitively procured contract for pharmacy management and preferred drug list services for the TennCare program. Pursuant to State of Tennessee contract rules, an RFP is the optimum state procurement method and no other options were explored. All technical and cost proposals submitted as a result of this RFP are available for public inspection.

**FA0825044**

Dept	Division	Funding Year	Reference Document	Date	Expenditures	
318	65	2009	FA0825044	10/31/2008	\$836,072.00	
318	65	2009	FA0825044	11/30/2008	\$1,244,852.21	
318	65	2009	FA0825044	12/31/2008	\$862,762.69	
318	65	2009	FA0825044	1/31/2009	\$860,373.26	
318	65	2009	FA0825044	2/28/2009	\$836,109.80	
318	65	2009	FA0825044	3/31/2009	\$884,025.42	
318	65	2009	FA0825044	4/30/2009	\$862,012.02	
318	65	2009	FA0825044	5/31/2009	\$862,421.69	
318	65	2009	FA0825044	6/30/2009	\$870,182.94	
					<b>\$8,118,812.03</b>	<b>FY 2009 Total</b>
318	65	2010	FA0825044	7/31/2009	\$861,307.85	
<b>PAYMENTS MADE THROUGH EDISON:</b>						
318	65	2010	FA0825044	8/31/2009	\$866,388.94	
318	65	2010	FA0825044	9/30/2009	\$860,538.22	
318	65	2010	FA0825044	10/31/2009	\$907,339.55	
318	65	2010	FA0825044	11/30/2009	\$906,206.17	
318	65	2010	FA0825044	12/31/2009	\$902,229.08	
318	65	2010	FA0825044	1/31/2010	\$302,139.13	
318	65	2010	FA0825044	2/28/2010	\$911,361.27	
318	65	2010	FA0825044	3/31/2010	\$878,613.00	
318	65	2010	FA0825044	4/30/2010	\$878,613.00	
318	65	2010	FA0825044	5/31/2010	\$878,013.00	
318	65	2010	FA0825044	6/30/2010	\$878,613.00	
					<b>\$10,031,362.21</b>	<b>FY 2010 Total</b>
318	65	2011	FA0825044	7/31/2010	\$878,613.00	
318	65	2011	FA0825044	8/31/2010	\$878,613.00	
318	65	2011	FA0825044	9/30/2010	\$877,613.00	
318	65	2011	FA0825044	10/31/2010	\$922,540.00	
318	65	2011	FA0825044	11/30/2010	\$922,540.00	
318	65	2011	FA0825044	12/31/2010	\$922,540.00	
318	65	2011	FA0825044	1/31/2011	\$894,385.00	
318	65	2011	FA0825044	2/28/2011	\$903,985.00 *	
					<b>\$7,200,829.00</b>	<b>FY 2011 Total</b>

# Non-Competitive Amendment Request

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

Route a completed request, as one file in PDF format, via e-mail attachment sent to: [AgSprs.AgSprs@state.tn.us](mailto:AgSprs.AgSprs@state.tn.us)

APPROVED

COMMISSIONER OF FINANCE & ADMINISTRATION

Request Tracking #	31865-00257	
Procuring Agency	Department of Finance and Administration Bureau of TennCare	
Contractor	SXC Health Solutions, Inc.	
Contract #	FA-08-25044-00	
Proposed Amendment #	2	
Edison ID #	12051	
Contract Begin Date	June 1, 2008	
Current Contract End Date – with ALL options to extend exercised	May 31, 2011	
Proposed Contract End Date – with ALL options to extend exercised	May 31, 2012	
Current Maximum Contract Cost – with ALL options to extend exercised	\$ 34,500,000.00	
Proposed Maximum Contract Cost – with ALL options to extend exercised	\$ 49,500,000.00	
Office for Information Resources Endorsement – information technology service (N/A to THDA)	xx Not Applicable <input type="checkbox"/> Attached	
eHealth Initiative Support – health-related professional, pharmaceutical, laboratory, or imaging service	xx Not Applicable <input type="checkbox"/> Attached	
Human Resources Support – state employee training service	xx Not Applicable <input type="checkbox"/> Attached	
<b>Explanation Need for the Proposed Amendment</b>		
<p>The proposed amendment clarifies existing language regarding TennCare outputs, POS claims processing and edits, Third Party Liability/Coordination of benefits, step therapy and modified Liquidated Damages. Additionally, as per RFP and current contract language, the term of this competitively procured contract is extended for an additional year and funding added to support the</p>		

*Mid* ANNUAL AMENDMENT YEAR AT THE SAME RATE PLUS ONE NEW PRODUCT THAT WILL ALLOW US TO SAVE MONEY. THE NEW PRODUCT IS A "SHARE SAVINGS" CONTRACT.

<b>Request Tracking #</b>	<b>31865-00257</b>
term extension as well as 25% of actual POS cost avoidance savings.	
<b>Name &amp; Address of the Contractor's Principal Owner(s)</b> – NOT required for a TN state education institution	
Mark A. Thierer, President and Chief Operating Officer SXC Health Solutions, Inc. 2441 Warrenville Road Suite 610 Lisle, IL 60532	
<b>Evidence Contractor's Experience &amp; Length Of Experience Providing the Service</b>	
SXC Health Solutions Corp. has been a leading provider of pharmacy benefits management (PBM) services and Health Care Information Technology (HCIT) solutions to the healthcare benefits management industry for over 27 years. The Company's product offerings and solutions combine a wide range of PBM services and software applications, application service provider (ASP) processing services and professional services, designed for many of the largest organizations in the pharmaceutical supply chain, such as health plans, employers, federal, provincial, and, state and local governments, pharmacy benefit managers, retail pharmacy chains and other healthcare intermediaries. SXC is headquartered in Lisle, Illinois with multiple locations in the US and Canada. SXC currently has a competitively procured contract for pharmacy benefits management with the Bureau of TennCare.	
<b>Efforts to Identify Reasonable, Competitive, Procurement Alternatives</b>	
SXC Health Solutions, Inc. was awarded the competitively procured contract for Pharmacy Management and Preferred drug list server for the Bureau of TennCare, the State of Tennessee's Medicaid program. Since this amendment alters original language not included in original RFP and provides funding to support the term extension and POS cost avoidance savings, this amendment is considered non competitive.	
<b>Justification</b> – specifically explain why non-competitive negotiation is in the best interest of the state	
SXC Health Solutions, Inc. was awarded the competitively procured contract for Pharmacy Management and Preferred drug list server for the Bureau of TennCare, the State of Tennessee's Medicaid program. The Bureau of TennCare would appreciate favorable review and approval of this amendment by the Commissioner of Finance and Administration.	
<b>Agency Head Signature and Date</b> – MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances	
 3/18/11 	



# CONTRACT AMENDMENT

<b>Agency Tracking #</b> 31865-00257	<b>Edison ID</b> 12051	<b>Contract #</b> FA-08-25044	<b>Amendment #</b> 02
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<b>Contractor Legal Entity Name</b> SXC Health Solutions, Inc.	<b>Edison Vendor ID</b> 0000068120
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<b>Amendment Purpose &amp; Effect(s)</b> Amendment extends term and adds funding for an additional year	<b>FEIN or SSN (optional)</b>
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**Amendment Changes Contract End Date:**  YES  NO      **End Date:** May 31, 2012

**Maximum Liability (TOTAL Contract Amount) Increase/Decrease per this Amendment:** **\$15,000,000.00**

FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2008	\$0.00	\$0.00			\$0.00
2009	\$4,854,650.00	\$4,854,650.00			\$9,709,300.00
2010	\$6,298,095.00	\$6,298,095.00			\$12,596,190.00
2011	\$6,581,605.00	\$6,581,605.00			\$13,163,210.00
2012	\$7,015,650.00	\$7,015,650.00			\$14,031,300.00
<b>TOTAL:</b>	<b>\$24,750,000.00</b>	<b>\$24,750,000.00</b>			<b>\$49,500,000.00</b>

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

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



Secured Document

# **FA0825044-02**

<b>Speed Code (optional)</b> TN00000066	<b>Account Code (optional)</b> 70803000
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**AMENDMENT #2  
TO FA-08-25044-00  
BETWEEN THE STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE  
AND  
SXC HEALTH SOLUTIONS, INC.**

This Contract Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Bureau of TennCare, hereinafter referred to as the "State" or "TennCare" and SXC Health Solutions, Inc., hereinafter referred to as the "Contractor" or "PBM." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

- 1 The text of Contract Section A.2.2.1 is amended by deleting the second paragraph and replacing with the following:

The Contractor shall distribute and mail TennCare outputs (hard copy and electronic) as directed by TennCare including but not limited to provider checks and remittance advices, returned claims, notices, provider bulletins, provider manuals and special mailings. Every Friday, with the exception of holiday weeks, the Contractor shall mail checks and Remittance Advices for claims submitted through its POS online pharmacy claims processing system for that work week. In the case of holiday weeks, the Contractor shall notify pharmacy providers if a schedule change is to occur at least two (2) weeks in advance and issue checks and remittance advices within two (2) business days of the routine date. Failure to meet the performance standards set forth in this Contract Section A.2.2.1 may result in liquidated damages as set forth in Attachment A.

2. The text of Contract Section A.2.2.1(c) is deleted in its entirety and replaced with the following:

A.2.2.1(c) The Contractor shall have in place a POS claims processing system capable of accepting and processing claims submitted electronically. To the extent that the Contractor compensates providers on a fee for service or other basis requiring the submission of claims as a condition to payment, the Contractor shall electronically process the provider's claims for covered benefits provided to members consistent with applicable TennCare policies and procedures and the terms of this Contract. The Contractor shall mail checks and Remittance Advices to pharmacy providers weekly on Fridays for all claims submitted through the POS online pharmacy claims processing system and for all batch claims. In the case of holiday weeks, the Contractor shall notify pharmacy providers if a schedule change is to occur at least two (2) weeks in advance and issue checks and Remittance Advices within two (2) days of the routine date.

The Contractor shall: (1) process ninety-nine and a half percent (99.5%) of POS claims on a daily basis within ten (10) seconds of receipt by the Contractor's processor (as set forth in Contract Section A.2.3.d.), and, (2) if appropriate, pay within fifteen (15) days of receipt one hundred percent (100%) of all clean claims submitted by network and non-network pharmacy providers through POS and batch electronic claims submission. The term "pay" means that the Contractor shall either send the provider cash or cash equivalent in full satisfaction of the clean claim, or give the provider a credit against any outstanding balance owed by that provider to the Contractor. The Contractor shall pay the claim or advise the provider that a submitted claim is: (1) a "denied claim" (specifying all reasons for denial); or, (2) a claim that cannot be denied or allowed due to insufficient information and/or documentation (specifying in detail all information and/or documentation that is needed from the provider in order to allow or deny the claim). An incomplete claim may be resubmitted with the information necessary to complete the claim. This resubmission shall constitute a new claim only for the purpose of establishing a timeframe for claims processing. The Contractor shall develop, maintain and distribute to pharmacy providers a pharmacy procedure and billing manual. Manuals shall be posted on the Contractor's dedicated TennCare website and distributed to pharmacies with acknowledgement of network participation. The manuals shall provide instructions

to providers regarding the process by which the provider receives payment, in order to diminish the potential for incorrect billing and the need for adjustments or recoupments. The content of the manuals shall be approved by TennCare before distribution. Failure to meet the performance standards set forth in this Contract Section A.2.2.1(c) may result in liquidated damages as set forth in Attachment A.

3. The text of Contract Section A.2.4.k. is deleted in its entirety and replaced with the following:

A.2.4.k. Third Party Liability/Coordination of Benefits - The Contractor shall obtain current information regarding recipients' other health insurance coverage, and perform daily updates to a third party liability (TPL) file. The TPL file shall then be used to enable the point of service (POS) system to validate claims to determine whether there is a liable third party. In situations where other insurance coverage is detected for the date of service, an edit would be generated at the POS prompting the pharmacy to process the claim through other existing third party coverage prior to processing the claim through the TennCare pharmacy benefit. The following information shall be included in the POS messaging, when available: Bank Identification Number (BIN), Processor Control Number (PCN), Group Number, and Cardholder ID.

The POS system shall be able to process claims where there may be more than one liable third party. In the event that the amount paid by the third party insurer(s) exceeds TennCare's maximum allowable, then the claim shall return a paid amount of zero through TennCare. In addition, the system shall allow pharmacies to override the TPL edit at the POS level with the use of standard POS Other Coverage Code (OCC) overrides. The Contractor shall provide pharmacy assistance with TPL edits/coordination of benefits (including use of OCC overrides) through the Technical Pharmacy Help Desk (described in Section A.7 of this Contract).

Pharmacy providers shall be educated by the Contractor regarding proper billing practices and carrier codes associated with NCPDP version 5.1. The Contractor and the Contractor's POS system shall strictly adhere to state and federal laws and regulations and TennCare policy and/or rules regarding coordination of benefits and third party liability. TennCare shall be the payer of last resort.

Prior to implementation of the POS TPL edit, the Contractor shall provide TennCare with a detailed testing plan, including but not limited to:

- analysis of TennCare data against the updated TPL file, reflecting the percentage of recipients determined to have third party coverage,
- testing and validation of appropriate adjudication of TPL claims in the test environment along with utilization of OCC override codes, and
- plan for pharmacy provider education

The Contractor shall be required to provide TennCare with monthly TPL reports that, at a minimum, include the following information: number of claims hitting the TPL POS edit, total amount submitted for claims hitting the TPL POS edit, number of claims hitting the TPL POS edit that went on to be paid (either in part or in full) by TennCare, final amount paid on claims hitting the TPL POS edit, and number of claims processed with each type of OCC override. In addition, the Contractor shall provide TennCare with a monthly report of the top pharmacies utilizing the OCC override codes to assist in identifying providers who may be abusing these codes

In exchange for providing the TPL services described in this section of the contract, the Contractor shall receive payment in the amount of 25% of actual POS cost avoidance savings. Actual POS cost avoidance savings shall be determined on a monthly basis by claim level reporting. Savings shall be calculated only from claims where the TPL edit was the sole reason for claim denial.

4. The text of Contract Section A.2.4.q. is deleted in its entirety and replaced with the following:

A.2.4.q. Maximum Dollar Amount Edit – All pharmacy claims over a specified dollar amount per claim shall reject at the point of service and the pharmacy provider shall be required to call the Contractor Call Center regarding rejected claims. This includes a two hundred fifty dollar (\$250) limit on compounded claims (including intravenous compounds), a one thousand five hundred dollar (\$1,500) limit on non-compounded, non-exception claims, and a forty thousand dollar (\$40,000) limit on exception claims (blood factors and other identified products). The Contractor's system shall be capable of adding, changing, or removing maximum dollar edit rules at no cost as requested by TennCare.

5. The text of Contract Section A.3.3 is deleted in its entirety and replaced with the following:

A.3.3. Step Therapy

The PDL program shall also identify and promote the use of the most cost-effective drug therapy for a specific indication, regardless of drug class. On the date the Contractor assumes full responsibility for the pharmacy benefits program, the Contractor shall assume responsibility for administering and maintaining the existing Step Therapy program. As the PDL is revised, the Contractor shall recommend changes or additions to the existing Step Therapy program. These recommendations should be based on therapeutic best practices and drive utilization to the most cost effective agents or classes. Drugs and criteria included in the Step Therapy program shall be included on the PDL documents and coded into the TennCare POS system.

The POS system shall be coded to edit on all drugs in the target classes that are being submitted for dispensing. Before the new drug may gain approval through a PA, there shall be evidence in the claims history of prior use of a drug in a more cost-effective class. This also includes a capability requirement to establish prior authorization criteria that cannot be handled with system edits but shall require calls to the Contractor's call center. The Contractor shall be responsible for making recommendations to TennCare regarding the need for such criteria and for subsequent criteria and call center protocol development. TennCare shall have the final decision on the method and timing of implementation.

The Contractor shall assure that the Call Center staff shall be available to evaluate prior authorization requests per the standards required in Section A.6 of this Contract. An agreed upon set of edits and PA criteria in this category shall be implemented on the date the Contractor assumes full responsibility for the pharmacy benefits program. Additional edits of this type may be implemented at TennCare's direction at any point in the term of this Contract without additional cost to TennCare.

6. The text of Contract Section A.8.7 is deleted in its entirety and replaced with the following:

A.8.7. Non-Network Providers. Pharmacies providing services to enrollees without a Provider Service Agreement are non-network providers. These providers may be reimbursed at a lower rate than network pharmacy providers. However, if the Contractor's network is unable to provide necessary, pharmacy services covered under this Contract to a particular enrollee, the Contractor shall adequately and timely cover these services out-of-network, at a network rate, for as long as a network pharmacy provider is unable to provide services. The non-network pharmacy provider shall coordinate with the Contractor with respect to payment, establishing a sole service agreement acceptable to TennCare. The Contractor shall ensure that co-pay cost to the enrollee is no greater than it would be if the services were furnished within the network. Under T.C.A. § 56-7-2359, the Contractor may not deny any licensed pharmacy or licensed pharmacist the right to participate as a participating provider in any policy, contract or plan on the same terms and conditions as are offered to any other providers of pharmacy services under the policy, contract or plan. In the event that TennCare's State Plan specifies that non-network pharmacies cannot process TennCare claims except in emergency situations, the Contractor will be required to provide an emergency override process, at no additional cost to TennCare, whereby non-network pharmacies may be approved to process a claim for a TennCare recipient in an emergency. This non-network emergency override process will be subject to TennCare approval. In addition, the Contractor will ensure that information regarding in-network providers is readily available on the website and through the Pharmacy Help Desk.

7. The text of Contract Section A.11.1 is deleted in its entirety and replaced with the following:

A.11.1 Notices

The Contractor shall be required to send individualized notices to enrollees, worded at a sixth (6<sup>th</sup>) grade reading level, unless otherwise approved by TennCare. Template notices shall be approved by TennCare. Notices should be printed with an assurance of non-discrimination both in English and Spanish that include, but are not limited to:

- a. Notification of prescription limits being met
- b. Notification that a Prior Authorization request has been denied, which may or may not include a provision for continuation of benefits
- c. Outcomes of a member initiated prior authorization request, which may include:
  - i. Prescription change;
  - ii. PA granted; or
  - iii. PA denied.
- d. Notification of drug not covered
- e. Notification of blocked prescriber
- f. Notification of pharmacy lock-in
- g. Response to prescriber on outcome of prior authorization request. This may be completed by utilizing facsimile technology.

These notices shall be mailed daily, except Sunday, each week. The previous day's claims and/or Prior Authorization requests shall be mailed the following day. Monday mailings shall include letters based on claims denied on Saturday and Sunday. The Contractor shall provide TennCare with a web-based system to search and view individual notices that have been sent. The Contractor shall have approval to subcontract the notice process as defined herein with the requisite approval from TennCare, but in no event shall off shore vendors be utilized. The direct postage cost for recipient Script Limit denial letters, prior authorization letters, non-covered drug letters, blocked prescriber letters, and lock-in letters shall be a pass through item. Failure to provide notices may result in liquidated damages as described in Attachment A.

8. The text of Contract Section B.1 is deleted in its entirety and replaced with the following:

B.1. This Contract shall be effective for the period commencing on June 1, 2008, and ending on May 31, 2012. The Contractor hereby acknowledges and affirms that the State shall have no obligation for services rendered by the Contractor which were not performed within this specified contract period.

9. The text of Contract Section C.1 is deleted in its entirety and replaced with the following:

C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Forty-Nine Million Five Hundred Thousand Dollars (\$49,500,000.00). The payment rates in section C.3 shall constitute the entire compensation due the Contractor for all service and Contractor obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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

10. The text of Contract Section C.3 is amended by adding the following language as section C.3.e.

C.3.e Third Party Liability Point of Service Edit – Per Section A.2.4.k, monthly savings due to cost avoidance from the TPL POS edit shall be calculated based on claims denied for the sole reason of TPL. The Contractor shall receive payment in the amount of 25% of the calculated cost avoidance savings due to the TPL POS edit.

11. The contract is amended by adding the following new language as Section E.31.

E.31. Federal Funding Accountability and Transparency Act (FFATA). This Contract requires the Contractor to provide supplies and/or services that are funded in whole or in part by federal funds that are subject to FFATA. The Contractor is responsible for ensuring that all applicable requirements, including but not limited to those set forth herein, of FFATA are met and that the Contractor provides information to the State as required.

The Contractor shall comply with the following:

a. Reporting of Total Compensation of the Contractor's Executives.

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

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

- (2) Total compensation means the cash and noncash dollar value earned by the executive during the Contractor's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
  - i. Salary and bonus.
  - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
  - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
  - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
  - v. Above-market earnings on deferred compensation which is not tax qualified.
  - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

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

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

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

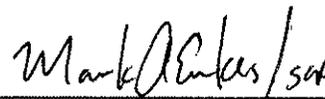
- 12. Contract Attachment A is deleted in its entirety and replaced with the Revised Contract Attachment A attached hereto.

The revisions set forth herein shall be effective May 31, 2011. All other terms and conditions not expressly amended herein shall remain in full force and effect.

**IN WITNESS WHEREOF,  
SXC HEALTH SOLUTIONS, INC.:**

	04.14.11 DATE
EXECUTIVE VICE PRESIDENT + CFO PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)	

**DEPARTMENT OF FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE:**

	4/20/11 DATE
Mark A. Emkes, Commissioner	

**PERFORMANCE, DELIVERABLES AND DAMAGES**

The table below summarizes Performance Measures and Deliverables described in other sections of this Contract. Included in the table are delivery schedules and non-performance damages. TennCare shall monitor the Contractor's performance meeting the required standards. If TennCare determines that the Contractor has failed to meet requirements of this Contract, TennCare shall notify the Contractor by certified U.S. Mail. Upon notification of a violation, the Contractor shall submit to TennCare, within five (5) business days, a Corrective Action Plan (CAP). Failure to submit a CAP or comply with its requirements, as approved by TennCare, may, in the State's discretion, result in liquidated damages of \$100 per day for each day the corrective action plan is late or compliance with the CAP is not complete. In situations where the Contractor wishes to dispute any liquidated damages assessed by the State, the Contractor must submit a written notice of dispute, including the reasons for disputing the LD, within 30 days of receipt of the letter from the State containing the total amount of damages assessed against the Contractor.

TennCare reserves the right to assess a general liquidated damage of five hundred dollars (\$500) per occurrence with any notice of deficiency.

If damages are assessed, TennCare shall reduce the Contractor's payment for administrative services in the following month's invoice by the amount of damages. In the event that damages due exceed TennCare fees payable to Contractor in a given payment cycle, TennCare shall invoice Contractor for the amount exceeding the fees payable to Contractor, that shall be paid by Contractor within thirty (30) calendar days of the invoice date.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.1 Implementation	Contractor shall complete all implementation actions prior to "go-live" date and according to the implementation timeline provided by the Contractor to TennCare. The Contractor shall receive TennCare's sign-off that each action has been completed successfully. Implementation action steps include the following minimum items: <ul style="list-style-type: none"> <li>• Benefit plan designs loaded, operable and tested;</li> <li>• Perform comprehensive systems testing (including interface testing with all third parties) and quality assurance audits, with results reported to the TennCare prior to the "Go-Live";</li> <li>• Eligibility feed formats loaded and tested end to end;</li> <li>• Operable and tested toll-free numbers;</li> <li>• Signed agreements for Retail Pharmacy and Long-term Care Pharmacy networks;</li> <li>• Account management, Help Desk and Prior Authorization staff hired and trained;</li> <li>• Established billing/banking</li> </ul>	Due prior to the claims processing commencement date of October 1, 2008, 1:00 a.m. Central Standard Time (CST)	Contractor may, in the State's discretion, be required pay to TennCare amount of ten thousand dollars (\$10,000.00) per day for each day full implementation of the project is delayed by fault of the Contractor. This guarantee is dependent upon Contractor receiving necessary information and approvals from TennCare in a timely manner.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
	<p>requirements;</p> <ul style="list-style-type: none"> <li>• Complete notifications to pharmacies and prescribers regarding contractor change;</li> <li>• Each component shall be met by an agreed upon deadline in an implementation timeline provided by Contractor to TennCare. Implementation action requirements may include other items necessary to meet the claims processing commencement date of July 1, 2008, 1:00 a.m. CST ; and</li> <li>• Claims history and existing prior authorizations and overrides shall be migrated to Contractors POS system</li> </ul>		
A.2.2.1 Claim payment and Remittance Services	The Contractor shall distribute and mail TennCare outputs as required by this Contract including, but not limited to: provider checks and remittance advices, returned claims, notices, provider bulletins, provider manuals and special mailings.	The Contractor shall mail checks and remittance advices to pharmacy providers each week on Fridays, with the exception of Holiday weeks. With notice, holiday production shall not delay the process by more than two (2) business days. TennCare shall be notified no later than two (2) business days of any systems or operational issues that may impact disbursements by the prescribed timelines. For checks to be issued on Friday, the Contractor shall deliver two files to the State, in an electronic media suitable to the State, by 10:00 a.m. CST, Thursday of each week.	Penalty may, in the State's discretion, be \$1,000 per business day files are overdue.
A.2.2.1(c) Claim payment and Remittance Services	The Contractor shall distribute and mail TennCare outputs as required by this Contract including, but not limited to: provider checks and remittance advices, returned claims, notices, provider bulletins, provider manuals and special mailings.	The Contractor shall pay within fifteen (15) calendar days of receipt one-hundred percent (100%) of all clean claims submitted by network and non-network	Penalty may, in the State's discretion, be \$1,000 per calendar day payment to pharmacy providers for clean claims exceeds fifteen (15) calendar days from the date of claim submission.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
		pharmacy providers through POS and batch electronic claims submission.	
A.2.2 Encounter Data Files	All adjudicated claims (encounters) shall be transferred to TennCare or on a schedule designated by TennCare.	File transfer due weekly and due ten (10) business days after end of reporting week.	If the Contractor fails to produce the report, the calculation of the damages may, in the State's discretion, begin on the first day following the due date of the report and continue until receipt of the report by TennCare. Penalty may, in the State's discretion, be \$5,000 per week.
A.2.3.d POS Claims	The Contractor shall process ninety-nine point five percent (99.5%) of POS pharmacy claims within ten (10) seconds on a daily basis. This is the time from when the claim is received by the Contractor's processor to the time the results are transmitted from the Contractor's processor and shall include all procedures required to complete claim adjudication.	Ninety-nine point five percent (99.5%) of claims process shall process to completion within ten (10) seconds on a daily basis.	If ninety-nine point five percent (99.5%) of claims are not processed within the ten (10) second time frame then the daily penalty may, in the State's discretion, be \$1,000 per day of non-compliant processing.
A.2.3. POS Downtime	System will operate without unscheduled or unapproved downtime. For purposes hereof "downtime" shall be any interruption involving more than 10% of production for a period greater than 15 minutes.	No unscheduled or unapproved downtime.	\$2,500 per occurrence of unscheduled or unapproved downtime if deemed by TennCare to be the result of contractor shortcomings.
A.2.3. POS Downtime Notification	Contractor shall report to TennCare immediately (within one (1) hour) upon knowledge of downtime.  TennCare is to identify staff to be contacted after normal business hours in the event of an interruption of service.	Report is due within one (1) hour, upon knowledge of downtime.	Immediate report is due within one (1) hour upon knowledge of the downtime. \$7,500 one time damage may, in the State's discretion, be assessed for not reporting immediately.
A.2.3 Batch Electronic Media (EMC) Claims Processing	The Contractor shall receive claims in electronic format, separate tape from diskette, convert diskette to tape, schedule tapes for immediate processing and return media to submitting providers within three (3) business days. The Contractor shall assign identification control numbers to all batch claims within three (3) business days of receipt. The Contractor shall maintain electronic	Return media claims to submitting providers within three (3) business days of receipt, assignment of identification control numbers to all batch claims within three (3) business days of receipt and provide	Calculation of the damages may, in the State's discretion, begin on the first day following the due date and continue until receipt of the report by TennCare. Penalty may, in the State's discretion, be \$1,000 per day.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
	<p>backup of batch claims for the duration of the contract. If TennCare requests copies of batch electronic claims, these shall be provided within three (3) business days of request.</p> <p>As requested, the Contractor shall provide the batch files as they were originally received. These files shall be delivered to the TennCare site by Virtual Private Network connection.</p> <p>Electronic batch claims shall be submitted through a sequential terminal, or similar method that shall allow batch and POS claims to be adjudicated through the same processing logic. New providers requesting to submit batch claims shall provide at least a thirty (30) day notice and shall conform to the standard Change Control and testing process.</p>	<p>TennCare with copies of batch electronic claims within three (3) business days of request.</p>	
<p>A.2.3 POS Downtime Occurrence Reports</p>	<p>The Contractor shall provide TennCare with updates at regular intervals during a sustained downtime. TennCare shall be presented with recovery options as appropriate. Upon full recovery, the Contractor shall provide TennCare with a System Down Analysis describing root cause issues and actions to mitigate future downtime occurrences.</p> <p>Transaction reports shall include: volume, longest response time and average response time. Statistics shall be provided to TennCare within ten (10) business days following the end of each calendar month that any downtime occurred.</p>	<p>Report is due within five (5) business days after full system recovery.</p>	<p>Daily penalty may, in the State's discretion, be \$1,000 per day. Calculation of the damages will begin on the sixth business day, following full system recovery.</p>
<p>A.2.3 Aged Checks Not Cashed</p>	<p>The Contractor shall provide TennCare Fiscal Services Unit a monthly report detailing all checks remitted to providers on behalf of the State that remain outstanding (have not been cashed) greater than ninety (90) days.</p>	<p>Contractor shall provide TennCare with a monthly report of remitted checks as stipulated. Reports are due monthly, due on the 15<sup>th</sup> day of the month following the reporting period.</p>	<p>Penalty may, in the State's discretion, be \$500 per week that report is overdue.</p>

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.2.3 Aged Account Payable Notices	The Contractor shall ensure that collection letters are sent to pharmacies that maintain an accounts-payable balance to the State greater than ninety (90) days. These notices shall be sent within five (5) workdays of becoming ninety (90) days old.	Contractor shall provide TennCare with a monthly report of notices that had been sent. Reports are due monthly, ten (10) business days after end of month of reporting period.	If Contractor fails to send notice, the penalty may, in the State's discretion, be \$100 per provider notice per month.
A.2.4 Claim Validation	The Contractor system shall approve for payment only those claims for members eligible to receive pharmacy services at the time the service was rendered. The Contractor shall immediately notify TennCare of any and all claims that have been erroneously processed, and initiate appropriate action to correct the errors.  In the event that claims are inappropriately denied the Contractor may be assessed damages denied the Contractor may be assessed damages	Reimbursement or damages resulting from this section may be applied to as offsets to future administrative fees.	The Contractor shall reimburse TennCare for the cost of all claims paid as a result of contractor error.  Penalty for claims inappropriately denied may, in the State's discretion, be \$100 per occurrence. .
A.2.8 Reversals and Adjustments	The system shall provide an efficient means of reversing or adjusting claims both before and after the claim has been transmitted to the TCMIS. The result of the adjustment shall be transferred to TCMIS for further processing. TennCare shall make no payments to the Contractor for reversed, voided or adjusted claims.	Contractor shall process all reversals requested by TennCare Fiscal Services Unit within thirty (30) days and provide confirmation to TennCare Fiscal Services Unit when that such has occurred.	A damage of \$100 may, in the State's discretion, be assessed per transaction that has not been reversed or adjusted within thirty (30) days of written request of TennCare Fiscal Services Unit.
A.3.2 PDL , Step Therapy and Prior Authorization Changes	The Contractor shall implement changes in the POS system for PDL, Step Therapy, Prior Authorization requirements and all supporting systems within forty-five (45) days of approval from TennCare. Such changes to the POS system shall require provider notification thirty (30) days prior to the implementation. TennCare shall identify the targeted provider for each notification.	Implement changes and issue notification in specified time frames	Calculation of the damages may, in the State's discretion, begin on the first day following the due date and continue until required changes with proper notice are implemented. Penalty may, in the State's discretion, be \$1,000 per day.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.3.4 TennCare Pharmacy Advisory Committee Support	The Contractor shall attend, support and facilitate meetings of the TennCare Pharmacy Advisory Committee (PAC) as necessary to maintain the TennCare PDL.	Approved meeting materials shall be distributed ten (10) business days prior to PAC meetings. Draft minutes shall be submitted to TennCare with two (2) weeks of PAC meeting.	Calculation of the damages may, in the State's discretion, begin on the first day following the due date for meeting material or minutes and may continue until delivered. Penalty may, in the State's discretion, be \$1,000 per day.
A.3.5 Drug Rebate Dispute Data	The Contractor shall provide to the agency or business of the State's choosing, any and all appropriate, accurate, and balanced pharmacy level claims data needed to resolve or avoid any Medicaid or supplemental drug rebate disputes.	This data shall be provided to TennCare within fifteen (15) days of a request by TennCare	Calculation of the damages may, in the State's discretion, begin on the first day following the due date and continue until receipt of the report by TennCare. Penalty may, in the State's discretion, be \$1,000 per business day.
A.3.5 Delinquent Rebate Payment Notices	<p>The Contractor shall ensure that written notification is sent to Drug Manufacturers concerning forty-five (45) day past-due undisputed account balances within fifty (50) days after the original invoice date.</p> <p>The Contractor shall also ensure that written notification is sent to Drug Manufacturers concerning seventy-five (75) day past-due undisputed account balances within eighty (80) days after the original invoice date.</p> <p>The Contractor shall also ensure that written notification is sent to Drug Manufacturers concerning ninety (90) day past-due undisputed account balances within ninety-five (95) days after the original invoice date.</p> <p>These notices shall remind the labeler that interest shall be assessed on all past due accounts as stipulated by their contract with the State.</p>	<p>Contractor shall provide TennCare with copies of all reports sent pursuant to this section.</p> <p>Reports due monthly, ten (10) business days after end of month of reporting period.</p>	If Contractor fails to send notice, the penalty may, in the State's discretion, be \$100 per Manufacturer per day independent of other dunning periods.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.3.5 Rebate Invoicing	The Contractor shall generate and issue quarterly Rebate invoices. Provide the designated TennCare staff data files that contain the specific information and in the specified format as required by TennCare	The quarterly Medicaid Drug Rebate invoices shall be generated for all pharmaceutical manufactures and TennCare approval by thirty (30) days after the end of the quarter.	Penalty may, in the State's discretion, be \$1,000 per invoice per day invoice overdue.
A.3.5 Rebate Dispute Resolution	The Contractor shall be responsible for dispute resolution pertaining to supplemental rebates. The Contractor shall perform unit resolution based on unit resolution performed on CMS Rebates. The Contractor shall perform all other dispute resolution activities with pharmaceutical manufacturers pertaining to supplemental rebate calculations and collections.	Within ninety (90) days of dispute the contractor shall present the State with an analysis of why the monies were disputed and remedies.	Penalty may, in the State's discretion, be \$1,000 per day past ninety (90) day timeframe of analysis and proposed remedy.
A.3.5 Delinquent Rebate Payment Interest Accrual	The Contractor shall ensure that all Drug Manufacturers are charged interest as stipulated in each Manufacturer's respective Supplemental Drug Rebate Contract. Interest shall be calculated on only the Manufacturer's undisputed account balance unless written notification is provided by TennCare to do otherwise.		Failure by Contractor to start accruing interest on the date stipulated in the individual supplemental rebate agreements may, in the State's discretion, result in a penalty of \$1,000 for every non-compliant invoice issued.
A.3.5 Supplemental Rebate Administration	If the Contractor falls below the allowed range for the supplemental rebate percentage they shall be financially liable for the full amount of difference between the actual amount collected and the amount that would have been collected if the lowest figure of the allowed range had been achieved.	Annually, the Contractor shall determine the supplemental rebates collected as a percentage of drug-spend as defined in Section A.3.5.2. This figure shall be verified by TennCare.	100% of the difference between the supplement rebate amount that would have been paid to the state if the Contractor had performed at the lowest end of the allowed supplemental rebate percentage range vs. the actual supplemental rebate amount paid to the state.
A.4.6. System Maintenance and Modification Deadlines/Damages	The Contractor shall correct maintenance problems within five (5) business days or by a State-approved correction date.		Five hundred dollars (\$500.00) liquidated damages per work day or any part thereof shall be assessed for a maintenance problem not corrected within five (5) business days or by correction date approved by the State.  These payments will be in addition to payment for any actual damages due to incorrect payment processing,

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
			including but not limited to damages based on loss of productivity of TennCare staff because of staff time required to respond to inquiries from auditors, users, members, advocates, legislators and in meetings with Contractor staff to rectify problems.
A.4.8 Disaster Preparedness and Recovery-Business Interruption	The Contractor shall submit the Contractor's Business Continuity/Disaster Recovery plan for their Central Processing Site to TennCare. If requested, test results of the plan shall be made available to TennCare	Plan due upon commencement of claims processing and annually on the anniversary date of the initial claims processing	Penalty may, in the State's discretion, be \$1000 per week that report is overdue.
A.4.8 Disaster Preparedness and Recovery-Business Interruption	The Contractor shall comply with their Contractor's Business Continuity/Disaster Recovery plan.	TennCare shall determine the final need to move to the disaster recovery plan based on the Contractor's recommendation.	Penalty may, in the State's discretion, be \$10,000 per day Contractor is non-compliant with their Business Continuity/Disaster Recovery Plan
A.4.9 Program Integrity	The Contractor shall have TennCare-approved policies and procedures in place for ensuring protections against actual or potential fraud and abuse.	The Contractor shall have a detailed Program Integrity Plan. The Contractor shall complete all tasks as described in the Program Integrity Plan on a quarterly and annual basis.	\$2,500 per occurrence of non compliance with the Program Integrity Plan.
A.4.10 Proprietary and Confidential Information	All information provided to TennCare, including but not limited to, provider, reimbursement and enrollee information shall be deemed confidential.	The Contractor shall immediately notify TennCare of any and all occurrences where TennCare's confidential information may have been breached and initiate appropriate action to prevent subsequent breaches.	\$2,500 per occurrence of breach.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.4.12 Member Identification Cards	The Contractor shall provide each TennCare enrollee with a NCPDP compliant pharmacy benefit identification (ID) card. The Contractor shall also provide enrollee with replacements cards.	Replacement and new cards shall be produced and mailed by the Contractor on the 15 <sup>th</sup> day of each month.	Delays in producing ID cards may, in the State's discretion, result in \$1,000 per day damages.
A.4.13 Mail Procedures	The Contractor shall open all returned mail from any mailings to enrollees or providers within thirty (30) days of receipt to determine if the enrollee has moved, if the Contractor has the wrong address, and/or if the enrollee is communicating other information to the Contractor or to TennCare. The Contractor shall track returned mail and shall report monthly to TennCare the number of pieces of returned mail, the reason the mail was returned and action taken by the Contractor. Included in this report shall be a list of all enrollees whose mail was undeliverable due to an incorrect address provided by TennCare.	Monthly report, due ten (10) business days after end of month of reporting period, beginning the first full month after the report format has been agreed to by the parties.	Calculation of the damages may, in the State's discretion, begin on the first day following the report due date and continue until receipt of the report by TennCare. Penalty may, in the State's discretion, be \$2,500 per week.
A.4.16 E-Prescribe	The Contractor shall participate in TennCare's E-Prescribe initiatives.	Provide accurate data files in the format agreed to as necessary to support E-Prescribe.	Damages for delays or errors may, in the State's discretion, be assessed at \$1,000 per day begin on the first day following the file due date.
A.5 Drug Utilization Review Program	The Contractor shall provide on a quarterly basis <ul style="list-style-type: none"> <li>• Provider and patient trending</li> <li>• Meetings and facilitation</li> <li>• Reports and website</li> </ul>	Approved meeting materials shall be distributed ten (10) days prior to DUR meetings. Draft minutes shall be submitted to TennCare with four (4) weeks of DUR meeting.	Calculation of the damages may, in the State's discretion, begin on the first day following the due date for meeting material or minutes and continue until delivered. Penalty, in the State's discretion, may be \$1,000 per day.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.6 Prior Authorization Unit Reports	The Prior Authorization Unit Reports are covered by Management Reports provided in section A.10.2		Failure by the Contractor to provide the Prior Authorization Call Center reports listed in a complete and timely manner may, in the State's discretion, result in the assessment of liquidated damages by TennCare of one hundred dollars (\$100) per day during the first month violations are identified. Liquidated damages may, in the State's discretion, increase to two hundred dollars (\$200) per day for the second consecutive month violations are identified.
A.6.1 Prior Authorization Processing time	The contractor shall complete all requests for prior approval within twenty four (24) hours given sufficient information to make a determination.	Contractor must document the receipt and determination time for every request for PA. This must be provided to TennCare on a quarterly basis. Explanation must be given for failing outside the twenty four (24) hour timeframe.	One hundred (\$100) dollars per PA not processed within twenty four (24) hours
A.6.1.m.ii and A.6.5.h Call Center Service Levels	The Contractor shall maintain service levels within the Prior Authorization Unit such that 85% of call line inquiry attempts are answered within 30 seconds and the total number of abandoned calls shall not exceed 3%.		Failure to meet these service levels may, in the State's discretion, result in liquidated damages of \$100 per day for which service levels are not met.
A.6.4 Prior Authorization Reconsideration	The Contractor shall respond to all reconsideration requests within one (1) business day.	The Contractor shall provide quarterly reports indicating the timeframe and outcome of every prior authorization reconsideration.	\$200 per occurrence of failure to respond to reconsideration within one (1) business day

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.6.4 Prior Authorization Reconsideration	The Contractor shall supply TSU with all pertinent information pertaining to reconsideration requests within two (2) business days.	The Contractor shall provide quarterly reports indicating the timeframe and outcome of every prior authorization reconsideration.	\$200 per occurrence of failure to supply all pertinent information within two (2) business days
A.8.5 Pharmacy Network	The Contractor shall ensure that network pharmacies comply with all provisions of enrollee notices.	The Contractor's shall utilize feedback from TennCare, other state agencies, and enrollees, in addition to the audit process to perform additional training to pharmacies regarding notice obligations.	\$100 per instance of failure of the Contractor to ensure pharmacies are compliant with notice requirements
A.8.6. Verification of Benefits (VOB) Notices	The Contractor shall send a letter to five hundred (500) randomly selected recipients each month requesting their reply to confirm whether they received the prescriptions processed in the preceding month and identified in the letter, as described in Contract Sections A.8.6.a-e.		Failure to generate Verification of Benefit (VOB) notices as described in the Contract, may, in the State's discretion, result in liquidated damages in the amount of \$100 per day during the first month violations are identified. LDs may, in the State's discretion, be increased to \$200 per day for the second consecutive month violations are identified.
A.9.5 Key Staff Position	The Contractor shall employ competent staff in all key positions listed in Section A.9.5.	Replacement staff shall be in place within sixty (60) days of vacancies, unless TennCare grants an exception to the requirement	Calculation of the damages may, in the State's discretion, begin on the sixty-first day following the vacancy of the position and may continue until monthly until the position is filed. The penalty may, in the State's discretion, be \$2,500 per month in addition to the salary of the position being withheld from the monthly payment.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.9.5 Key Staff Licensure	The Contractor shall provide to TennCare documentation verifying the state licensure of key staff.	The Contractor shall provide TennCare copies of current Tennessee licenses for key staff	Calculation of the damages may, in the State's discretion, begin on the annually on September 16 and may continue until receipt of the licensure verification by TennCare. Penalty may, in the State's discretion, be \$2,500 per week per employee.
A.10.1 Management Reports	<p>The Contractor shall provide TennCare with industry standard utilization and financial management reporting. The Contractor's management reports shall provide a summary of drug costs sorted by therapeutic category, by top ranked drugs, and by benefit categories. Reports shall include, but not be limited to:</p> <ul style="list-style-type: none"> <li>• Financial summary with change trend</li> <li>• Utilization statistics</li> <li>• Claim processing volume and statistics</li> <li>• Cost trend reports</li> <li>• Fraud detection/ Investigation activity</li> <li>• DUR reports (retrospective and prospective)</li> <li>• PDL reports</li> <li>• Prior Authorization</li> <li>• Call Center metrics</li> <li>• Reconsideration volume, disposition and aging</li> <li>• Prescriber profiles</li> <li>• Rebate reports</li> <li>• MAC savings report</li> <li>• Pharmacy Access reports</li> <li>• An electronic file of priced or paid claims</li> <li>• All other reports referenced in the RFP</li> <li>• Pharmacy Desk Audits</li> </ul>	Monthly and quarterly reports are due ten (10) business days after the end of the reporting period.	Damages may, in the State's discretion, be assessed weekly. Calculation of the damages will begin on the first day following the report due date and may continue until receipt of the report by TennCare. Penalty may, in the State's discretion, be \$2,500 per week, per report.
A.10.2 Ad Hoc Reports	The Contractor shall be able to provide, at no extra cost to TennCare <i>ad hoc</i> reports that shall assist in managing the pharmacy benefit for TennCare members. <i>Ad hoc</i> reports shall be provided in a format described by TennCare and in an agreed upon timetable.		Failure by the Contractor to produce Ad Hoc reports in an agreed upon timeframe may, in the State's discretion, result in the assessment of liquidated damages by TennCare of one hundred dollars (\$100) per day during the first month violations are identified. Liquidated damages may, in the State's

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
			discretion, increase to two hundred dollars (\$200) per day for the second consecutive month violations are identified.
A.10.2 Emergency Supply Aggregate Reports	The Contractor shall provide TennCare with reports summarizing all emergency supply overrides performed by dispensing pharmacists at the point-of-sale, pursuant to the policy regarding dispensing of drugs not listed on the TennCare PDL. The reports shall be on a weekly and monthly basis and list the top one hundred (100) pharmacies entering emergency supplies and the top one hundred (100) prescribers associated with those overrides. The reports shall also include the top one hundred (100) drugs associated with emergency supplies as well as summary totals of overrides. The emergency supply reports shall be delivered to TennCare in electronic format by a web-based report library, as agreed to by TennCare.	Reports shall be delivered on a weekly and monthly basis no longer than five (5) business days after the ending of the week/month.	Failure by the Contractor to provide emergency supply Aggregate Report may, in the State's discretion, result in the assessment of liquidated damages by TennCare of one hundred dollars (\$100) per day during the first month violations are identified. Liquidated damages may, in the State's discretion, increase to two hundred dollars (\$200) per day for the second consecutive week or month violations are identified.
A.10.3 PDL Compliance Report	The Contractor shall monitor compliance by prescribers and pharmacists with the TennCare PDL and report that information to TennCare monthly, quarterly, and semiannually, and provide suggestions for improving PDL compliance.	Report shall be delivered within forty-five (45) days following the period, but not earlier than thirty (30) days following the period.	Penalty may, in the State's discretion, be \$2500 per week that report is overdue.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.10.4. Program Integrity Reports	<p>The Contractor shall be required to provide the following program integrity reports on a daily basis:</p> <ul style="list-style-type: none"> <li>- Ingredient Cost/Prescription Report, identifying claims with total cost exceeding \$750 at retail.</li> <li>- Override report, reflecting daily claims paid with override, prior authorization, or other unique adjudication rules</li> <li>- Submitted Units/Rx for topical dosage forms where total quantity exceeds 480 units/Rx</li> <li>- Pharmacy Time of Claims Submission Report, reflecting claims submitted between 10:00 pm and 6:00 am</li> </ul> <p>The Contractor shall be required to provide the following program integrity reports on a monthly basis:</p> <ul style="list-style-type: none"> <li>- Enrollees Using Multiple Prescribers Report</li> <li>- Enrollee Use of Controlled Substances Report</li> <li>- Pharmacy DAW Code Submission Report</li> <li>- Pharmacy Claim Reversals Report</li> <li>- Generic efficiency report, reflecting pharmacies processing <math>\geq 250</math> claims per quarter and having <math>&lt; 40\%</math> generic utilization</li> <li>- Pharmacy Submission of Package Size versus Day Supply Report, identifying claims with an invalid correlation between quantity and day supply</li> </ul>	<p>Reports shall be delivered on a daily or monthly basis (as described in previous column). Daily reports should be delivered by close of business on the following business day. Monthly reports should be delivered by the 15<sup>th</sup> of the month for the previous month's data.</p>	<p>Failure by the Contractor to provide the required Program Integrity Reports on a daily or monthly basis may, in the State's discretion, result in liquidated damages of one hundred dollars (\$100) per day the reports are late during the first month violations are identified. Liquidated damaged may, in the State's discretion, increase to two hundred (\$200) per day for the second consecutive month violations are identified.</p>
A.11.1.a Enrollee Notices	<p>The Contractor shall be required to send individualized notices to enrollees, as specified in the column immediately to the right of this A.11.1.a column, worded at a six (6th) grade reading level, on a daily basis except for Sunday</p>	<p>Notices shall be approved by TennCare and include prior authorization denial notices, prescription limit notices, lock-in notices, or other notice as directed by TennCare.</p>	<p>Failure by the Contractor to produce notices in such a manner shall result in liquidated damages of five hundred dollars (\$500) per occurrence</p>

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.11.1.b Notices to Children in State Custody	Each week, the Contractor receives a file of TennCare recipients currently in State Custody from the Department of Children's Services (DCS). The Contractor shall be required to produce copies of any recipient denial notices generated over the previous week, and forward the notices (either hard copy or via secure electronic file transmission) to DCS.	Copies of denial notices generated for children in State custody shall be provided on a weekly basis to DCS (either hard copy or via secure electronic file transmission).	Failure by the Contractor to produce notices in such a manner shall result in liquidated damages of one hundred dollars (\$100) per notice.
E.5 Breach, Partial Default	<p>In the event of a Breach, the State may declare a Partial Default. In that case, the State shall provide the Contractor written notice of: (1) the date that Contractor shall terminate providing the service associated with the Breach; and (2) the date the State shall begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.</p> <p>In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts that would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) business days any requested material from Contractor. The State shall make the final and binding determination of said amount.</p>	Contract Performance Standard	The amount of liquidated damages that may, in the State's discretion, be assessed against the Contractor shall be at the discretion of the State, in accordance with the specific penalty provisions contained in the base Contract, and not exceed ten percent (10%) of the maximum payments previously made by TennCare to Contractor
E.23.1, Prevention/Detection of Provider Fraud and Abuse	The Contractor shall provide monthly reports to TennCare that describe pharmacy provider dispensing patterns that statistically identify the pharmacy as an outlier that may be representative of potential fraudulent, abusive or wasteful dispensing patterns. Additionally, the Contractor shall provide specific recommendations to TennCare, via a plan of correction that will eliminate the potentially fraudulent, abusive or wasteful	The reports shall be due on the fifteenth (15th) day of the month for the previous month's pharmacy claims.	Failure by the Contractor to provide the monthly reports listed above in a complete and timely manner may, in the State's discretion, result in the assessment of liquidated damages by TennCare of one hundred dollars (\$100) per day during the first month violations are identified. Liquidated damages will increase to two

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
	dispensing patterns of these specific pharmacy providers.		hundred dollars (\$200) per day for the second consecutive month violations are identified.



**GENERAL ASSEMBLY OF THE STATE OF TENNESSEE  
FISCAL REVIEW COMMITTEE**

320 Sixth Avenue, North - 8<sup>th</sup> Floor  
NASHVILLE, TENNESSEE 37243-0057  
615-741-2564

Sen. Bill Ketron, Chairman  
Senators  
Douglas Henry            Reginald Tate  
Doug Jackson            Ken Yager  
Brian Kelsey  
Randy McNally, *ex officio*  
Lt. Governor Ron Ramsey, *ex officio*

Rep. Charles Curtiss, Vice-Chairman  
Representatives  
Harry Brooks            Donna Rowland  
Curtis Johnson           Tony Shipley  
Steve McManus           Curry Todd  
Mary Pruitt               Eddie Yokley  
Craig Fitzhugh, *ex officio*  
Speaker Kent Williams, *ex officio*

**M E M O R A N D U M**

TO:                    The Honorable Dave Goetz, Commissioner  
                          Department of Finance and Administration

FROM:                Bill Ketron, Chairman, Fiscal Review Committee  
                          Charles Curtiss, Vice-Chairman, Fiscal Review Committee

DATE:                June 2, 2010

SUBJECT:            **Contract Comments**  
                          (Fiscal Review Committee Meeting 6/2/10)

*BK CC*

**RFS# 318.66-05308**

**Department: Finance & Administration/Bureau of TennCare**

**Contractor: SXC Health Solutions, Inc.**

**Summary: The vendor is responsible for the provision of pharmacy management and preferred drug list services. The proposed amendment includes \$0.19/transaction reimbursement for any transaction charges for e-prescriptions; adds disclosure of ownership language; and clarifies liquidate damages.**

**Maximum liability: \$34,500,000**

**Maximum liability w/amendment: \$34,500,000**

After review, the Fiscal Review Committee voted to recommend approval of the contract amendment with the stipulation that the proposed \$0.19/transaction reimbursement for e-prescriptions be deleted from the amendment at this time and that the transaction reimbursement language be deferred for consideration at the Committee's next meeting.

cc: The Honorable Darin Gordon, Deputy Commissioner  
     Mr. Robert Barlow, Director, Office of Contracts Review



STATE OF TENNESSEE  
BUREAU OF TENNCARE  
310 Great Circle Road  
NASHVILLE, TENNESSEE 37243

May 18, 2010

Mr. Jim White, Director  
Fiscal Review Committee  
8<sup>th</sup> Floor, Rachel Jackson Bldg.  
Nashville, TN 37243

Attention: Ms. Leni Chick

RE: Bureau of TennCare Contract Amendments

Dear Mr. White:

The Department of Finance and Administration, Bureau of TennCare, is submitting for consideration by the Fiscal Review Committee the Middle Tennessee and TennCare Select managed care contract amendments which address the following changes: (1) Include language relating to enforcement of maintenance effort requirements of the Annual Coverage Assessment Act of 2010; (2) Implement rate methodology for adjusting Long-Term Care (LTC) rates based on member movement; (3) Clarify Long Term Care reporting requirements; (4) Update acceptable claims processing entities; and (5) various housekeeping clarifications including numbering and typos. There is no term extension or additional funding associated with these amendments.

Volunteer State Health Plan (Select)	FA-02-14632-23
AMERIGROUP Tennessee, Inc.	FA-07-16936-06
UnitedHealthCare Plan of River Valley, Inc.	FA-07-16937-06

The following amendments for the East/West Regions of the State include the same language as noted above with added LTC capitation payment rates for use upon implementation of the CHOICES Program in East and West TN.

UnitedHealthCare Plan of the River Valley, Inc (West Region)	FA-08-24979-03
Volunteer State Health Plan (West Region)	FA-08-24978-03
UnitedHealthCare Plan of the River Valley, Inc. (East Region)	FA-08-24984-03
Volunteer State Health Plan (East Region)	FA-08-24983-03

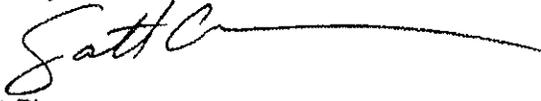
TennCare is also submitting for Committee review amendment #1 to SXC Health Solutions, Inc., TennCare's contract for Pharmacy Management. This amendment addresses language changes associated with TennCare's e-Prescribe Initiatives, adds Disclosure of Ownership language as required by the Center for Medicare and Medicaid Services, and clarifies Liquidated Damages as currently stated in the contract.

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MAY 18 2010  
FISCAL REVIEW

Mr. Jim White, Director  
Fiscal Review Committee  
May 18, 2010

The Bureau of TennCare would greatly appreciate the consideration and approval of these amendments by the Fiscal Review Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Pierce", with a long horizontal flourish extending to the right.

Scott Pierce  
Chief Financial Officer

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

**Supplemental Documentation Required for  
Fiscal Review Committee**

*Contact Name:	Alma Chilton	*Contact Phone:	615-507-6384
*Original Contract Number:	FA-08-25044-00	*Original RFS Number:	318.65-257
Edison Contract Number: (if applicable)	12051	Edison RFS Number: (if applicable)	31865-00257
*Original Contract Begin Date:	June 1, 2008	*Current End Date:	May 31, 2011
Current Request Amendment Number: (if applicable)	1		
Proposed Amendment Effective Date: (if applicable)	July 18, 2010		
*Department Submitting:	Department of Finance and Administration		
*Division:	Bureau of TennCare		
*Date Submitted:	May 18, 2010		
*Submitted Within Sixty (60) days:	Yes		
<i>If not, explain:</i>			
*Contract Vendor Name:	SXC Health Solutions, Inc.		
*Current Maximum Liability:	\$34,500,000.00		
<b>*Current Contract Allocation by Fiscal Year:</b> <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>			
FY: 2009	FY: 2010	FY:2011	FY: FY FY
\$ 9,709,300.00	\$12,596,190.00	\$12,194,510	\$ \$ \$
<b>*Current Total Expenditures by Fiscal Year of Contract:</b> <i>(attach backup documentation from STARS or FDAS report)</i>			
FY: 2009	FY: 2010	FY: 2011	FY: FY FY
\$8,118,812.03	\$ 6,517,510.21 * thru Feb.	\$	\$ \$ \$
<b>IF</b> Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:		This competitively procured contract includes fixed amounts for specific rates submitted by the Contractor in their original RFP Cost Proposal. Additionally, there are associated costs included in contractor reimbursement that are actual costs which cannot be determined prior to actual expenditures that also are included in the contract. The maximum liability included these projected costs at the inception of the contract and any unused dollars will roll forward to be used as needed for these costs as they occur through the duration of the contract.	
<b>IF</b> surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:		If the amount spent on this contract is less than the budgeted amount and contributes to a net surplus for the bureau, surplus funds would be carried forward subject to authority granted in Section 48, Item 3 of the General Appropriations Act.	

**Supplemental Documentation Required for  
Fiscal Review Committee**

<b>IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:</b>		N/A			
<b>*Contract Funding Source/Amount:</b>	<b>State:</b>	\$17,250,000.00	<b>Federal:</b>	\$17,250,000.00	
<b>Interdepartmental:</b>			<b>Other:</b>		
<b>If "other" please define:</b>					
<b>Dates of All Previous Amendments or Revisions: (if applicable)</b>			<b>Brief Description of Actions in Previous Amendments or Revisions: (if applicable)</b>		
			N/A		
<b>Method of Original Award: (if applicable)</b>			<b>Request for Proposal</b>		
<b>*What were the projected costs of the service for the entire term of the contract prior to contract award?</b>			The projected costs associated with this contract were based on Cost Proposals submitted with Request for Proposal. Prior to completion of RFP, costs could not be projected. These documents are public information and available upon request.		

## Supplemental Documentation Required for Fiscal Review Committee

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

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

**Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures. (Section C.3 of original contract attached)**

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

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

b. The Contractor shall be compensated based upon the following payment rates:

(1) For service performed from June, 2008, through September 30, 2008, the following rates shall apply:

Service Description	Amount (per compensable increment)
Installation Cost - (Paid in Three Equal Installments) 1/3 Due Three Months Prior to Delivery of Services 1/3 Due Two Months Prior to Delivery of Services 1/3 Due Upon Delivery of Services	\$ 0

(2) For service performed from October 1, 2008, through September 30, 2009, the following rates shall apply:

Service Description	Amount (per compensable increment)
Monthly Administrative Fee	\$ 692,250 / month
Clinical Pharmacist Based in Nashville	\$ 16,830 / month
Clinical Pharmacist Based in Nashville	\$ 16,830 / month
Provider Educator Based in Nashville	\$ 16,830 / month
Provider Educator Based in Field	\$ 16,830 / month
Provider Educator Based in Field	\$ 16,830 / month
Provider Educator Based in Field	\$ 16,830 / month
Data Research Analyst Based in Nashville	\$ 9,180 / month
Program Coordinator Based in Nashville	\$ 13,006 / month

## Supplemental Documentation Required for Fiscal Review Committee

System Liaison Based in Contractor's Home Office	\$ 9,180 / month
Contract Manager Based in Contractor's Home Office	\$ 11,476 / month

(3) For service performed from October 1, 2009, through September 30, 2010, the following rates shall apply:

Service Description	Amount (per compensable increment)
Monthly Administrative Fee	\$ 727,598 / month
Clinical Pharmacist Based in Nashville	\$ 17,672 / month
Clinical Pharmacist Based in Nashville	\$ 17,672 / month
Provider Educator Based in Nashville	\$ 17,672 / month
Provider Educator Based in Field	\$ 17,672 / month
Provider Educator Based in Field	\$ 17,672 / month
Provider Educator Based in Field	\$ 17,672 / month
Data Research Analyst Based in Nashville	\$ 9,639 / month
Program Coordinator Based in Nashville	\$ 13,656 / month
System Liaison Based in Contractor's Home Office	\$ 9,639 / month
Contract Manager Based in Contractor's Home Office	\$ 12,049 / month

(4) For service performed from October 1, 2010, through May 31, 2011, the following rates shall apply:

Service Description	Amount (per compensable increment)
Monthly Administrative Fee	\$ 763,977 / month
Clinical Pharmacist Based in Nashville	\$ 18,555 / month
Clinical Pharmacist Based in Nashville	\$ 18,555 / month
Provider Educator Based in Nashville	\$ 18,555 / month
Provider Educator Based in Field	\$ 18,555 / month
Provider Educator Based in Field	\$ 18,555 / month
Provider Educator Based in Field	\$ 18,555 / month
Data Research Analyst Based in Nashville	\$ 10,121 / month
Program Coordinator Based in Nashville	\$ 14,339 / month
System Liaison Based in Contractor's Home Office	\$ 10,121 / month
Contract Manager Based in Contractor's Home Office	\$ 12,652 / month

## Supplemental Documentation Required for Fiscal Review Committee

(5) Should the Contract be amended for Extension of Services, for the services performed from June 1, 2011, through May 31, 2012, the following rates shall apply:

Service Description	Amount (per compensable increment)
Monthly Administrative Fee	\$ 802,176 / month
Clinical Pharmacist Based in Nashville	\$ 19,483 / month
Clinical Pharmacist Based in Nashville	\$ 19,483 / month
Provider Educator Based in Nashville	\$ 19,483 / month
Provider Educator Based in Field	\$ 19,483 / month
Provider Educator Based in Field	\$ 19,483 / month
Provider Educator Based in Field	\$ 19,483 / month
Data Research Analyst Based in Nashville	\$ 10,627 / month
Program Coordinator Based in Nashville	\$ 15,056 / month
System Liaison Based in Contractor's Home Office	\$ 10,627 / month
Contract Manager Based in Contractor's Home Office	\$ 13,284 / month

c. **Rebate Bonus -** Per Section A.3.5.2., Annual Rebates for each year of the contract shall be calculated on the basis of any rebates obtained outside of the OBRA rebates. Annually, if the Contractor exceeds the upper figure of the allowed supplemental rebate percentage range they shall receive an annual bonus based on the following table:

Exceed by less than one percent (1%)	One hundred thousand dollars (\$100,000)
Exceed by more than or equal to one percent (1%), but less than two percent (2%)	Two hundred thousand dollars (\$200,000)
Exceed by more than or equal to two percent (2%), but less than three percent (3%)	Six hundred thousand dollars (\$600,000)
Exceed by more than or equal to three percent (3%)	One million, two hundred thousand dollars (\$1,200,000)

d. **Rebate Bonus -** Per Section A.3.5.2., Annual Rebates for each year of the contract shall be calculated on the basis of any rebates obtained outside of the OBRA rebates. The Table below lists the Contractor's Annual Allowed Supplemental Percentage for each year of the contract:

	October 1, 2008- September 30, 2009	October 1, 2009- September 30, 2010	October 1, 2010-May 31, 2011	June 1, 2011- May 31, 2012	June 1, 2012- May 31, 2013
--	--	--	------------------------------------	----------------------------------	----------------------------------

## Supplemental Documentation Required for Fiscal Review Committee

Annual Allowed Supplemental Rebate Percentage	8.35%	8.35%	8.35%	8.35%	8.35%
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**Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.**

This amendment to SXC Health Solutions, Inc., the competitively procured contract for pharmacy management and preferred drug list services, does not reflect potential savings to be realized by the state. It does address language changes associated with (1) TennCare's e-Prescribe initiatives (2) assigns a transaction charge reimbursement for e-prescriptions for enrollee prescriptions (3) adds Disclosure of Ownership, Disclosure of Business Transactions, and Health Care Related Criminal Conviction Disclosures as required by CMS, and (4) clarifies Liquidated Damages as specified in the contract. The maximum liability is not increased as a result of this amendment.

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

SXC Health Solutions, Inc. was awarded the competitively procured contract for pharmacy management and preferred drug list services for the TennCare program. Pursuant to State of Tennessee contract rules, an RFP is the optimum state procurement method and no other options were explored. All technical and cost proposals submitted as a result of this RFP are available for public inspection.

**FA0825044**

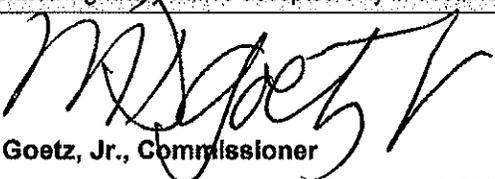
<b>Dept</b>	<b>Division</b>	<b>Funding Year</b>	<b>Reference Document</b>	<b>Date</b>	<b>Expenditures</b>	
318	65	2009	FA0825044	10/31/2008	\$836,072.00	
318	65	2009	FA0825044	11/30/2008	\$1,244,852.21	
318	65	2009	FA0825044	12/31/2008	\$862,762.69	
318	65	2009	FA0825044	1/31/2009	\$860,373.26	
318	65	2009	FA0825044	2/28/2009	\$836,109.80	
318	65	2009	FA0825044	3/31/2009	\$884,025.42	
318	65	2009	FA0825044	4/30/2009	\$862,012.02	
318	65	2009	FA0825044	5/31/2009	\$862,421.69	
318	65	2009	FA0825044	6/30/2009	\$870,182.94	
					<b>\$8,118,812.03</b>	<b>FY 2009 Total</b>
318	65	2010	FA0825044	7/31/2009	\$861,307.85	
<b>PAYMENTS MADE THROUGH EDISON:</b>						
318	65	2010	FA0825044	8/31/2009	\$866,388.94	
318	65	2010	FA0825044	9/30/2009	\$860,538.22	
318	65	2010	FA0825044	10/31/2009	\$907,339.55	
318	65	2010	FA0825044	11/30/2009	\$906,206.17	
318	65	2010	FA0825044	12/31/2009	\$902,229.08	
318	65	2010	FA0825044	1/31/2010	\$302,139.13	
318	65	2010	FA0825044	2/28/2010	\$911,361.27	
					<b>\$6,517,510.21</b>	<b>FY 2010 Total</b>

**NON-COMPETITIVE AMENDMENT REQUEST:**

APPROVED

Commissioner of Finance &amp; Administration

1) RFS #	31865-00257	
2) Procuring Agency :	Department of Finance and Administration Bureau of TennCare	
<b>EXISTING CONTRACT INFORMATION</b>		
3) Service Caption :	Pharmacy Management and Preferred Drug List Services	
4) Contractor :	SXC Health Solutions, Inc.	
5) Contract #	FA-08-25044-00	
6) Contract Start Date :	June 1, 2008	
7) CURRENT Contract End Date : (if ALL options to extend the contract are exercised)	May 31, 2011	
8) CURRENT Maximum Cost : (if ALL options to extend the contract are exercised)	\$ 34,500,000.00	
<b>PROPOSED AMENDMENT INFORMATION</b>		
9) Amendment #	1	
10) Amendment Effective Date : (attached explanation required if < 60 days after F&A receipt)	July 18, 2010	
11) PROPOSED Contract End Date : (if ALL options to extend the contract are exercised)	May 31, 2011	
12) PROPOSED Maximum Cost : (if ALL options to extend the contract are exercised)	\$ 34,500,000.00	
13) Approval Criteria : (select one)	<input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state	
	<input type="checkbox"/> only one uniquely qualified service provider able to provide the service	
14) Description of the Proposed Amendment Effects & Any Additional Service :		
<p>This amendment addresses language changes associated with (1) TennCare's e-Prescribe initiatives (2) assigns a transaction charge reimbursement for e-prescriptions for enrollee prescriptions (3) adds Disclosure of Ownership, Disclosure of Business Transactions, and Health Care Related Criminal Conviction Disclosures as required by CMS, and (4) clarifies Liquidated Damages as specified in the contract. No additional funds are associated with this contract.</p>		
15) Explanation of Need for the Proposed Amendment :		
<p>This amendment is required to adequately address changes in e-Prescription initiative and to bring TennCare into CMS compliance by including appropriate Disclosure language. Additionally, this amendment is updating Liquidated Damage and Performance Measures and Deliverables. No additional funds are associated with this contract.</p>		

<b>16) Name &amp; Address of Contractor's Current Principal Owner(s) :</b> (not required for a TN state education institution)	
Mark A. Thierer, President and Chief Operating Officer SXC Health Solutions, Inc. 2441 Warrenville Road Suite 610 Lisle, IL 60532	
<b>17) Office for Information Resources Endorsement :</b> (required for information technology service; n/a to THDA)	
Documentation is ... <input type="checkbox"/> Not Applicable to this Request <input type="checkbox"/> Attached to this Request	
<b>18) eHealth Initiative Endorsement :</b> (required for health-related professional, pharmaceutical, laboratory, or imaging service)	
Documentation is ... <input type="checkbox"/> Not Applicable to this Request <input checked="" type="checkbox"/> Attached to this Request	
<b>19) Department of Human Resources Endorsement :</b> (required for state employees training service)	
Documentation is ... <input type="checkbox"/> Not Applicable to this Request <input type="checkbox"/> Attached to this Request	
<b>20) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :</b>	
SXC Health Solutions, Inc. was awarded the competitively procured contract for Pharmacy Management and Preferred drug list server for the Bureau of TennCare, the State of Tennessee's Medicaid program. Since this amendment alters original language not included in original RFP, this amendment is considered non competitive.	
<b>21) Justification for the Proposed Non-Competitive Amendment :</b>	
SXC Health Solutions, Inc. was awarded the competitively procured contract for Pharmacy Management and Preferred drug list server for the Bureau of TennCare, the State of Tennessee's Medicaid program. The Bureau of TennCare would appreciate favorable review and approval of this amendment by the Commissioner of Finance and Administration.	
<b>AGENCY HEAD SIGNATURE &amp; DATE :</b>	
(must be signed & dated by the <u>ACTUAL</u> procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)	
 M. D. Goetz, Jr., Commissioner	 Date



# C O N T R A C T   A M E N D M E N T

<b>Agency Tracking #</b> 31865-00257	<b>Edison ID</b> 12051	<b>Contract #</b> FA-08-25044-00	<b>Amendment #</b> 01
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<b>Contractor</b> SXC Health Solutions, Inc.	<b>Contractor Federal Employer Identification or Social Security #</b> <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V - 75-2578509
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**Amendment Purpose/ Effects**  
Amendment addresses language changes in e-Prescription initiative and to bring TennCare into CMS compliance. There are no additional funds or term extension associated with this amendment.

<b>Contract Begin Date</b> June 1, 2008	<b>Contract End Date</b> May 31, 2011	<b>Subrecipient or Vendor</b> <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor	<b>CFDA #(s)</b> 93.778 Dept of Health and Human Services/Title XIX
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FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2008	\$0	\$0			\$0
2009	\$4,854,650.00	\$4,854,650.00			\$9,709,300.00
2010	\$6,298,095.00	\$6,298,095.00			\$12,596,190.00
2011	\$6,097,255.00	\$6,097,255.00			\$12,194,510.00
<b>TOTAL:</b>	<b>\$17,250,000.00</b>	<b>\$17,250,000.00</b>			<b>\$34,500,000.00</b>

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

— COMPLETE FOR AMENDMENTS —		
END DATE AMENDED?	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
FY	Base Contract & Prior Amendments	THIS Amendment ONLY
2008	\$0	
2009	\$9,709,300.00	
2010	\$12,596,190.00	
2011	\$12,194,510.00	
<b>TOTAL:</b>	<b>\$34,500,000.00</b>	<b>0.00</b>

<b>Agency Contact &amp; Telephone #</b> Alma Chilton 615-507-6384	
<b>Agency Budget Officer Approval</b> (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred)  	
<b>Speed Code</b> TN00000066	<b>Account Code</b> 70803000

— OCR USE —

**Procurement Process Summary** (non-competitive, FA- or ED-type only)

**AMENDMENT #1  
TO FA-08-25044-00  
BETWEEN THE STATE OF TENNESSEE  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE  
AND  
SXC HEALTH SOLUTIONS, INC.**

This Contract Amendment is made and entered by and between the State of Tennessee, Department of Finance and Administration, Bureau of TennCare, hereinafter referred to as the "State" or "TennCare" and SXC Health Solutions, Inc., hereinafter referred to as the "Contractor" or "PBM." It is mutually understood and agreed by and between said, undersigned contracting parties that the subject Contract is hereby amended as follows:

1. The text of Contract Section A.4.11.b. is deleted in its entirety and replaced with the following:
  - A.4.11.b. If during the term of this Contract, TennCare directs the Contractor, through a contract amendment, to operate as a risk-bearing entity for pharmacy services, the Contractor shall establish and maintain all financial reserves required by the Tennessee Department of Commerce and Insurance of HMOs, Third Party Administrator, or Prepaid Limited Health Services Organization licensed by the State of Tennessee, including, but not limited to, the reserves required by Tennessee Code Annotated § 56-32-112 as amended or Tennessee Code Annotated § 56-51-136 as amended. The Contractor shall demonstrate evidence of its compliance (or process of compliance) with this provision to the Tennessee Department of Commerce and Insurance, TennCare Division, in the financial reports filed with that Department by the Contractor.
  
2. The text of Contract Section A.4.16. is deleted in its entirety and replaced with the following:
  - A.4.16. The Contractor shall participate in TennCare's E-Prescribe initiatives and provide needed, accurate data files to TennCare initially and on an ongoing basis, in the format and timeframes agreed to by TennCare, as required to support E-Prescribe. This may include, but is not limited to: electronic formulary files (denoting preferred and non-preferred drugs), electronic files denoting drugs requiring prior authorization (including specific PA criteria for each drug), electronic files denoting drugs with quantity limits (including specific information regarding the nature of such limits), weekly encounter files to update the e-prescribe platform, and links into the Contractor's web-site for PA specific facsimile forms and criteria. The Contractor shall also coordinate the e-prescribe initiatives within the pharmacy network it is managing for TennCare.
  
3. The text of Contract Section A.10.2.m. is deleted in its entirety and replaced with the following:
  - A.10.2.m. Top 50 Narcotic Prescribers Report- Twice yearly the Contractor will report on the Top 50 prescribers of narcotic prescriptions including information needed to follow up with Managed Care Organizations (MCO) which includes, but is not limited to, number of claims, enrollees, enrollee demographic information such as MCO, and types/names of drugs prescribed.
  
4. The text of Contract Section A.11.1. is deleted in its entirety and replaced with the following:
  - A.11.1.a Notices - The Contractor shall be required to send individualized notices to enrollees, worded at a six (6<sup>th</sup>) grade reading level, unless otherwise approved by TennCare. Template notices shall be approved by TennCare. Notices should be printed with an assurance of non-discrimination both in English and Spanish that include, but not be limited to:

- a. Notification of prescription limits being met;
- b. Notification that a Prior Authorization request has been denied, which may or may not include a provision for continuation of benefits;
- c. Outcomes of a member Initiated prior authorization request, which may include:
  - i. Prescription change;
  - ii. PA granted; or
  - iii. PA denied.
- d. Response to prescriber on outcome of prior authorization request. This may be completed by utilizing facsimile technology.

These notices shall be mailed daily, except Sunday, each week. The previous days claims and/or Prior Authorization requests shall be mailed the following day. Monday mailings shall include letters based on claims denied on Saturday and Sunday. The Contractor shall provide TennCare with a web-based system to search and view individual notices that have been sent. The Contractor shall have approval to subcontract the notice process as defined herein with the requisite approval from TennCare, but in no event shall off shore vendors be utilized. The direct postage cost for each Script Limit denial letters and prior authorization letters shall be a pass through item. Failure to provide notices shall result in liquidated damages as described in Attachment A.

A.11.1.b The State shall provide the Contractor with an eligibility record file containing indicators identifying recipients in the Department of Children's Services (DCS). Updates to this file will be provided on a weekly basis. The Contractor shall produce copies of any recipient denial notices generated over the previous week and forward the notices (via secure electronic file transmission) to DCS. Failure to provide denial notices to DCS on a weekly basis shall result in liquidated damages as described in Attachment A.

5. The following provision is added as Contract Section E.28.:

E.28. Disclosure of Ownership, Control, or Relationship Information: In the time and manner set forth in 42 CFR § 455.104, TennCare's Managed Care Contractors and/or TennCare's Benefit Administrators must disclose to the State agency the name and address of each person with an ownership or controlling interest in any Provider, fiscal agent, disclosing entity (collectively, "the aforementioned") who are authorized to provide and receive payment for any covered service furnished to TennCare enrollees. In addition, the State must be provided the name and address of any subcontractor in which the aforementioned have a direct or indirect ownership interest of 5 percent or more. TennCare's Managed Care Contractors and/or TennCare's Benefit Administrators must disclose whether any of the aforementioned is related to him/her as spouse, parent, child, or sibling. Moreover, the aforementioned must disclose the name of any other Provider, fiscal agent, disclosing entity or subcontractor in which a person with an ownership or controlling interest in the aforementioned also has an ownership or controlling interest. The State shall not contract with a managed care contractor or a benefit administrator who has not disclosed ownership or control information required under the federal regulations.

6. The following provision is added as Contract Section E.29.:

E.29. Disclosure of Business Transactions Upon Request: Regulation 42 CFR § 455.105 requires that, upon request, Providers furnish to the State or the U.S. Department of Health and Human Services (HHS) information about certain business transactions with wholly owned suppliers or any subcontractors. In addition, the Provider must disclose the ownership of any

subcontractor with whom the Provider has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request. Therefore, as a condition of contracting with the State, TennCare's Managed Care Contractors and/or TennCare's Benefit Administrators must agree to disclosure of the business transaction information upon request specified in the regulation.

7. The following provision is added as Contract Section E.30.:
- E.30. Health Care-Related Criminal Conviction Disclosures and Timely Reporting: Regulation 42 CFR § 455.106 stipulates that Providers must disclose to Federal and State Medicaid agencies any criminal convictions related to Medicare, Medicaid, or Title XX programs at the time they apply or renew their applications for Medicaid participation or at any time on request. The regulation further requires that the State Medicaid agency notify the HHS Office of Inspector General (HHS-OIG) whenever such disclosures are made. Hence, as a condition of contracting with the State, TennCare's Managed Care Contractors and/or TennCare's Benefit Administrators must agree to collect the disclosure of health care-related criminal conviction information as required by 42 CFR § 455.106 and establish policies and procedures to ensure that applicable criminal convictions are reported timely to the State.
8. Contract Attachment A is deleted in its entirety and replaced with the new Revised Contract Attachment A attached hereto.

The revisions set forth herein shall be effective July 18, 2010. All other terms and conditions not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF,  
SXC HEALTH SOLUTIONS, INC.:



CONTRACTOR SIGNATURE

Mike Bennof, Executive Vice President

8/6/10  
DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE:



M. D. Goetz, Jr., Commissioner

8/16/10  
DATE

**PERFORMANCE, DELIVERABLES AND DAMAGES**

The table below summarizes Performance Measures and Deliverables described in other sections of this Contract. Included in the table are delivery schedules and non-performance damages. TennCare shall monitor the Contractor's performance meeting the required standards. If TennCare determines that the Contractor has failed to meet requirements of this Contract, TennCare shall notify the Contractor by certified U.S. Mail. Upon notification of a violation, the Contractor shall submit to TennCare, within five (5) business days, a Corrective Action Plan (CAP). Failure to submit a CAP or comply with its requirements, as approved by TennCare, may, in the State's discretion, result in liquidated damages of \$100 per day for each day the corrective action plan is late or compliance with the CAP is not complete. In situations where the Contractor wishes to dispute any liquidated damages assessed by the State, the Contractor must submit a written notice of dispute, including the reasons for disputing the LD, within 30 days of receipt of the letter from the State containing the total amount of damages assessed against the Contractor.

If damages are assessed, TennCare shall reduce the Contractor's payment for administrative services in the following month's invoice by the amount of damages. In the event that damages due exceed TennCare fees payable to Contractor in a given payment cycle, TennCare shall invoice Contractor for the amount exceeding the fees payable to Contractor, that shall be paid by Contractor within thirty (30) calendar days of the invoice date.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.1 Implementation	<p>Contractor shall complete all implementation actions prior to "go-live" date and according to the implementation timeline provided by the Contractor to TennCare. The Contractor shall receive TennCare's sign-off that each action has been completed successfully. Implementation action steps include the following minimum items:</p> <ul style="list-style-type: none"> <li>• Benefit plan designs loaded, operable and tested;</li> <li>• Perform comprehensive systems testing (including interface testing with all third parties) and quality assurance audits, with results reported to the TennCare prior to the "Go-Live";</li> <li>• Eligibility feed formats loaded and tested end to end;</li> <li>• Operable and tested toll-free numbers;</li> <li>• Signed agreements for Retail Pharmacy and Long-term Care Pharmacy networks;</li> <li>• Account management, Help Desk and Prior Authorization staff hired and trained;</li> <li>• Established billing/banking requirements;</li> </ul>	Due prior to the claims processing commencement date of October 1, 2008, 1:00 a.m. Central Standard Time (CST)	Contractor may, in the State's discretion, be required pay to TennCare amount of ten thousand dollars (\$10,000.00) per day for each day full implementation of the project is delayed by fault of the Contractor. This guarantee is dependent upon Contractor receiving necessary information and approvals from TennCare in a timely manner.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
	<ul style="list-style-type: none"> <li>• Complete notifications to pharmacies and prescribers regarding contractor change;</li> <li>• Each component shall be met by an agreed upon deadline in an implementation timeline provided by Contractor to TennCare. Implementation action requirements may include other items necessary to meet the claims processing commencement date of July 1, 2008, 1:00 a.m. CST ; and</li> <li>• Claims history and existing prior authorizations and overrides shall be migrated to Contractors POS system</li> </ul>		
A.2.2 Claim payment and Remittance Services	The Contractor shall distribute and mail TennCare outputs as required by this Contract including, but not limited to: provider checks and remittance advices, returned claims, notices, provider bulletins, provider manuals and special mailings.	The Contractor shall mail checks and remittance advices to pharmacy providers each week on Fridays, with the exception of Holiday weeks. With notice, holiday production shall not delay the process by more than two (2) business days. TennCare shall be notified no later than two (2) business days of any systems or operational issues that may impact disbursements by the prescribed timelines. For checks to be issued on Friday, the Contractor shall deliver two files to the State, in an electronic media suitable to the State, by 10:00 a.m. CST, Thursday of each week.	Penalty may, in the State's discretion, be \$1,000 per day files are overdue.
A.2.2 Encounter Data Files	All adjudicated claims (encounters) shall be transferred to TennCare or on a schedule designated by TennCare.	File transfer due weekly and due ten (10) business days after end of reporting week.	If the Contractor fails to produce the report, the calculation of the damages may, in the State's discretion, begin on the first day following the due date of the report and continue until receipt of the report by TennCare. Penalty may, in the State's discretion, be \$5,000 per week.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.2.3 POS Claims	The Contractor shall process ninety-nine point five percent (99.5%) of POS pharmacy claims within ten (10) seconds on a daily basis. This is the time from when the claim is received by the Contractor's processor to the time the results are transmitted from the Contractor's processor and shall include all procedures required to complete claim adjudication.	Ninety-nine point five percent (99.5%) of claims process shall process to completion within ten (10) seconds on a daily basis.	If ninety-nine point five percent (99.5%) of claims are not processed within the ten (10) second time frame then the daily penalty may, in the State's discretion, be \$1,000 per day of non-compliant processing.
A.2.3. POS Downtime	System will operate without unscheduled or unapproved downtime. For purposes hereof "downtime" shall be any interruption involving more than 10% of production for a period greater than 15 minutes.	No unscheduled or unapproved downtime.	\$2,500 per occurrence of unscheduled or unapproved downtime if deemed by TennCare to be the result of contractor shortcomings.
A.2.3. POS Downtime Notification	Contractor shall report to TennCare immediately (within one (1) hour) upon knowledge of downtime.  TennCare is to identify staff to be contacted after normal business hours in the event of an interruption of service.	Report is due within one (1) hour, upon knowledge of downtime.	Immediate report is due within one (1) hour upon knowledge of the downtime. \$7,500 one time damage may, in the State's discretion, be assessed for not reporting immediately.
A.2.3 Batch Electronic Media (EMC) Claims Processing	The Contractor shall receive claims in electronic format, separate tape from diskette, convert diskette to tape, schedule tapes for immediate processing and return media to submitting providers within three (3) business days. The Contractor shall assign identification control numbers to all batch claims within three (3) business days of receipt. The Contractor shall maintain electronic backup of batch claims for the duration of the contract. If TennCare requests copies of batch electronic claims, these shall be provided within three (3) business days of request.  As requested, the Contractor shall provide the batch files as they were originally received. These files shall be delivered to the TennCare site by Virtual Private Network connection.  Electronic batch claims shall be submitted	Return media claims to submitting providers within three (3) business days of receipt, assignment of identification control numbers to all batch claims within three (3) business days of receipt and provide TennCare with copies of batch electronic claims within three (3) business days of request.	Calculation of the damages may, in the State's discretion, begin on the first day following the due date and continue until receipt of the report by TennCare. Penalty may, in the State's discretion, be \$1,000 per day.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
	through a sequential terminal, or similar method that shall allow batch and POS claims to be adjudicated through the same processing logic. New providers requesting to submit batch claims shall provide at least a thirty (30) day notice and shall conform to the standard Change Control and testing process.		
A.2.3 POS Downtime Occurrence Reports	<p>The Contractor shall provide TennCare with updates at regular intervals during a sustained downtime. TennCare shall be presented with recovery options as appropriate. Upon full recovery, the Contractor shall provide TennCare with a System Down Analysis describing root cause issues and actions to mitigate future downtime occurrences.</p> <p>Transaction reports shall include: volume, longest response time and average response time. Statistics shall be provided to TennCare within ten (10) business days following the end of each calendar month that any downtime occurred.</p>	Report is due within five (5) business days after full system recovery.	Daily penalty may, in the State's discretion, be \$1,000 per day. Calculation of the damages will begin on the sixth business day following full system recovery.
A.2.3 Aged Checks Not Cashed	The Contractor shall provide TennCare Fiscal Services Unit a monthly report detailing all checks remitted to providers on behalf of the State that remain outstanding (have not been cashed) greater than ninety (90) days.	Contractor shall provide TennCare with a monthly report of remitted checks as stipulated. Reports are due monthly, due on the 15 <sup>th</sup> day of the month following the reporting period.	Penalty may, in the State's discretion, be \$500 per week that report is overdue.
A.2.3 Aged Account Payable Notices	The Contractor shall ensure that collection letters are sent to pharmacies that maintain an accounts-payable balance to the State greater than ninety (90) days. These notices shall be sent within five (5) workdays of becoming ninety (90) days old.	Contractor shall provide TennCare with a monthly report of notices that had been sent. Reports are due monthly, ten (10) business days after end of month of reporting period.	If Contractor fails to send notice, the penalty may, in the State's discretion, be \$100 per provider notice per month.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.2.4 <u>Claim Validation</u>	<p>The Contractor system shall approve for payment only those claims for members eligible to receive pharmacy services at the time the service was rendered. The Contractor shall immediately notify TennCare of any and all claims that have been erroneously processed, and initiate appropriate action to correct the errors.</p> <p>In the event that claims are inappropriately denied the Contractor may be assessed damages denied the Contractor may be assessed damages</p>	Reimbursement or damages resulting from this section may be applied to as offsets to future administrative fees.	<p>The Contractor shall reimburse TennCare for the cost of all claims paid as a result of contractor error.</p> <p>Penalty for claims inappropriately denied may, in the State's discretion, be \$100 per occurrence. .</p>
A.2.8 Reversals and Adjustments	The system shall provide an efficient means of reversing or adjusting claims both before and after the claim has been transmitted to the TCMIS. The result of the adjustment shall be transferred to TCMIS for further processing. TennCare shall make no payments to the Contractor for reversed, voided or adjusted claims.	Contractor shall process all reversals requested by TennCare Fiscal Services Unit within thirty (30) days and provide confirmation to TennCare Fiscal Services Unit when that such has occurred.	A damage of \$100 may, in the State's discretion, be assessed per transaction that has not been reversed or adjusted within thirty (30) days of written request of TennCare Fiscal Services Unit.
A.3.2 PDL , Step Therapy and Prior Authorization Changes	The Contractor shall implement changes in the POS system for PDL, Step Therapy, Prior Authorization requirements and all supporting systems within forty-five (45) days of approval from TennCare. Such changes to the POS system shall require provider notification thirty (30) days prior to the implementation. TennCare shall identify the targeted provider for each notification.	Implement changes and issue notification in specified time frames	Calculation of the damages may, in the State's discretion, begin on the first day following the due date and continue until required changes with proper notice are implemented. Penalty may, in the State's discretion, be \$1,000 per day.
A.3.4 TennCare Pharmacy Advisory Committee Support	The Contractor shall attend, support and facilitate meetings of the TennCare Pharmacy Advisory Committee (PAC) as necessary to maintain the TennCare PDL.	Approved meeting materials shall be distributed ten (10) business days prior to PAC meetings. Draft minutes shall be submitted to TennCare with two (2) weeks of PAC meeting.	Calculation of the damages may, in the State's discretion, begin on the first day following the due date for meeting material or minutes and may continue until delivered. Penalty may, in the State's discretion, be \$1,000 per day.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.3.5 Drug Rebate Dispute Data	The Contractor shall provide to the agency or business of the State's choosing, any and all appropriate, accurate, and balanced pharmacy level claims data needed to resolve or avoid any Medicaid or supplemental drug rebate disputes.	This data shall be provided to TennCare within fifteen (15) days of a request by TennCare	Calculation of the damages may, in the State's discretion, begin on the first day following the due date and continue until receipt of the report by TennCare. Penalty may, in the State's discretion, be \$1,000 per business day.
A.3.5 Delinquent Rebate Payment Notices	<p>The Contractor shall ensure that written notification is sent to Drug Manufacturers concerning forty-five (45) day past-due undisputed account balances within fifty (50) days after the original invoice date.</p> <p>The Contractor shall also ensure that written notification is sent to Drug Manufacturers concerning seventy-five (75) day past-due undisputed account balances within eighty (80) days after the original invoice date.</p> <p>The Contractor shall also ensure that written notification is sent to Drug Manufacturers concerning ninety (90) day past-due undisputed account balances within ninety-five (95) days after the original invoice date.</p> <p>These notices shall remind the labeler that interest shall be assessed on all past due accounts as stipulated by their contract with the State.</p>	<p>Contractor shall provide TennCare with copies of all reports sent pursuant to this section.</p> <p>Reports due monthly, ten (10) business days after end of month of reporting period.</p>	If Contractor fails to send notice, the penalty may, in the State's discretion, be \$100 per Manufacturer per day independent of other dunning periods.
A.3.5 Rebate Invoicing	The Contractor shall generate and issue quarterly Rebate Invoices. Provide the designated TennCare staff data files that contain the specific information and in the specified format as required by TennCare	The quarterly Medicaid Drug Rebate invoices shall be generated for all pharmaceutical manufacturers and TennCare approval by thirty (30) days after the end of the quarter.	Penalty may, in the State's discretion, be \$1,000 per invoice per day invoice overdue.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.3.5 Rebate Dispute Resolution	The Contractor shall be responsible for dispute resolution pertaining to supplemental rebates. The Contractor shall perform unit resolution based on unit resolution performed on CMS Rebates. The Contractor shall perform all other dispute resolution activities with pharmaceutical manufacturers pertaining to supplemental rebate calculations and collections.	Within ninety (90) days of dispute the contractor shall present the State with an analysis of why the monies were disputed and remedies.	Penalty may, in the State's discretion, be \$1,000 per day past ninety (90) day timeframe of analysis and proposed remedy.
A.3.5 Delinquent Rebate Payment Interest Accrual	The Contractor shall ensure that all Drug Manufacturers are charged interest as stipulated in each Manufacturer's respective Supplemental Drug Rebate Contract. Interest shall be calculated on only the Manufacturer's undisputed account balance unless written notification is provided by TennCare to do otherwise.		Failure by Contractor to start accruing interest on the date stipulated in the individual supplemental rebate agreements may, in the State's discretion, result in a penalty of \$1,000 for every non-compliant invoice issued.
A.3.5 Supplemental Rebate Administration	If the Contractor falls below the allowed range for the supplemental rebate percentage they shall be financially liable for the full amount of difference between the actual amount collected and the amount that would have been collected if the lowest figure of the allowed range had been achieved.	Annually, the Contractor shall determine the supplemental rebates collected as a percentage of drug-spend as defined in Section A.3.5.2. This figure shall be verified by TennCare.	100% of the difference between the supplement rebate amount that would have been paid to the state if the Contractor had performed at the lowest end of the allowed supplemental rebate percentage range vs. the actual supplemental rebate amount paid to the state.
A.4.8 Disaster Preparedness and Recovery-Business Interruption	The Contractor shall submit the Contractor's Business Continuity/Disaster Recovery plan for their Central Processing Site to TennCare. If requested, test results of the plan shall be made available to TennCare	Plan due upon commencement of claims processing and annually on the anniversary date of the initial claims processing	Penalty may, in the State's discretion, be \$1000 per week that report is overdue.
A.4.8 Disaster Preparedness and Recovery-Business Interruption	The Contractor shall comply with their Contractor's Business Continuity/Disaster Recovery plan.	TennCare shall determine the final need to move to the disaster recovery plan based on the Contractor's recommendation.	Penalty may, in the State's discretion, be \$10,000 per day Contractor is non-compliant with their Business Continuity/Disaster Recovery Plan

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.4.9 Program Integrity	The Contractor shall have TennCare-approved policies and procedures in place for ensuring protections against actual or potential fraud and abuse.	The Contractor shall have a detailed Program Integrity Plan. The Contractor shall complete all tasks as described in the Program Integrity Plan on a quarterly and annual basis.	\$2,500 per occurrence of non compliance with the Program Integrity Plan.
A.4.10 Proprietary and Confidential Information	All information provided to TennCare, including but not limited to, provider, reimbursement and enrollee information shall be deemed confidential.	The Contractor shall immediately notify TennCare of any and all occurrences where TennCare's confidential information may have been breached and initiate appropriate action to prevent subsequent breaches.	\$2,500 per occurrence of breach.
A.4.12 Member Identification Cards	The Contractor shall provide each TennCare enrollee with a NCPDP compliant pharmacy benefit identification (ID) card. The Contractor shall also provide enrollee with replacements cards.	Replacement and new cards shall be produced and mailed by the Contractor on the 15 <sup>th</sup> day of each month.	Delays in producing ID cards may, in the State's discretion, result in \$1,000 per day damages.
A.4.13 Mail Procedures	The Contractor shall open all returned mail from any mailings to enrollees or providers within thirty (30) days of receipt to determine if the enrollee has moved, if the Contractor has the wrong address, and/or if the enrollee is communicating other information to the Contractor or to TennCare. The Contractor shall track returned mail and shall report monthly to TennCare the number of pieces of returned mail, the reason the mail was returned and action taken by the Contractor. Included in this report shall be a list of all enrollees whose mail was undeliverable due to an incorrect address provided by TennCare.	Monthly report, due ten (10) business days after end of month of reporting period, beginning the first full month after the report format has been agreed to by the parties.	Calculation of the damages may, in the State's discretion, begin on the first day following the report due date and continue until receipt of the report by TennCare. Penalty may, in the State's discretion, be \$2,500 per week.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.4.16 E-Prescribe	The Contractor shall participate in TennCare's E-Prescribe initiatives.	Provide accurate data files in the format agreed to as necessary to support E-Prescribe.	Damages for delays or errors may, in the State's discretion, be assessed at \$1,000 per day begin on the first day following the file due date.
A.5 Drug Utilization Review Program	<p>The Contractor shall provide on a quarterly basis</p> <ul style="list-style-type: none"> <li>• Provider and patient trending</li> <li>• Meetings and facilitation</li> <li>• Reports and website</li> </ul>	Approved meeting materials shall be distributed ten (10) days prior to DUR meetings. Draft minutes shall be submitted to TennCare with four (4) weeks of DUR meeting.	Calculation of the damages may, in the State's discretion, begin on the first day following the due date for meeting material or minutes and continue until delivered. Penalty, in the State's discretion, may be \$1,000 per day.
A.6 Prior Authorization Unit Reports	The Prior Authorization Unit Reports are covered by Management Reports provided in section A.10.2		Failure by the Contractor to provide the Prior Authorization Call Center reports listed in a complete and timely manner may, in the State's discretion, result in the assessment of liquidated damages by TennCare of one hundred dollars (\$100) per day during the first month violations are identified. Liquidated damages may, in the State's discretion, increase to two hundred dollars (\$200) per day for the second consecutive month violations are identified.
A.6.1 Prior Authorization Processing time	The contractor shall complete all requests for prior approval within twenty four (24) hours given sufficient information to make a determination.	Contractor must document the receipt and determination time for every request for PA. This must be provided to TennCare on a quarterly basis. Explanation must be given for falling outside the twenty four (24) hour timeframe.	One hundred (\$100) dollars per PA not processed within twenty four (24) hours

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.6.1.m.ii and A.6.5.h Call Center Service Levels	The Contractor shall maintain service levels within the Prior Authorization Unit such that 85% of call line inquiry attempts are answered within 30 seconds and the total number of abandoned calls shall not exceed 3%.		Failure to meet these service levels may, in the State's discretion, result in liquidated damages of \$100 per day for which service levels are not met.
A.6.4 Prior Authorization Reconsideration	The Contractor shall respond to all reconsideration requests within one (1) business day.	The Contractor shall provide quarterly reports indicating the timeframe and outcome of every prior authorization reconsideration.	\$200 per occurrence of failure to respond to reconsideration within one (1) business day
A.6.4 Prior Authorization Reconsideration	The Contractor shall supply TSU with all pertinent information pertaining to reconsideration requests within two (2) business days.	The Contractor shall provide quarterly reports indicating the timeframe and outcome of every prior authorization reconsideration.	\$200 per occurrence of failure to supply all pertinent information within two (2) business days
A.8.5 Pharmacy Network	The Contractor shall ensure that network pharmacies comply with all provisions of enrollee notices.	The Contractor's shall utilize feedback from TennCare, other state agencies, and enrollees, in addition to the audit process to perform additional training to pharmacies regarding notice obligations.	\$100 per instance of failure of the Contractor to ensure pharmacies are compliant with notice requirements
A.8.6. Verification of Benefits (VOB) Notices	The Contractor shall send a letter to five hundred (500) randomly selected recipients each month requesting their reply to confirm whether they received the prescriptions processed in the preceding month and identified in the letter, as described in Contract Sections A.8.6.a-e.		Failure to generate Verification of Benefit (VOB) notices as described in the Contract, may, in the State's discretion, result in liquidated damages in the amount of \$100 per day during the first month violations are identified. LDs may, in the State's discretion, be increased to \$200 per day for the second consecutive month violations are identified.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.9.5 Key Staff Position	The Contractor shall employ competent staff in all key positions listed in Section A.9.5.	Replacement staff shall be in place within sixty (60) days of vacancies, unless TennCare grants an exception to the requirement	Calculation of the damages may, in the State's discretion, begin on the sixty-first day following the vacancy of the position and may continue until monthly until the position is filled. The penalty may, in the State's discretion, be \$2,500 per month in addition to the salary of the position being withheld from the monthly payment.
A.9.5 Key Staff Licensure	The Contractor shall provide to TennCare documentation verifying the state licensure of key staff.	The Contractor shall provide TennCare copies of current Tennessee licenses for key staff	Calculation of the damages may, in the State's discretion, begin on the annually on September 16 and may continue until receipt of the licensure verification by TennCare. Penalty may, in the State's discretion, be \$2,500 per week per employee.
A.10.1 Management Reports	The Contractor shall provide TennCare with industry standard utilization and financial management reporting. The Contractor's management reports shall provide a summary of drug costs sorted by therapeutic category, by top ranked drugs, and by benefit categories. Reports shall include, but not be limited to: <ul style="list-style-type: none"> <li>• Financial summary with change trend</li> <li>• Utilization statistics</li> <li>• Claim processing volume and statistics</li> <li>• Cost trend reports</li> <li>• Fraud detection/ Investigation</li> </ul>	Monthly and quarterly reports are due ten (10) business days after the end of the reporting period.	Damages may, in the State's discretion, be assessed weekly. Calculation of the damages will begin on the first day following the report due date and may continue until receipt of the report by TennCare. Penalty may, in the State's discretion, be \$2,500 per week, per report.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
	<ul style="list-style-type: none"> <li>activity</li> <li>• DUR reports (retrospective and prospective)</li> <li>• PDL reports</li> <li>• Prior Authorization</li> <li>• Call Center metrics</li> <li>• Reconsideration volume, disposition and aging</li> <li>• Prescriber profiles</li> <li>• Rebate reports</li> <li>• MAC savings report</li> <li>• Pharmacy Access reports</li> <li>• An electronic file of priced or paid claims</li> <li>• All other reports referenced in the RFP</li> <li>• Pharmacy Desk Audits</li> </ul>		
A.10.2 <i>Ad Hoc</i> Reports	The Contractor shall be able to provide, at no extra cost to TennCare <i>ad hoc</i> reports that shall assist in managing the pharmacy benefit for TennCare members. <i>Ad hoc</i> reports shall be provided in a format described by TennCare and in an agreed upon timetable.		Failure by the Contractor to produce <i>Ad Hoc</i> reports in an agreed upon timeframe may, in the State's discretion, result in the assessment of liquidated damages by TennCare of one hundred dollars (\$100) per day during the first month violations are identified. Liquidated damages may, in the State's discretion, increase to two hundred dollars (\$200) per day for the second consecutive month violations are identified.
A.10.2 Emergency Supply Aggregate Reports	The Contractor shall provide TennCare with reports summarizing all emergency supply overrides performed by dispensing pharmacists at the point-of-sale, pursuant to the policy regarding dispensing of drugs not listed on the TennCare PDL. The reports shall be on a weekly and monthly basis and list the top one hundred (100) pharmacies entering emergency supplies and the top one hundred (100) prescribers associated with those overrides. The reports shall also include the top one hundred (100) drugs associated with emergency supplies as well as summary totals of	Reports shall be delivered on a weekly and monthly basis no longer than five (5) business days after the ending of the week/month.	Failure by the Contractor to provide emergency supply Aggregate Report may, in the State's discretion, result in the assessment of liquidated damages by TennCare of one hundred dollars (\$100) per day during the first month violations are identified. Liquidated damages may, in the State's discretion, increase to two hundred

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
	overrides. The emergency supply reports shall be delivered to TennCare in electronic format by a web-based report library, as agreed to by TennCare.		dollars (\$200) per day for the second consecutive week or month violations are identified.
A.10.3 PDL Compliance Report	The Contractor shall monitor compliance by prescribers and pharmacists with the TennCare PDL and report that information to TennCare monthly, quarterly, and semiannually, and provide suggestions for improving PDL compliance.	Report shall be delivered within forty-five (45) days following the period, but not earlier than thirty (30) days following the period.	Penalty may, in the State's discretion, be \$2500 per week that report is overdue.
A.10.4. Program Integrity Reports	<p>The Contractor shall be required to provide the following program integrity reports on a daily basis:</p> <ul style="list-style-type: none"> <li>- Ingredient Cost/Prescription Report, identifying claims with total cost exceeding \$750 at retail.</li> <li>- Override report, reflecting daily claims paid with override, prior authorization, or other unique adjudication rules</li> <li>- Submitted Units/Rx for topical dosage forms where total quantity exceeds 480 units/Rx</li> <li>- Pharmacy Time of Claims Submission Report, reflecting claims submitted between 10:00 pm and 6:00 am</li> </ul> <p>The Contractor shall be required to provide the following program integrity reports on a monthly basis:</p> <ul style="list-style-type: none"> <li>- Enrollees Using Multiple Prescribers Report</li> <li>- Enrollee Use of Controlled Substances Report</li> <li>- Pharmacy DAW Code</li> </ul>	Reports shall be delivered on a daily or monthly basis (as described in previous column). Daily reports should be delivered by close of business on the following business day. Monthly reports should be delivered by the 15 <sup>th</sup> of the month for the previous month's data.	Failure by the Contractor to provide the required Program Integrity Reports on a daily or monthly basis may, in the State's discretion, result in liquidated damages of one hundred dollars (\$100) per day the reports are late during the first month violations are identified. Liquidated damages may, in the State's discretion, increase to two hundred (\$200) per day for the second consecutive month violations are identified.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
	<p>Submission Report</p> <ul style="list-style-type: none"> <li>- Pharmacy Claim Reversals Report</li> <li>- Generic efficiency report, reflecting pharmacies processing ≥250 claims per quarter and having &lt;40% generic utilization</li> <li>- Pharmacy Submission of Package Size versus Day Supply Report, identifying claims with an invalid correlation between quantity and day supply</li> </ul>		
A.11.1.a Enrollee Notices	The Contractor shall be required to send individualized notices to enrollees, as specified in the column immediately to the right of this A.11.1.a column, worded at a six (6th) grade reading level, on a daily basis except for Sunday	Notices shall be approved by TennCare and include prior authorization denial notices, prescription limit notices, lock-in notices, or other notice as directed by TennCare.	Failure by the Contractor to produce notices in such a manner shall result in liquidated damages of five hundred dollars (\$500) per occurrence
A.11.1.b Notices to Children in State Custody	Each week, the Contractor receives a file of TennCare recipients currently in State Custody from the Department of Children's Services (DCS). The Contractor shall be required to produce copies of any recipient denial notices generated over the previous week, and forward the notices (either hard copy or via secure electronic file transmission) to DCS.	Copies of denial notices generated for children in State custody shall be provided on a weekly basis to DCS (either hard copy or via secure electronic file transmission).	Failure by the Contractor to produce notices in such a manner shall result in liquidated damages of one hundred dollars (\$100) per notice.
E.5 Breach, Partial Default	<p>In the event of a Breach, the State may declare a Partial Default. In that case, the State shall provide the Contractor written notice of: (1) the date that Contractor shall terminate providing the service associated with the Breach; and (2) the date the State shall begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.</p> <p>In the event the State declares a Partial</p>	Contract Performance Standard	The amount of liquidated damages that may, in the State's discretion, be assessed against the Contractor shall be at the discretion of the State, in accordance with the specific penalty provisions contained in the base Contract, and not exceed ten percent (10%) of the maximum payments previously made by TennCare to

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
	<p>Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts that would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) business days any requested material from Contractor. The State shall make the final and binding determination of said amount.</p>		Contractor
<p>E.23.1, Prevention/Detection of Provider Fraud and Abuse</p>	<p>The Contractor shall provide monthly reports to TennCare that describe pharmacy provider dispensing patterns that statistically identify the pharmacy as an outlier that may be representative of potential fraudulent, abusive or wasteful dispensing patterns. Additionally, the Contractor shall provide specific recommendations to TennCare, via a plan of correction that will eliminate the potentially fraudulent, abusive or wasteful dispensing patterns of these specific pharmacy providers.</p>	<p>The reports shall be due on the fifteenth (15th) day of the month for the previous month's pharmacy claims.</p>	<p>Failure by the Contractor to provide the monthly reports listed above in a complete and timely manner may, in the State's discretion, result in the assessment of liquidated damages by TennCare of one hundred dollars (\$100) per day during the first month violations are identified. Liquidated damages will increase to two hundred dollars (\$200) per day for the second consecutive month violations are identified.</p>

# CONTRACT SUMMARY SHEET

021908

<b>RFS:</b> <div style="font-size: 24pt; font-weight: bold; text-align: center;">318.65-257-08</div>	<b>Contract:</b> <div style="font-size: 24pt; font-weight: bold; text-align: center;">FA-08 - 25044-00</div>
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<b>State/Agency:</b> Department of Finance and Administration	<b>State Agency Division:</b> Bureau of TennCare
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<b>Contractor Name:</b> SXC Health Solutions, Inc.	<b>Contractor ID # (FEIN or SSN):</b> <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 75-2578509
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**Service Description:**  
 Pharmacy Management and Preferred Drug List Services

<b>Contract Begin Date:</b> June 1, 2008	<b>Contract End Date:</b> May 31, 2011	<b>SUBRECIPIENT or VENDOR:</b> Vendor	<b>OFDA:</b> 93.778 Dept of Health & Human Services/Title XIX
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**Mark Each TRUE Statement:**

<input checked="" type="checkbox"/> Contractor is on STARS	<input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts
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<b>Allotment Code:</b> 318.65	<b>Cash Center:</b> 073	<b>Object Code:</b> 083	<b>Fund:</b> 11	<b>Funding Grant Code:</b>	<b>Funding Subgrant Code:</b> 93.778 Dept of Health & Human Services/Title XIX
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FY	State	Federal	Interdepartmental	Other	TOTAL Com. by Agency
2008	\$0	\$0			\$0
2009	\$4,854,650.00	\$4,854,650.00			\$9,709,300.00
2010	\$6,298,095.00	\$6,298,095.00			\$12,596,190.00
2011	\$6,097,255.00	\$6,097,255.00			\$12,194,510.00
<b>TOTAL</b>	<b>\$17,250,000.00</b>	<b>\$17,250,000.00</b>			<b>\$34,500,000.00</b>

<b>COMPLETE FOR AMENDMENTS ONLY</b>	<b>State Agency Fiscal Contact &amp; Telephone:</b> Scott Pierce 310 Great Circle Road Nashville, TN 37243 (615) 507-6415																								
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">FY</th> <th style="width: 20%;">Base Contract / Prior Amendments</th> <th style="width: 20%;">THIS Amendment ONLY</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr> <td><b>TOTAL</b></td> <td> </td> <td> </td> </tr> </tbody> </table>	FY	Base Contract / Prior Amendments	THIS Amendment ONLY																			<b>TOTAL</b>			<b>State Agency Budget Officer Approval:</b> 
FY	Base Contract / Prior Amendments	THIS Amendment ONLY																							
<b>TOTAL</b>																									
<b>End Date:</b>	<b>Funding Certification:</b> This contract was funded by the following source(s): State of Tennessee, Department of Health & Human Services, Title XIX																								



**Contractor Ownership:** (complete for all contracts, w/ amendments or delegate authority)

<input type="checkbox"/> African American	<input type="checkbox"/> Person w/ Disability	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Small Business	<input type="checkbox"/> Government
<input type="checkbox"/> Asian	<input type="checkbox"/> Female	<input type="checkbox"/> Native American	<input checked="" type="checkbox"/> NOT Minority/Disadvantaged	<input type="checkbox"/> Other

**Contractor Selection Method:** (complete for ALL contracts, w/ amendments or delegate authority)

<input checked="" type="checkbox"/> RFP	<input type="checkbox"/> Competitive Negotiation *	<input type="checkbox"/> Alternative Competitive Method *
<input type="checkbox"/> Non-Competitive Negotiation *	<input type="checkbox"/> Negotiation w/ Government (ID, GG, GU)	<input type="checkbox"/> Other *

**Procurement Process Summary:** (complete for all contracts, w/ amendments or delegate authority)

CONTRACT

TABLE OF CONTENTS

A.	Scope of Services .....	3
A.1.	Plan Implementation .....	3
A.1.2.	Project Initiation and Requirements Definition Phase	
A.1.3.	System Analysis/General Design Phase	
A.1.4.	Technical Design Phase	
A.1.5.	Development Phase	
A.1.6.	Implementation/Operations Phase	
A.1.7.	Readiness Review	
A.2.	TennCare Point-of-Sale System .....	5
A.2.1	TennCare Point-of-Sale System	
A.2.2.	Claim Adjudication Services - General Requirements	
A.2.3.	Claims Receipt and Management	
A.2.4.	Data Validation Edits and Audits	
A.2.5.	Prospective Drug Utilization Review (Pro-DUR)	
A.2.6.	Prescription Limits	
A.2.7	Pharmacy Claim Processing and Payments	
A.2.8	Reversals and Adjustments.	
A.3.	TennCare Preferred Drug List (PDL) .....	16
A.3.1.	Preferred Drug List (PDL)	
A.3.2.	PDL Design, Development, and Implementation	
A.3.3.	Step Therapy	
A.3.4.	TennCare Pharmacy Advisory Committee	
A.3.5.	Rebate Administration	
A.4.	TennCare -Technical Requirements .....	23
A.4.1.	TCMIS Interface	
A.4.2	POS Network Interfaces	
A.4.3	Batch Claim Submission Format and HIPAA Compliance	
A.4.4.	TennCare-POS Interface Software	
A.4.5.	TennCare-POS System Availability Requirements	
A.4.6.	System Maintenance and Modification Deadlines and Damages	
A.4.7.	System Security	
A.4.8.	Disaster Preparedness and Recovery	
A.4.9.	Program Integrity Requirements	
A.4.10.	Proprietary and Confidential Information	
A.4.11.	Third Party Administrator Requirement	
A.4.12.	TennCare Member Identification Cards	
A.4.13	Returned Mail	
A.4.14	Website	
A.4.15.	HIPAA Compliance	
A.4.16	E-prescribe Initiatives	
A.5.	Drug Utilization Review and Provider Education .....	34
A.5.1.	Retrospective Drug Utilization Review	
A.5.2.	Retro DUR reporting system	
A.5.3.	Provider Education	
A.6.	Prior Authorization .....	38
A.6.1.	Prior Authorization Unit	
A.6.2.	Prior Authorization Process	
A.6.3	Prior Authorization Reconsideration	
A.6.4	Prior Authorization Appeals and Special Circumstances	
A.6.5	Member-Initiated Prior Authorization Request	
A.6.6	Administer Prior Authorization Program for the TennCare PDL	
A.7.	Pharmacy Help Desk .....	43
A.8	Pharmacy Network .....	44

A.8.1	Access to Services	
A.8.2	Network Access	
A.8.3	Provider Enrollment Records	
A.8.5	Pharmacy Notices	
A.8.4	Provider Directories	
A.8.6	Pharmacy Audit	
A.8.7	Non-Network Providers	
A.8.8	Limited English Proficiency	
A.8.9	Provider Service Agreements	
A.8.10	Network Deficiency	
A.8.11	Provider Sole Service Agreements	
A.8.11.	Return of TennCare-Specific Data	
A.8.12	Non-Discrimination Policy	
A.8.13	Rejection of Network Application	
A.9.	Staffing .....	52
A.9.1.	Staff Requirements	
A.9.2	Staff Training and Approval	
A.9.3	Staff Competency	
A.9.4	Staffing Level	
A.9.5.	Staff Dedicated to TennCare	
A.10.	TennCare Reporting Requirements .....	53
A.10.1	Standard Management Reports	
A.10.2	Custom Reports	
A.10.3.	PDL Reports	
A.10.4	Program Integrity Reports	
A.10.5	HIPAA Reporting Requirements	
A.11.	Communication .....	57
A.11.1.	Notices	
A.11.2	Prescription Limit Letters	
A.11.3	Returned Mail	
A.11.4	Privacy or Security Event Notice	
A.12.	Business Continuity and Contingency Plan .....	59
A.12.1.	Business Continuity and Contingency Plan	
A.12.2.	System Back-up and Disaster Recovery Contractor Requirements	
A.12.2.	Business Continuity and Contingency Plan Deliverables	
B.	Contract Term.....	63
C.	Payment Terms and Conditions.....	63
D.	Standard Terms and Conditions.....	68
E.	Special Terms and Conditions...	70
Attachment A	Performance, Deliverables and Damages .....	81
Attachment B	Definitions .....	93
Attachment C	Attestation Re Personnel Used in Contract Performance .....	97
Attachment D	Business Associates Agreement .....	98

**CONTRACT  
BETWEEN THE STATE OF TENNESSEE,  
DEPARTMENT OF FINANCE AND ADMINISTRATION,  
BUREAU OF TENNCARE  
AND  
SXC HEALTH SOLUTIONS, INC.**

This Contract, by and between the State of Tennessee, Department of Finance and Administration, Bureau of TennCare, hereinafter referred to as the "State" or "TennCare" and SXC Health Solutions, Inc., hereinafter referred to as the "Contractor" or "PBM," is for the provision of Pharmacy Management and Preferred Drug List Services, as further defined in the "SCOPE OF SERVICES."

The Contractor is a for-profit company.

Contractor Federal Employer Identification or Social Security Number: 75-2578509  
Contractor Place of Incorporation or Organization: Illinois

**A. SCOPE OF SERVICES:**

The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract. Applicable terms and definitions related to this contract can be located in Attachment B.

**A.1. Plan Implementation**

A.1.1 Implementation of the TennCare Pharmacy benefit shall be conducted as series of defined phases described below. The benefit shall become fully effective and operable on October 1, 2008. The Contractor shall be required to complete all the tasks, obligations and responsibilities listed under each phase by the dates identified in the project plan. The project plan shall be in Microsoft Project and include a detailed timeline description of all work to be performed both by the Contractor and TennCare. The plan shall also include a description of the participants on the transition team and their roles and schedules of meetings between the transition team and TennCare. This plan shall require approval by TennCare.

**A.1.2. Project Initiation and Requirements Definition Phase**

TennCare shall conduct a project kick-off meeting. All key Contractor project staff shall attend. TennCare project staff shall provide access and orientation to the TennCare Pharmacy Program and system documentation. TennCare technical staff shall provide an overview of the Tennessee TennCare Management Information System (TCMIS) emphasizing pharmacy claims processing and adjudication, reference files, and payment processes. During this phase the Contractor shall develop the following documentation:

- a. Functional and Informational Requirements (FIR) Document. This document shall include detailed requirements for both internal and external interfaces and all TennCare Point-of-Sale (POS) functionalities required by the RFP and/or contained in the Contractor's proposal and/or this Contract.
- b. Data Dictionary. For each data field this shall indicate content, size, values, structure, edit criteria and purpose.
- c. Data mapping. This shall consist of a cross-reference map of required TCMIS data and TennCare POS data elements and data structures. A separate data structure map shall be required for each transaction and interface. A data conversion plan, that includes both automated and manual activities, shall be provided for each data structure map. TennCare shall make any necessary data formats available to the Contractor.

- d. Additionally, the Contractor shall recommend design modifications to the Tennessee TCMIS. Performing any maintenance and design enhancements to TCMIS shall be the decision and responsibility of TennCare.

#### A.1.3. System Analysis/General Design Phase

After approval of the documentation by TennCare required in the Project Initiation and Requirements Definition Phase, the Contractor shall develop the General System Design Document. The General System Design Document shall include the following information:

- a. An Operational Impact Analysis that details the procedures and infrastructure required to enable TCMIS, the Contractor's system, and the "switch" systems used by pharmacy providers to work effectively together.
- b. A Detailed Conversion Plan that specifies plans for conversion of twelve (12) months of TCMIS and the previous contractor/processor's claims history, provider, recipient, preferred drug list, prior authorization, lock-in and reference data.
- c. A Software Release Plan that sets forth the project's implementation into production. This document shall explain procedures for coordinating system changes that shall have an operational or information impact on TennCare POS operations. It shall detail how TennCare POS and/or TCMIS software releases are tested and coordinated. The plan shall include both initial implementation of the TennCare POS system and coordination of software releases between TCMIS and TennCare POS.

#### A.1.4. Technical Design Phase

During this phase, detailed specifications shall be developed for conversion and for the interface(s) between the TCMIS and the Contractor's system. The Contractor shall develop detailed plans that address back-up and recovery, information security and system testing. The Contractor shall develop the System Interface Design Overview Document (this document shall be completed after the Contractor has conducted a review of all previous design documents. In addition to the System Interface Design Overview, the Contractor shall provide the following system plan documents:

- a. Unit Test Plan that includes test data, testing process, and expected results;
- b. Back-up and Recovery Plan that includes processes for daily backup and recovery of system information;
- c. Final disaster recovery plan;
- d. Information Security Plan that includes how the Contractor shall maintain confidentiality of TennCare data. This document shall include a comprehensive Risk Analysis; and
- e. System, Integration, and Load and Test Plan.

#### A.1.5. Development Phase

This phase includes activities that shall lead to the implementation of the TennCare-POS system. The Contractor shall develop interface and conversion programs, develop system documentation, and develop Unit Test Plans. Where manual data entry screens are required, the Contractor shall develop these screens. Testing shall be performed on all phases and programs shall be documented. System testing shall require reports to substantiate and document the testing. These reports shall include number of tests run, number of requirements tested, number of tests passed, number of tests failed, and number of tests retested after initial failure. The Contractor shall perform testing activities that shall include the following:

- a. TennCare POS system test to validate the appropriate adjudication of a claim which shall include a description of the test procedure, expected results, and actual results;

- b. Integration testing shall test external system impacts including provider POS systems, downstream TCMIS applications, and all interfaces. It shall include a description of the test procedure, expected results, and actual results; and
- c. Load and Stress testing shall include volume and efficiency to ensure that the system is able to process the volume of TennCare pharmacy claims. It shall include a description of the test procedure, expected results, and actual results.

#### A.1.6. Implementation/Operations Phase

During this phase the Contractor and TennCare shall assess the operational readiness of all required system components including TCMIS, the TennCare-POS, and required communications links with the pharmacy "switch" providers. This shall result in the establishment of the operational production environment in which all TennCare pharmacy claims shall be accurately and reliably processed, adjudicated and paid. TennCare shall have final approval for the elements of the operational production environment.

- a. The Contractor shall develop and prepare the operations documentation of all procedures of the Contractor's performance. This shall include, but may not be limited to: automated operations, data entry operations, Help Desk operations, prior authorization operations/interfaces, check and remittance fulfillment and member notifications.
- b. With the approval of TennCare, the Contractor shall develop production and report distribution schedules.
- c. The Contractor shall update the operations training plan for TennCare approval. The Contractor shall schedule and conduct training and develop the training materials for TennCare staff, pharmacy providers, and other identified stakeholders.
- d. The Contractor and TennCare shall prepare a final conversion plan and perform final conversion activities that include procedures for testing the conversion data. The conversion plan shall include loading one year of claims history from the current POS system. The plan shall also include migrating current prior authorizations, overrides and grandfather provisions with their end dates into the Contractor's POS system, running other conversion programs, performing manual functions, performing quality control, reporting on outcomes, and converting files in preparation for system operation.

#### A.1.7. Readiness Review

The State may conduct an on-site review to assess the readiness of the Contractor to effectively administer and provide the services as defined in this Contract.

### A.2. TennCare Point-of-Sale System

- A.2.1. The Contractor shall provide an online pharmacy POS system that can be modified to meet the needs of TennCare. The Contractor shall provide system design and modification, development, implementation and operation for the TennCare-POS system. The Contractor's POS system shall allow it to interface with the existing pharmacy "switch" networks that connect the pharmacy providers with the Contractor's system.

The Contractor shall be responsible for operating the provided system that automates the entire pharmacy claims processing system for the complete pharmacy benefit for all TennCare enrollees. All payments for pharmacy claims shall be made through the Contractor's system and electronically invoiced to TennCare weekly as a pass through cost.

The source of the claims shall be enrolled network pharmacy providers such as retail pharmacies, firms supplying Tennessee's nursing homes, some hospitals, mail order pharmacies, and some out-of-network pharmacies. The majority of claims shall be submitted through point-of-sale telecommunications devices. However, the Contractor shall also process claims on batch electronic media for long term care pharmacy providers, the Tennessee Department of Health's TennCare pharmacy claims and non-traditional pharmacy providers.

Prospective Drug Utilization Review (Pro-DUR) functions provided by the Contractor through the TennCare-POS system shall alert pharmacists when several defined conditions are present. These conditions shall include recognizing that a prescribed drug could cause an adverse reaction when taken in combination with other drugs prescribed for the same recipient. It shall also include situations when a drug may be contraindicated due to the presumed physical condition of the patient based on their drug history. The Contractor shall recommend to TennCare new Pro-DUR edits that improve quality and reduce pharmacy program costs.

#### A.2.2. Claim Adjudication Services - General Requirements

A.2.2.1 This section defines claim adjudication requirements for all TennCare pharmacy claims regardless of source and including electronic batch and POS claims. The timing of the adjudication shall differentiate POS claims from claims submitted in batch. However, all claims shall be adjudicated through a common set of processing modules. All claims adjudicated as payable shall be for eligible members to enrolled or appropriate providers for approved services and in accordance with the payment rules and other policies of TennCare. All adjudicated claims shall be captured to an encounter file and transferred weekly to the TennCare TCMIS by the Contractor. The NCPDP 1.1 formats shall be used for the encounter file. The encounter file shall include all relevant data elements used to process each claim. At the direction of TennCare, the Contractor shall make changes to data elements included on the encounter file with no additional cost to TennCare.

The Contractor shall distribute and mail TennCare outputs (hard copy and electronic) as directed by TennCare including but not limited to provider checks and remittance advices, returned claims, notices, provider bulletins, provider manuals and special mailings. Every Friday, with the exception of Holiday weeks, the Contractor shall mail checks and Remittance Advices for claims submitted through its POS online pharmacy claims processing system for that work week. In the case of holiday weeks, the Contractor shall notify pharmacy providers if a schedule change is to occur at least two (2) weeks in advance and issue checks and remittance advices within two (2) business days of the routine date.

The Contractor shall use first class rate for all TennCare mailings, unless otherwise directed by TennCare. Postage costs incurred by the Contractor shall be treated as pass-through costs. Such costs shall be billed on a monthly basis to the TennCare Bureau in addition to regular invoices and shall include substantiating documentation. Each batch shall have its own reconciliation and money remits. No overhead, administrative or other fee shall be added to such pass-through costs. Printing and supply costs for check and remittance mailings are to be included in the base rate of this contract. The Contractor shall be responsible for system messages and notice of claims being adjudicated payable, denied or rejected. Claims denied or rejected shall return situation specific messages to assist pharmacies with resubmissions.

- a. Cash flow -- For checks to be issued on Friday, the Contractor shall deliver the following two files to the State, in an electronic media suitable to the State, by 10:00 a.m. Central Standard Time, Thursday of each week:
  - i. All transactions (i.e., claims, financial adjustment, etc.) that comprise the payments to be issued for Friday of that week. In cases of holidays the Contractor shall the Contractor shall notify pharmacy providers if a schedule change is to occur at least two (2) weeks in advance and issue

checks and remittance advices within two (2) business days of the routine date.

- ii. All payments (check register) to be made on Friday of that week. TennCare shall be notified no later than one (1) business day of any systems or operational issues that may impact disbursements by the prescribed time lines.

The file described in Section A.2.2.1.a. above, shall contain all transactions that make up the payments in the file described in Section A.2.2.1.a.ii. above.

- b. TennCare reserves the right to review the files prior to issuing payment and to hold or adjust any payment that is not satisfactory to the State. The Contractor is required to offer automatic deposit to its providers. If the Contractor submits a claims payment request and the State overpays the claim, the State reserves the right to withhold the overpaid monies. The Contractor shall be responsible for providing remittance advices to providers unless the provider elects not to receive hardcopy Remittance Advices (RAs). Remittance Advices shall be included in payments by the Contractor to providers. The Contractor shall be required to be compliant with the HIPAA 835 remittance format. The Contractor shall be responsible for ensuring that any payments funded by TennCare are accurate and in compliance with the terms of this Contract, agreements between the State or Contractor and providers, and state and federal laws and regulations.
- c. The Contractor shall have in place a POS claims processing system capable of accepting and processing claims submitted electronically. To the extent that the Contractor compensates providers on a fee for service or other basis requiring the submission of claims as a condition to payment, the Contractor shall electronically process the provider's claims for covered benefits provided to members consistent with applicable TennCare policies and procedures and the terms of this Contract. The Contractor shall mail checks and Remittance Advices to pharmacy providers weekly on Fridays for all claims submitted through the POS online pharmacy claims processing system and for all batch claims. In the case on holiday weeks, the Contractor shall notify pharmacy providers if a schedule change is to occur at least two (2) weeks in advance and issue checks and Remittance Advices within two (2) days of the routine date.

The Contractor shall pay within ten (10) calendar days of receipt one hundred percent (100%) of all clean claims submitted by network and non-network pharmacy providers through POS and batch electronic claims submission. The term "pay" means that the Contractor shall either send the provider cash or cash equivalent in full satisfaction of the clean claim, or give the provider a credit against any outstanding balance owed by that provider to the Contractor. The Contractor shall pay the claim or advise the provider that a submitted claim is: (1) a "denied claim" (specifying all reasons for denial); or, (2) a claim that cannot be denied or allowed due to insufficient information and/or documentation (specifying in detail all information and/or documentation that is needed from the provider in order to allow or deny the claim). An incomplete claim may be resubmitted with the information necessary to complete the claim. This resubmission shall constitute a new claim only for the purpose of establishing a timeframe for claims processing. The Contractor shall develop, maintain and distribute to pharmacy providers a pharmacy procedure and billing manual. Manuals shall be posted on the Contractor's dedicated TennCare website and distributed to pharmacies with acknowledgement of network participation. The manuals shall provide instructions to providers regarding the process by which the provider receives payment, in order to diminish the potential for incorrect billing and the need for adjustments or recoupments. The content of the manuals shall be approved by TennCare before distribution.

- d. The Contractor shall be responsible for processing all TennCare pharmacy claims through a POS system using the specified, current NCPDP format. Pharmacy claims shall be priced and adjudicated in an online, real time POS system that results in a claim pay status of pay, deny or reject. The system must allow a pharmacy to initiate a reversal (void) of a submitted claim. The telecommunications system supporting the POS function shall be available for claims submissions by pharmacies twenty-four (24) hours-a-day, seven (7) days-a-week (except for regularly scheduled and separately approved downtimes). The Contractor shall not charge pharmacies a POS transaction fee. TennCare providers are responsible for purchasing POS hardware, software and all telecommunications linkages. The POS function shall be required of all pharmacy providers. The Tennessee Department of Health may submit batch claims as described herein.
- e. TennCare covers medically necessary OTC drugs for children (under twenty-one (21) years old) and prenatal vitamins for pregnant women. OTC drugs for children shall only be covered to the extent that they are prescribed by a health care provider legally qualified to write prescriptions. The contractor shall have appropriate processes in place to assure that OTC drugs are only reimbursed as described above, or other manner as described by TennCare.

A.2.3. Claims Receipt and Management

- a. The Contractor shall receive batch electronic and point of sale (POS) claims. The Contractor shall apply a unique identification number to each claim and any supporting documentation regardless of submission format. The identification number shall be used to recognize the claim for research or audit purposes. Control totals shall be utilized to ensure that all claims have been processed to completion. Appropriate safeguards shall be in place to protect the confidentiality of TennCare and enrollee information.
- b. At the point of sale, the Contractor shall identify and deny claims that contain invalid provider numbers. This shall include cases where the number is missing, the check digit fails, or the provider number does not identify an entity to receive a Remittance Advice. Claims that contain these errors shall be returned to the originating provider. Pharmacy Providers shall submit claims and be identified by their individual and specific NPI (National Provider Identification numbers). Prescribers shall be identified on all pharmacy claims by their specific NPI (National Provider Identification or Drug Enforcement Agency (DEA) numbers, or any other identifying number as required by TennCare, CMS or HIPAA (NPI).
- c. The Contractor shall identify and deny claims (unless specifically instructed differently by TennCare) that contain National Drug Code (NDC) numbers for which drug rebates under the Omnibus Budget Reconciliation Act (OBRA) of 1990 and subsequent amendments of OBRA in 1993, are not available, including non-covered drug codes, DESI, LTE and IRS drug codes and any terminated or obsolete drug codes. Such claims shall reject with situation specific messaging and error codes.
- d. Unless a claim resolution is being managed by TennCare staff in accordance with TennCare guidelines or held by the Contractor under TennCare written directive, the Contractor shall be held to the following timeline requirements:
  - i. POS Claims - The Contractor shall process ninety-nine and a half percent (99.5%) of POS claims on a daily basis within ten (10) seconds. This is the time from when the claim is received by the Contractor's processor to the time the results are transmitted from the Contractor's processor and shall include all procedures required to complete claim adjudication. The Contractor shall notify TennCare within one hour (1) of sub-standard system performance. Failure to meet this performance standard may result in liquidated damages set forth in Attachment A.

- ii. Batch Electronic Media (EMC) Claims - The Contractor shall receive claims in electronic format, separate tape from diskette, convert diskette to tape, schedule tapes for immediate processing and return media to submitting providers within seventy-two (72) hours. The Contractor shall assign identification control numbers to all batch claims within twenty-four (24) hours of receipt. The Contractor shall maintain electronic backup of batch claims for the duration of this Contract. At the end of the Contract, the Contractor shall follow the guidelines set forth in the Business Associate's Agreement with TennCare regarding data tapes. See Attachment D for a template BAA. If TennCare requests copies of batch electronic claims, these shall be provided within twenty-four (24) hours of request. Electronic batch claims shall be submitted through a sequential terminal, or similar method that shall allow batch and POS claims to be adjudicated through the same processing logic.
- e. Contractor shall report to TennCare immediately (within one hour) upon knowledge of unscheduled or unapproved downtime. A system down shall be defined as an interruption involving more than 10% of production for a period greater than 15 minutes. The Contractor shall also provide TennCare updates at regular intervals during a sustained downtime. TennCare shall be presented with recovery options as appropriate. Upon full system recovery, the Contractor shall provide TennCare with a System Downtime Analysis describing root cause issues and actions to mitigate future downtime occurrences. Failure to meet this performance standard may result in liquidated damages set forth in Attachment A.
- f. The Contractor shall ensure that collection letters are sent to contracting pharmacies that maintain an accounts-payable balance to the State greater than ninety (90) days. These notices shall be sent within five (5) workdays of becoming ninety (90) days old. Failure to send the notices as scheduled may result in liquidated damages set forth in Attachment A. Postage costs incurred by the Contractor shall be treated as pass-through costs. In addition to regular invoices, these costs shall be billed on a monthly basis to the State and shall include any necessary substantiating documentation. Printing and supply costs for collection mailings shall be included in the base rate of this Contract.
- g. The Contractor shall provide TennCare Fiscal Services Unit a report detailing all checks remitted to contracted pharmacies on behalf of the State that remain outstanding (that have not been cashed) more than ninety (90) days. Failure to report to TennCare as scheduled may result in liquidated damages set forth in Attachment A.
- h. Help Desk for System Support - The Contractor shall maintain toll-free telephone access to support system operations. This Help Desk shall be available twenty-four (24) hours a day, seven days a week to respond to questions and problems from providers regarding system operations and claims inquiries. The Contractor shall supply all the required information systems, telecommunications, and personnel to perform these operations. In no event should the Contractor use off shore sites for any area of performance of this contract.

#### A.2.4. Data Validation Edits and Audits

The system shall screen all claims and apply all TennCare-approved and required data validation procedures and edits. Consistency controls shall be in place to ensure that dates, types, and number of services are reasonable and comply with TennCare policy and/or rules. These control measures may be changed by TennCare at no cost.

The Contractor shall immediately notify TennCare of any and all claims that have been erroneously processed, and initiate appropriate action to correct the errors (e.g., adjustments, recoveries, etc.). Incorrect claims include, but are not limited to: claims paid for ineligible members; claims paid to a terminated provider; claims paid for duplicate services; claims paid for a non-covered service; and

claims paid at an incorrect rate or claims that denied or rejected inappropriately. The Contractor shall follow-up such notification to TennCare by letter for any system errors that resulted in provider overpayment or other incorrect payment. The Contractor shall reimburse TennCare for the cost of all claims paid as a result of contractor error. In the event that claims are inappropriately denied the Contractor may be assessed damages as specified in Attachment A . Reimbursement or damages resulting from this section may be applied as offsets to future administrative fees.

Using an industry-accepted standard, the Contractor shall define the categories of data elements such as brand/generic classification, therapeutic categories, and OTC classification. The contractor's system shall also then enable TennCare to override these values using its own policies/procedures.

The Contractor's system shall be capable of adding, changing, or removing claim adjudication processing rules at no cost to accommodate TennCare-required changes to the pharmacy program. At installation, the system shall be able to perform the following validation edits and audits, which TennCare shall have the ability to and shall have the right to override at its discretion.

TennCare reserves the right to override any system edit whenever it deems appropriate and necessary.

- a. Prior authorization - The system shall determine whether a prescribed drug requires prior authorization, and if so, whether approval was granted prior to dispensing the prescribed drug and reimbursement to the provider.
- b. Valid Dates of Service - The system shall ensure that dates of services are valid dates, are no older than ninety (90) days from the date of the prescription (unless approved by TennCare) and are not in the future.
- c. Duplicate Claims - The system shall automatically inform the provider that the current claim is an exact or possible duplicate and deny that claim as appropriate.
- d. Prescription Validity - The system shall ensure that the time period for a prescription has not expired and that the number of valid refills has not been exceeded.
- e. Covered Drugs - Unless otherwise directed by TennCare, the system shall verify that a drug code (NDC) is valid and the drug is eligible for payment under the TennCare pharmacy program and eligible for Medicaid drug rebates and any supplemental rebates.
- f. Compounded Drugs - The system shall capture, edit, and adjudicate pharmacy claims as necessary to support TennCare compounded drug prescription coding policy and/or rules.
- g. Provider Validation - The system shall approve payment only for claims received from providers who are eligible to provide pharmacy services, and for TennCare and non-TennCare providers who are authorized (as required by TennCare) to prescribe pharmaceuticals.
- h. Recipient Validation - A valid claim is a claim for service for those members eligible to receive pharmacy services at the time the services were rendered. The system shall approve only these valid claims. TennCare shall transmit eligibility/enrollment information to the Contractor by the standard HIPAA 834 transaction as defined by the TennCare Companion Guide. TennCare shall be responsible for assuring that the eligibility file provided is accurate and complete. The Contractor shall use this information to immediately (within one (1) business day) identify individuals whose enrollment status has changed, update the eligibility information in the Contractor's data system, and take appropriate action as outlined below. The NCPDP 1.1 formats shall be used for encounter reporting sent to TennCare. If the Contractor has been billed for any claims for a recipient who was deceased at the time the service was allegedly provided or who is no longer eligible for TennCare, then the Contractor shall be required to recoup monies paid to any provider and to repay any monies collected by the Contractor for the claims that were paid

post date of death or post eligibility for enrollment. On a monthly basis, the Contractor shall report the amount recouped by the Contractor and the amount to be repaid to TennCare. In addition, the Contractor shall reimburse TennCare monthly for monies owed to TennCare as a result of billing for recipients not eligible to receive services. Failure to report monthly and/or reimburse TennCare monthly may result in liquidated damages set forth in Attachment A.

- i. Quantity of Service - The system shall validate claims to ensure that the quantity of services is consistent with TennCare policy and/or rules (i.e., verify that drug specific minimum and maximum quantity limitations, as well as days supply and number of prescriptions per month limitations, if imposed, are followed as described by TennCare).
- j. Rejected Claims - The system shall determine whether a claim is acceptable for adjudication and reject claims that are not.
- k. Third Party Liability/Coordination of Benefits -- When directed by TennCare, the POS system shall validate claims to determine whether there is a liable third party. The system shall be able to process claims where there may be more than one liable third party. The system shall be able to override this edit, even at the POS level, if appropriate, under TennCare rules and policy. The system shall also support any efforts by the State of Tennessee, TennCare or another contractor to collect third party liability or perform cost-avoidance, at the point-of-sale, related to coordination of benefits. Pharmacy providers shall be educated by the Contractor regarding proper billing practices and carrier codes associated with NCPDP version 5.1. The Contractor and the Contractor's POS system shall strictly adhere to state and federal laws and regulations and TennCare policy and/or rules regarding coordination of benefits and third party liability. TennCare shall be the payer of last resort.
- l. Lock-in - The system shall have the capability to impose pharmacy and prescriber benefit restrictions that apply to a given recipient. This includes, but is not limited to, lock-in conditions.
- m. Managed Care Organizations - The system shall reject claims that should rightly be processed and paid by a member's MCO for any and all medical benefits (when that MCO is responsible for those claims).
- n. Early Refills - The systems shall be able to recognize when an enrollee attempts to refill a prescription (be it the original prescription or a new prescription for the same drug) and require that eighty-five percent (85%) of the original days supply has passed since the original filling. Overrides at the pharmacy level shall be permitted by the Contractor's Help Desk, but monthly reports shall identify the enrollee and the pharmacy provider where such overrides occurred.
- o. Tiered Co-pay Edit - A tiered co-pay structure shall be coded into the POS system. Initially, only two tiers may be established. At a later date, a more complex structure may be required by TennCare without any additional cost to TennCare.
- p. Gross Amount Due (GAD) Edit -- Reimbursement logic shall compare the sum the ingredient cost and dispensing fee to the submitted GAD amount and pay the less amount.
- q. Maximum Dollar Amount Edit - All pharmacy claims over a specified dollar amount per claim shall reject at the point of service and the pharmacy provider shall be required to call the Contractor Call Center regarding rejected claims. This includes a two hundred and fifty dollar (\$250) limit on compounded claims, a ten thousand dollar (\$10,000) limit on non-compounded, non-exception claims, a two thousand, five hundred dollar (\$2,500) limit on Total Parental Nutrition (TPN) products and a fifty thousand dollar (\$50,000) limit on exception claims (blood factors and other identified products). The Contractor's system shall be capable of adding, changing, or removing maximum dollar edit rules to at no cost as requested by TennCare.

- r. Prescriber Number Edit - The POS claims processing system shall be configured to require that all claims shall be submitted with the prescriber's DEA number. The validity of DEA numbers shall be determined by the most current data available from the National Technical Information Service. The validity of DEA numbers shall be determined by the most current data available from the National Technical Information Service. TennCare may request that processing for non-controlled drugs require a valid National Provider Identifier. In this case, the Contractor shall change POS processes to the new identifier at no cost to the State.
- s. OTC Drug Coverage - Most Over-the-Counter (OTC) drugs for adults are excluded from TennCare coverage, with the exception of prenatal vitamins for pregnant women. OTC drugs for children and prenatal vitamins for pregnant women shall only be a covered benefit to the extent that they are prescribed by a health care provider legally qualified to write prescriptions.
- t. Unit of Measure Edit - The Unit of Measure (UOM) edit shall perform two main functions:
  - i. Check incoming claim units (i.e., gram, milliliter, etc) versus the units listed in Reporting System for that particular NDC; and
  - ii. Verify that the unit amounts transmitted is consistent with the unit amounts in Reporting System. The submitted quantity shall be a multiple of the unit size shown in Reporting System (i.e., claim shall be rejected if unit amount transmitted has been rounded). For example, the units transmitted is fourteen (14), but the unit amount is thirteen point seven (13.7) in the Reporting System.
- u. Prescriber Last Name Edit -The claims processing system shall be set to ensure that the submitting prescriber's last name correctly matches the last name associated with the submitted DEA number that is present on the National DEA file (NTIS) used by the Contractor.

Throughout the term of this Contract, the Contractor shall be responsible for making recommendations to TennCare regarding the need for the edits, associated criteria and call center protocol development. The Contractor and TennCare staff shall agree upon criteria to produce a retrospective report containing findings and recommendations for prevention of such practices.

#### A.2.5. Prospective Drug Utilization Review (Pro-DUR)

The Contractor shall furnish a fully automated Prospective Drug Utilization Review (Pro-DUR) system that meets all applicable state and federal requirements including those identified in the OBRA 1990 and OBRA 1993. The Pro-DUR function shall meet minimum federal Drug Utilization Review (DUR) regulations as well as the additional specifications in this section and be flexible enough to accommodate any future edit changes required by TennCare. The Contractor shall prepare all CMS-required annual DUR reports.

The Contractor's system shall provide Pro-DUR services that apply TennCare-approved edits to all claims. The edits shall determine problems with a prescription and shall validate medical appropriateness of the prescribed drug by comparing the circumstances surrounding the request with established pharmacy-related therapeutic criteria.

The Contractor's POS system shall be capable of applying results of Pro-DUR processing in the claim adjudication process. Claims that reject as a result of Pro-DUR processing shall include situation specific messaging and error codes that enable the pharmacy provider to take appropriate actions. The Contractor may use an existing DUR package but shall be prepared to make any modifications required by TennCare. The Contractor shall work with TennCare in setting the disposition of Pro-DUR edits that may vary by type of submission (e.g., POS versus batch).

The Contractor's system shall include the following minimum prospective drug utilization review (Pro-DUR) features at installation:

- a. Potential Drug Problems Identification - The Contractor's system shall accept and use only TennCare-approved criteria and shall perform automated Pro-DUR functions that include, but are not limited to:
  - i. Automatically identify and report problems that involve potential drug over-utilization;
  - ii. Automatically identify and report problems that involve therapeutic duplication of drugs when the submitted claim is associated with other drugs or historical claims identified for a given enrollee;
  - iii. Automatically identify and report problems that involve drug use contraindicated by age, gender and presumed diagnosis codes on historical claims for a given enrollee;
  - iv. Automatically identify and report problems that involve drug use contraindicated by other drugs on current or historical claims for a given enrollee (drug-to-drug interactions);
  - v. Automatically indicate and report the level of severity of drug/drug interactions;
  - vi. Automatically identify and report potentially incorrect drug dosages or limit the quantity per prescription to ensure the most cost-effective strength is dispensed.
  - vii. Automatically identifies and report potentially incorrect drug treatments;
  - viii. Automatically indicate and report potential drug abuse and/or misuse based on a given members prior use of the same or related drugs; and
  - ix. Automatically identifies early refill conditions and provide, at the drug code level, the ability to deny these claims;
- b. POS Provider Cancel or Override Response to Pro-DUR Messages -- Prior to the final submission of POS pharmacy claims, the Contractor's system shall automatically generate Pro-DUR messages in a manner that shall enable a pharmacy provider to cancel submission of the claim or to submit it if it is a message that can be overridden.
- c. POS Provider Comment on Pro-DUR Messages - The Contractor's system shall allow providers to enter responses through NCPDP Professional Pharmacy Services (PPS) intervention codes in response to Pro-DUR messages. The system shall capture and store all NCPDP standard DUR conflict, intervention, and outcome messages for reporting to TennCare. The Contractor shall make changes PPS intervention configuration as directed by TennCare at no cost to the State.
- d. Flexible Parameters for Generation of Pro-DUR Messages - The Contractor's system shall have the ability to transmit new or revised Pro-DUR messages and to define the Pro-DUR criteria that activate these messages. The system shall maintain a TennCare-controlled set of parameters to the situations involving generation of online Pro-DUR messages. The system shall provide and permit the use of all general system parameters regarding data access, support, and maintenance. Variables subject to TennCare definition and control include, but are not limited to: NDC code (including multiple NDC codes subject to potential drug/drug interaction); date of service; drug strength; drug quantity; daily supply; and Generic Drug Code or GCN.

- e. Pro-DUR Enrollee Profile Records - The Contractor's system shall provide and maintain enrollee profiles for Pro-DUR processing of submitted claims. Recipient profiles shall be based on inferred and actual diagnoses from pharmacy claims and other data available.
- f. Disease/Drug Therapy Issues Screening - The Pro-DUR system shall have the capability to screen for drug therapy concerns by specific drugs relative to high-risk disease, to include but not limited to: cardiovascular disease; cerebrovascular disease; central nervous system disease; renal disease; endocrine disease; gastrointestinal disease; psychiatric disease; and respiratory disease.
- g. Patient Counseling Support - The Contractor's system shall present Pro-DUR results to pharmacy providers in a format that supports their ability to advise and counsel members appropriately. The system shall be able to print out these instructions for the member.

#### A.2.6. Prescription Limits

- a. The Contractor shall restrict the maximum number of claims per month that certain, specified recipients can receive under the TennCare benefit package. A "soft" limit restricts dispensing to the specified limit with the exception of drugs included on one of two lists developed by TennCare. As of the beginning date of this Contract, the prescription limit applies to most adults, is calculated on a monthly basis and is set at five (5) prescriptions per month of which no more than two (2) may be brands.
- b. Prescription Limit Overrides - The Contractor shall support two (2) mechanisms for allowing enrollees to get prescriptions beyond the limit. The first, known as the auto-exemption list, shall be developed by TennCare with the assistance of the Contractor and shall include products that shall never count against the prescription limit. The second, known as the prescriber attestation list, shall normally count against the prescription limit unless the prescriber calls the Contractor's Prior Authorization Call Center and obtains the necessary approval. The Contractor shall be responsible for developing the process to support both long and short term override capabilities.  
  
The Contractor shall support any changes to the prescription limit process including, but not limited to: changes in the five (5) prescription/two (2) brand limit; changes in the auto-exemption or prescriber attestation lists; and changes to definitions of what constitutes a brand versus a generic at no additional cost to TennCare.
- c. The Emergency Supply Override -The Contractor shall assure that the TennCare-POS systems allows pharmacists to execute an emergency override that shall process an emergency seventy-two (72) hour supply of drugs in normally covered therapeutic categories that are not listed on the TennCare Preferred Drug List (PDL) or would otherwise require prior authorization. The Contractor's TennCare-POS system shall post a message for the dispensing pharmacist to contact the prescriber and suggest alternative therapies listed on the TennCare PDL. Drugs eligible for the emergency override shall be in a therapeutic class normally covered by TennCare. The Contractor's system shall allow for differentiation of drug categories that can be overridden by the pharmacist in the POS system and drug categories that the pharmacy shall call the technical call center for an override. The Contractor shall instruct pharmacy providers how to perform the emergency override in the National Council of Prescription Drug Programs (NCPDP) environment of the TennCare-POS pharmacy claims processing system.
- d. Emergency Supply Copays - The enrollee shall not be charged a copay for the emergency supply. The emergency supply shall count against the prescription limit. However, if later in the same month the provider obtains a Prior Authorization (PA) or changes to a drug not requiring a PA, the remainder of the prescription and /or the substitute prescription shall not count toward the limit.
- f. Number of emergency supply - Only one (1) seventy-two (72) hour supply shall be provided per patient, per prescription. Prescription refers to the entire course of therapy

ordered by single prescription (i.e., first fill and subsequent refills included with the order for the first fill). In addition, only one (1) seventy-two (72) hour supply shall be provided per patient, per Generic Sequence Number (GSN), or industry equivalent, per month.

#### A.2.7 Pharmacy Claim Processing and Payments

The system shall process claims in accordance with existing TennCare policy and rules and Tennessee regulations for dispensing fees.

- a. All payments for pharmacy claims shall be made through the Contractor's system and electronically invoiced to TennCare weekly. A pharmacy claim is a request for payment for a specific drug, typically at the NDC code level. An adjudicated pharmacy claim is one that has been processed to either a Payable or Denied status. An adjudicated claim also includes a claim that has been previously rejected and resubmitted by the provider and is later deemed either Payable or Denied.
- b. Claims pricing is driven by the pricing methodologies described by TennCare rules and policies. **Currently Average Wholesale Price of minus thirteen percent (13%) is the payment for brand name and non MAC medications.** The system shall compare the calculated allowed (i.e., quantity multiplied by price plus the dispensing fee) to the billing charge and authorize payment based on the current TennCare pricing methodology. Most generic drugs and multi-source products shall be assigned Maximum Allowable Cost (MAC) prices by the Contractor, federal government or TennCare. The Contractor's system shall allow for such MAC price changes, as well as any other price adjustments made online in real time by the TennCare Pharmacy Director or his/her appropriate staff on the day requested. NCPDP overrides at the POS level shall be available to the dispensing pharmacist in the event a DAW (dispense as written) override is necessary and allowed or required by TennCare policy.

TennCare's claim pricing for generics and multi-source brands is based on the MAC pricing provided by the Contractor. The Contractor shall change certain MACs at the direction of TennCare. In such an event, TennCare shall be responsible for ongoing MAC pricing maintenance and provider appeals related to those changes.

Manual Pricing. The Contractor shall provide the services of licensed Pharmacists for calculating the reimbursement pricing using guidelines provided by TennCare, for certain prior authorized drugs (i.e., compounded prescriptions). The price established for the specific prescription shall be used to adjudicate claims for the patient, and not the price set in the system.

- c. The system shall recognize all applicable copays or coinsurance and deduct that amount from the payment made to the pharmacy provider. The Contractor shall be required to report copay, coinsurance and deductible information to TennCare as required by TennCare and the TennCare manager of the TCMIS.
- d. For the purposes of this Contract, an adjudicated claim shall not include a point-of-sale transaction that was canceled by the sender or a claim that was rejected before it could be fully adjudicated.
- e. The Contractor shall be responsible for the preparation of any applicable tax information for service provider payments and the federal government (i.e., Form 1099).
- f. The Contractor shall be able to support any/all changes to discount rates and standard pharmaceutical pricing methodologies (i.e., AWP, AMP, WAC, FUL) and incorporate them into pharmacy claim pricing policies at the sole discretion of TennCare with no additional cost.

A.2.8. Reversals and Adjustments.

The system shall provide an efficient means of reversing or adjusting claims before and after the claim has been transmitted to the TCMIS. The result of the adjustment shall be transferred to TCMIS for further processing. TennCare shall not pay the Contractor for reversed, voided or adjusted claims. Contractor shall process all reversals requested by TennCare's fiscal unit within thirty (30) days and provide confirmation to TennCare's fiscal unit that such has occurred. Failure to reverse or adjust claims within thirty (30) days may result in liquidated damages as set forth in Attachment A.

A.3. TennCare Preferred Drug List (PDL)

The Contractor shall manage the PDL program in an ongoing manner, which assures that new drugs and clinical information are addressed appropriately. PDL changes will be reviewed by the TennCare Pharmacy Advisory Committee and coordinated with the Contractor's supplemental rebate offers. The Contractor shall assure that the PDL decision-making process is evidence-based, assures enrollee access to clinically superior drugs, and takes into account the relative cost of therapeutically equivalent drugs. The Contractor shall identify for TennCare therapeutic alternatives and opportunities for savings, including opportunities to promote competition to drive rebate bidding. The Contractor shall also make recommendations concerning therapeutic categories that should be avoided with regard to inclusion on the TennCare PDL.

A.3.1. Preferred Drug List (PDL)

- a. The Contractor shall design, develop, implement, administer and maintain a PDL program for TennCare. On the date the Contractor assumes full responsibility for the pharmacy benefits program, the Contractor shall assume responsibility for administering and maintaining the existing PDL, including the existing prior authorization criteria. Most preferred drugs may be prescribed and dispensed with no prior authorization. Non-preferred drugs may be prescribed, but require prior authorization from the Contractor prior to being dispensed by the pharmacist and reimbursed. As the PDL is re-evaluated and/or expanded, the Contractor shall develop proposed prior authorization criteria for non-preferred drugs and certain preferred drugs and present those criteria to the TennCare Pharmacy Advisory Committee for review and input and to TennCare for final approval.

The Contractor shall design, develop, implement, administer and maintain a listing of quantity limits for certain preferred and non-preferred drugs. This list shall be based on therapeutic best practices or opportunities to reduce the cost of the most appropriate dosage form. This list is distinct from the maximum tolerated to dose. Drugs and quantities on the quantity limits listing shall be included in the PDL documents and coded into the TennCare POS system.

- b. The TennCare PDL shall be designed to maximize the prescribing and dispensing of safe and clinically effective drugs within each therapeutic class that are the most cost-effective. Conversely, the TennCare PDL shall ensure that more costly drugs, which do not have any significant clinical or therapeutic advantage over others in their class, are used only when medically necessary.
- c. The Contractor's PDL design shall include a stringent clinical review of clinical guidelines and medical literature to identify which agents and classes of drugs shall be subject to the PDL program. Within the classes of drugs determined to be subject to the PDL, the Contractor shall determine which drugs within each class are safe, clinically effective, and provide equivalent clinical outcomes. Recommendations for inclusion on the PDL shall be based on a thorough review of clinical effectiveness, safety, and health outcomes, followed by an analysis of the relative costs of the drugs in each class under consideration.
- d. Drugs within a reviewed class that are excluded from the PDL shall be considered non-preferred and require prior authorization by the Contractor's Prior authorization Unit in order to be dispensed to a TennCare member.

- e. The Contractor shall establish policies and procedures describing the manner in which pharmaceutical manufacturer industry personnel contact appropriate Contractor staff. This should include specifying which Contractor staff may be contacted and the content of discussions when contact or visits take place. Further, the policies shall restrict contacts and visits to discussions related to the TennCare PDL and to appropriate pharmaceutical manufacturer personnel. The Contractor's policies shall guide the content of discussion and forum for such discussions with pharmaceutical manufacturers as they relate to the TennCare PDL. The Contractor's policies shall be approved by TennCare. Nothing in this Contract shall constrain the Contractor from engaging in contact with manufacturer personnel on behalf of other Contractor clients.
- f. The Contractor shall design, develop, test and implement an electronic interface with the Contractor's POS pharmacy claims processing system to assure timely transmission and uploading (posting) of prior authorization data from the Prior Authorization Call Center to the TennCare-POS pharmacy system.
- g. The Contractor shall monitor compliance with the TennCare PDL, report that information to TennCare monthly, and provide suggestions for improving PDL compliance.
- h. Final decisions for inclusion or exclusion from the TennCare PDL shall be at the sole discretion of TennCare.

A.3.2. PDL Design, Development, and Implementation

- a. The Contractor shall use pharmacoeconomic modeling and evidence-based data in the maintenance of the TennCare PDL that ensures clinically safe and effective pharmaceutical care and yields the highest overall level of cost effectiveness. The Contractor shall develop and submit to TennCare a schedule for review of the TennCare PDL (including addition of drug classes as appropriate) that meets the State's pharmacy program goals and timelines. The Contractor shall develop and present to the TennCare Pharmacy Advisory Committee the clinical and pharmacoeconomic review criteria the Contractor used to make recommendations regarding preferred and non-preferred drugs and the specific written guidelines/criteria to be used in the administration of the prior authorization of non-preferred drugs.
- b. The Contractor's PDL development and criteria shall be coordinated with the Contractor's Prior Authorization Unit to ensure scaleable processes and minimize enrollee or prescriber impact.
- c. The Contractor shall design, develop and implement an ongoing, broad-based educational effort to ensure that prescribers and pharmacists are fully aware of the TennCare PDL and prior authorization requirements. Prior to the program implementation, the Contractor shall submit educational plans to TennCare for review and approval.
- d. The Contractor shall ensure that the TennCare-POS pharmacy claims processing system fully integrates the TennCare PDL and prior authorization programs.
- e. For the term of this Contract, the Contractor shall comply with all applicable federal and state statutes, regulations, rules and policy requirements and all applicable administrative rules, statutes, policies and guidelines.
- f. The Contractor shall ensure that the TennCare PDL program and TennCare-POS system include provisions for:
  - i. The dispensing of an emergency supply, as described and determined by TennCare policy, of the prescribed drug and a dispensing fee to be paid to the pharmacy for such supply;

- ii. Prior authorization decisions to be made within twenty-four (24) hours and timely notification of the prescribing physician;
  - iii. Prescriber and pharmacy provider education, training and information regarding the TennCare PDL prior to implementation of any changes, and ongoing communications to include computer and website access to information; and
  - iv. The Contractor shall ensure that all prescribers and pharmacy providers have timely and complete information about all drugs on the TennCare PDL. The Contractor shall make such information available through written materials, internet sites, and electronic personal data assistants (PDA).
- g. The Contractor shall support the management and coordination of all activities related to the maintenance of the TennCare PDL. Activities shall include but not be limited to the following:
- i. The Contractor shall present the to the TennCare Pharmacy Advisory Committee clinical reviews of new brand-name drugs and new generic drugs for clinical safety and efficacy, and make recommendations regarding possible inclusion in the TennCare PDL.
  - ii. The Contractor shall annually review drugs within chosen therapeutic classes in order to affirm or change the recommendations to TennCare regarding supplemental rebate strategies.
  - iii. The Contractor shall develop changes to review drug criteria for the TennCare PDL based on new clinical and pharmacoeconomic information. The Contractor shall conduct class reviews of all existing therapeutic categories over a time-frame to be co-developed with TennCare.
  - iv. The Contractor shall analyze cost information relative to drug alternatives as they affect the TennCare PDL. The Contractor shall produce PDL compliance reports as described in A.10.3.

The Contractor shall manage the PDL timeline from preparing for the TennCare Pharmacy Advisory Committee meeting through follow up implementation. This timeline shall be co-developed with TennCare.

The Contractor shall implement changes to PDL, Step Therapy or Prior authorization requirements within forty-five (45) days of approval from TennCare. Changes shall include modifications to the POS system and all supporting systems and documents. Such changes to the program shall require provider notification at least thirty (30) days prior to the implementation. TennCare shall approved all documents and identify the targeted providers for each notification.

### A.3.3. Step Therapy

The PDL program shall also identify and promote the use of the most cost-effective drug therapy for a specific indication, regardless of drug class. On the date the Contractor assumes full responsibility for the pharmacy benefits program, the Contractor shall assume responsibility for administering and maintaining the existing Step Therapy program. As the PDL is revised, the Contractor shall recommend changes or additions to the existing Step Therapy program. These recommendations should be based on therapeutic best practices and drive utilization to the most cost effective agents or classes. Drugs and criteria included in the Step Therapy program shall be included on the PDL documents and coded into the TennCare POS system.

The POS system shall be coded to edit on all drugs in the target classes that are being submitted for dispensing. Before the new drug may gain approval through a PA, there shall

be evidence in the claims history of prior use of a drug in a more cost-effective class. This also includes a capability requirement to establish prior authorization criteria that cannot be handled with system edits but shall require calls to the Contractor's call center. The Contractor shall be responsible for making recommendations to TennCare regarding the need for such criteria and for subsequent criteria and call center protocol development. TennCare shall have the final decision on the method and timing of implementation.

The Contractor shall assure that the Call Center staff shall be available to evaluate prior authorization requests per the standards required in Section A.3.6 of this Contract. An agreed upon set of edits and PA criteria in this category shall be implemented on the date the Contractor assumes full responsibility for the pharmacy benefits program. Additional edits of this type may be implemented at TennCare's direction at any point in the term of this Contract without additional cost to TennCare.

A.3.4. TennCare Pharmacy Advisory Committee

The Contractor shall attend, support and facilitate meetings of the TennCare Pharmacy Advisory Committee (PAC) as necessary to maintain the TennCare PDL. Such support shall include the responsibility to develop drug class reviews, prior authorization criteria, quantity limits and step therapy recommendations. The Contractor shall coordinate with TennCare to determine quarterly dates for the PAC meetings. The Contractor shall also be responsible for arrangements for meeting facilities, distribution of meeting materials and preparation of meeting minutes. No less than ten (10) business days prior to the scheduled PAC meeting, the Contractor shall have the meeting materials approved by TennCare and distributed to committee members. Meeting minutes are to be taken by Contractor and the draft copy shall be available for review by the appropriate TennCare staff no greater than two (2) weeks after the scheduled PAC meeting. After approval, the draft minutes shall be disseminated to PAC members for approval at the next regularly scheduled PAC meeting. After approval of the minutes they shall be posted on the TennCare and Contractor's dedicated websites. The TennCare Pharmacy Advisory Committee make up and duties may be found at T.C.A. § 71-5-2401, *et seq.*

The Contractor's clinical staff shall present to the TennCare Pharmacy Advisory Committee drug class reviews for new or existing drugs and new indications that might affect their inclusion in the TennCare PDL.

- a. The primary function of the drug class review is to assist the TennCare and the TennCare Pharmacy Advisory Committee members in determining if the drugs within the therapeutic class of interest can be considered therapeutic alternatives.
- b. PDL reviews are therapeutic comparisons - PDL drug class reviews should assess a drug or class's place in therapy, including comparisons to other drugs outside the drug class in question.
- c. The PDL reviews may also make recommendations for other program initiatives such as development of DUR criteria, prospective edits, step therapy edits and prior authorization.
- e. The Contractor shall monitor compliance by prescribers and pharmacists with the TennCare PDL, report that information to TennCare monthly, quarterly, and semiannually, and provide suggestions for improving PDL compliance.
- f. Meeting facility costs, as well as meals, lodging and mileage reimbursement for PAC members will be paid by the State. Costs for production of materials will be paid by the Contractor. Postage will be a pass through cost.

A.3.5. Rebate Administration

The Contractor shall process, invoice and collect supplemental rebates through the Contractor's rebate administration systems. The Contractor's system shall be capable of payment tracking and reconciliation and dispute resolution for disputes related to supplemental rebate unit issues and utilization. The Contractor shall generate and issue quarterly invoices for supplemental rebates. The Contractor shall provide the designated TennCare staff data files that contain the specific information and in the specified format as required by TennCare. The quarterly rebate invoices shall be generated for all pharmaceutical manufactures and TennCare approval by thirty (30) days after the receipt of the quarterly CMS file.

The Contractor shall ensure that written notifications are sent to Drug Manufacturers concerning past-due rebate payments for undisputed account balances. Past-due balances shall be identified when they are at forty-five (45), seventy-five (75) and ninety (90) days of delinquency. Notifications shall be issued within five (5) days of delinquent date for supplemental rebates. TennCare shall be copied on all past-due notifications. This notice shall remind the labeler that interest shall be assessed on all past due accounts as stipulated by their contract with the State. Failure to send the notices as scheduled may result in liquidated damages as set forth in Attachment A.

Dispute resolution pertaining to units billed for supplemental rebates shall be done by the Contractor based on unit resolution performed on CMS Rebates. The Contractor shall perform all dispute resolution activities with pharmaceutical manufacturers pertaining to supplemental rebate calculations and collections. The Contractor shall present for TennCare approval remedies for all disputes within ninety (90) days of dispute. TennCare shall have final approval of all settlements negotiated.

One hundred percent (100%) of all monies collected on behalf of the State, shall be remitted to the State. The Contractor agrees that all rebates collected on behalf of the State shall be collected for the sole benefit of the State's share of costs, and that no other monies other than rebates shall be collected based on the State's program

The Contractor shall provide to the agency or business of the State's choosing, any and all appropriate, accurate, and balanced pharmacy level claims data needed to resolve or avoid any Medicaid or supplemental drug rebate disputes. This pharmacy level claims data shall be provided within fifteen (15) business days of the request by TennCare.

A.3.5.1 Supplemental Rebates

- a. The Contractor shall negotiate supplemental rebates through an open competition process within specific drug classes, thereby encouraging maximum participation among manufacturers. The Contractor shall negotiate supplemental rebates with pharmaceutical manufacturers as part of the TennCare PDL program. The resulting contract, negotiated by the Contractor and approved by TennCare, regarding supplemental rebates shall be between the pharmaceutical manufacturer and the State. The Supplemental Rebate Contract shall be written using the template that is approved by CMS. Such agreements shall be in a format agreed to by TennCare and approved by CMS. TennCare shall review and approve agreements before execution. The Contractor shall establish and operate a process for accurate reporting and monitoring of negotiated supplemental rebate payments and perform all supplemental rebate dispute resolutions to maximize collections for the State.
- b. The Contractor shall include diabetic supplies such as syringes, lancets, strips, glucose control solutions and glucose testing monitors in the TennCare-POS pharmacy claims processing system and PDL. For this category, the Contractor shall

provide TennCare a class review, preferred product recommendation and supplemental rebate offer similar to that provided for pharmaceutical agents.

- c. The Contractor, consistent with State guidelines and requirements, shall provide annual opportunities for manufacturers to amend supplemental rebate agreements. However, nothing in this Contract shall prevent a manufacturer from offering supplemental or enhanced rebates or amendments to existing supplemental rebates at any time. The Contractor shall report to TennCare, on a time schedule and in a format specified by TennCare, the results of those negotiations and their clinical and fiscal impact on the PDL. TennCare shall have final approval on all supplemental rebate agreements and amendments.
- d. The Contractor shall, concurrent with the development of the PDL, conduct meetings with TennCare to develop and analyze the different potential supplemental rebate strategies with the designated pharmaceutical manufacturers.
- e. The Contractor shall provide TennCare with access to all supplemental rebate contracts and related documentation. This will include quarterly analysis by therapeutic category including the net cost per drug entity in the category including the demonstration of how that net cost was achieved.
- f. The Contractor shall ensure that supplemental rebates are in addition to federal rebates as required by Section 1927 of the Social Security Act and complies with CMS guidelines, regulations and policies.
- g. The Contractor shall maintain the State's supplemental rebate contracts confidentially and separate from its other clients. The Contractor shall propose a plan for securing and maintaining the supplemental rebate contracts and related confidential information in a format agreed to by TennCare. TennCare shall approve confidentiality agreements.
- h. The Contractor shall perform supplemental rebate calculations including National Drug Code (NDC) information and invoice the manufacturers within thirty (30) days after the end of each calendar quarter. The invoices shall be approved by TennCare and contain information sufficient to minimize disputes and comply with supplemental rebate contracts.
- k. One hundred percent (100%) of the supplemental rebates collected pursuant to implementation of the TennCare PDL, on behalf of the State, shall be remitted to the State. The Contractor agrees that all rebates collected on behalf of the State shall be collected for the sole benefit of the State's share of costs.
- l. In a format agreed to by TennCare, the Contractor shall provide to TennCare monthly and ad hoc reports on the performance of the TennCare PDL and supplemental rebates.
- m. The Contractor shall consider a variety of potential rebate strategies and shall compare and contrast for the State the clinical and economic ramifications of each strategy for the State.
- n. For the term of this Contract, The Contractor may, on behalf of the State, assemble or join a multi-state pharmaceutical purchasing coalition or cooperative in order to maximize the State's purchasing power.
- o. Inclusion into the State's PDL shall be based on lowest net cost to the State in a product category over a two year projection, and not highest supplemental rebate achievable.

- p. In cases where a product has demonstrated a clear clinical superiority, as defined by the TennCare Pharmacy Advisory Committee majority vote and State agreement, that product shall receive PDL status regardless of supplemental rebates.
- q. In cases where a product has demonstrated a clear clinical inferiority, as defined by the TennCare Pharmacy Advisory Committee majority vote and State agreement, that product shall receive non-PDL status regardless of supplemental rebates.
- r. During PDL transition a minimum of three (3) months and maximum of six (6) months shall be required to transition users of maintenance medications to different PDL agents.
- s. Changes in drug category PDL status shall be made no more than once per two years.
- t. Failure to achieve program effectiveness may result in liquidated damages as set forth in Attachment A.

A.3.5.2 Supplemental Rebate Bonus

- a. The Contractor shall be responsible for maintaining the effectiveness of their supplemental rebate program as described in the RFP response.
- b. The formula for calculation of supplemental rebate program effectiveness shall be the sum of all supplemental rebates collected for claims paid on an annual basis divided by total pharmacy reimbursement, projected to be \$650 million annually (less dispensing fees) for the same time period.
- c. Any category in which the State decides to forgo Sections A.3.5.1.o. through A.3.5.1.t. above, the category shall, by mutual consent of the State and Contractor, be removed from the supplemental rebate calculation for both supplemental rebates collected and category cost.
- d. On an annual basis the percentage of effectiveness of the supplemental rebate program shall be measured against the Contractors response to the RFP. The Contractor shall be allowed a one percent (1%) deviation from its response. For example, if the Contractor bids six percent (6%) for supplemental rebate percentage in the RFP, the allowable range shall be five to seven percent (5-7%).
- e. Rebates shall be calculated on the basis of any rebates obtained outside of the OBRA rebates. Annually, if the Contractor exceeds the upper figure of the allowed supplemental rebate percentage range they shall receive an annual bonus based on the following table:

Exceed by less than one percent (1%)	One hundred thousand dollars (\$100,000)
Exceed by more than or equal to one percent (1%), but less than two percent (2%)	Two hundred thousand dollars (\$200,000)
Exceed by more than or equal to two percent (2%), but less than three percent (3%)	Six hundred thousand dollars (\$600,000)
Exceed by more than or equal to three percent (3%)	One million, two hundred thousand dollars (\$1,200,000)

- f. The supplemental rebates for claims billed by September 30, 2008 shall be the obligation of the Contractor of record as of September 30, 2008.
- g. The calculation will occur 180 days after initial billing of a full year is complete. Rebates for that year collected after the calculation date will be accounted for in the next year. At the calculation date, if outstanding invoices for rebates would account for a substantial change in the rebates collected, then upon mutual agreement the State and the Contractor can set a new calculation date not to exceed ninety (90) days from the initial calculation date.
- h. Changes in reimbursement methodology that result in a 2% or greater change in reimbursement amount shall result in a corresponding recalculation of the guaranteed rebate percentage to be mutually agreed upon by the Contractor and the State. This shall only apply to changes in methodology such as calculation on a standard other than AWP, or change in the AWP discount from 13%. Changes in prices for individual products shall not be included for purposes of adjusting the guaranteed rebate percentage.

**A.4. TennCare -Technical Requirements**

A.4.1. TCMIS Interface. Operation of the TennCare-POS requires ongoing interfaces with TCMIS. The Contractor shall coordinate with TennCare to design and maintain an effective interface between TCMIS and the Contractor's system for pharmacy claims processing, Pro-DUR and financial systems.

- a. In order to ensure the security and confidentiality of all transmitted files, the Contractor shall have a system that establishes a dedicated communication line connecting TCMIS to the Contractor's processing site. The cost of this communication line is to be borne solely by the Contractor. This dedicated communication line shall meet specifications of the TennCare Bureau, OIR and the State of Tennessee.
  - i. All circuits, circuit terminations and supported network options are to be coordinated through the TennCare Director of Information Services, TennCare, 310 Great Circle Road, Nashville, Tennessee 37228.
  - ii. Contractor shall contact the TennCare Director of Information Services before placing all line orders.
  - iii. Contractor shall be responsible for providing compatible mode table definitions and NCP configurations for all non-standard system generations.
  - iv. Contractor shall be responsible for supplying both host and remote modems for all non-State initiated circuits.
  - v. Dial-up access into production regions shall be prohibited.
- b. After the pre-implementation conversion process, transaction data that changes baseline TCMIS files shall be transferred to the Contractor's system on a daily basis unless TennCare approves a less frequent schedule. The system design shall be finalized during the (DDI) phase and shall result in the daily update of the TennCare-POS system with the most current information from TCMIS. This may include, but not be limited to: recipient eligibility, prior authorization information, provider, and reference information.
- c. The format of the data exchange shall be determined during DDI and shall resolve any incompatible data format issues that may exist between the Contractor's system and TCMIS. TCMIS may be modified to expand certain fields. Although no significant changes to TCMIS file structures are anticipated, the TCMIS may be enhanced to improve

data compatibility between the POS environment and TCMIS. The Contractor shall make changes as needed, at no cost to TennCare.

- d. Daily batch files shall be transmitted from TCMIS to the Contractor and from the Contractor to TCMIS. The transmission from TCMIS may contain, but not be limited to: recipient and provider eligibility records, claim history, prior authorization information and drug formulary information (Procedure Formulary File or PFF). The recipient identification number is a nine (9) byte record and is the key indicator for the eligibility record. This number is constant for a given recipient. The transmission of data from the Contractor to the TCMIS shall contain records of processed, adjudicated and paid claims.
- e. The Contractor shall be required to notify TennCare, in a manner agreed to by TennCare each time a file is received from TennCare in order to verify transmission and receipt of the files.

#### A.4.2 POS Network Interfaces

- a. At initial system implementation, data transmissions between the TennCare-POS and the pharmacy providers shall be in National Council on Prescription Drug Programs' (NCPDP) most current version. As updates to the NCPDP format become available, the TennCare-POS Contractor shall maintain compatibility both with Providers using the updated version and those using the superseded versions. Compatibility maintenance for each superseded version shall continue until the updated version becomes generally available.
- b. The Contractor shall support pharmacy providers in their interaction with the TennCare-POS and coordinate with network vendors to ensure smooth operation of the TennCare-POS with the commercial pharmacy POS environment. At the date of the release of the RFP, there are approximately twenty-five hundred (2,500) pharmacy providers in the TennCare Participating Pharmacy Provider network. The Contractor shall establish testing procedures and certify provider practice management systems (i.e., "switches") as compatible and ready to interface with the TennCare-POS. The Contractor shall not be required to supply hardware or software to pharmacy providers.
- c. The Contractor may not use its position as the TennCare pharmacy claims processing agent to create barriers to providers, or pharmacy practice management vendors who wish to participate in the TennCare-POS. The Contractor shall not charge connection or access fee to pharmacies or switching companies.
- d. Federal regulations require TennCare to maintain appropriate controls over POS eligibility Contractors who perform both switching services and billing services. Switch and billing agent functions, if provided by the same company, shall be maintained as separate and distinct operations. If the Contractor acting as the TennCare-POS Contractor also provides services as the providers' agent, an organizational "firewall" shall be in place to separate these functions.

#### A.4.3 Batch Claim Submission Format and HIPAA Compliance

- a. Pharmacy providers will use NCPDP format for submission of pharmacy transactions. The X12 837 Standard Claim format may be used at some point to allow institutional and professional claims to be submitted in batch electronic claim format so long as the batches are compliant with standards and formats published by TennCare, including the X12 837 and NCPDP formats promulgated by the Secretary of Human Services as specified by the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- b. The Contractor shall coordinate with TennCare to ensure that the electronic formats used for the TennCare-POS conform to present and future regulations as they exist during the term of this Contract.

A.4.4. TennCare-POS Interface Software. The Contractor shall provide software to allow TennCare to test the Contractor's system through the TennCare network. During the DDI Phase, TennCare shall test submission and receipt of NCPDP point-of-sale transactions. After implementation, and during the term of this Contract, TennCare shall test and audit performance of the system. An ongoing project plan shall be required to coordinate a software release schedule and detail how TennCare and/or TCMIS efforts are to be coordinated.

A.4.5. TennCare-POS System Availability Requirements. The Contractor shall ensure that the average system response time is no greater than ten (10) seconds for a minimum of ninety-nine and a half percent (99.5 %) of all transactions, seven (7) days per week twenty-four (24) hours per day. Cumulative system downtime shall not exceed two (2) hours during any continuous five (5) day period.

The TennCare-POS system shall be available twenty-four (24) hours per day, seven (7) days per week, for provider inquiry or billing purposes. Such availability shall include all normal forms of entry. The Contractor may have scheduled maintenance downtime that is approved by the State.

A.4.6. System Maintenance and Modification Deadlines and Damages. System maintenance problems shall be corrected within five (5) business days or by a State-approved correction date. Failure to resolve system eminence issues in this timeframe shall result in liquidated damages as noted in attachment A.

A.4.7. System Security. The Contractor shall apply recognized industry standards governing security of State and Federal Automated Data Processing systems and information processing. At a minimum, the State requires the Contractor to conduct a security risk analysis and the results shall be included in the Information Security Plan provided during the DDI phase. The risk analysis shall also be made available to appropriate Federal agencies. As determined by the State to be appropriate, the following specific security measures may be included in the system design documentation, operating procedures and State agency security program:

- a. Computer hardware controls that ensure acceptance of data from authorized networks only;
- b. Placement of software controls, at the Contractor's central facility, that establish separate files for lists of authorized user access and identification codes;
- c. Manual procedures that provide secure access to the system with minimal risk;
- d. Multilevel passwords, identification codes or other security procedures that shall be used by State or Contractor personnel;
- e. All TennCare-POS software changes subject to TennCare approval prior to implementation; and
- f. System operation functions segregated from systems development duties.

A.4.8. Disaster Preparedness and Recovery at the Automated Claims Processing Site. The Contractor shall submit the Contractor's Business Continuity/Disaster Recovery plan for their Central Processing Site to TennCare. If requested, test results of the plan shall be made available to TennCare. The plan shall be able to meet the requirements of any applicable state and federal regulations, TennCare and the State of Tennessee Office of Information Resources (OIR).

- a. After award of this Contract, but during the development of the Information Security Plan, a Contractor representative shall work in conjunction with a team member from both OIR and TennCare's TCMIS in order to ensure that the plan is compatible with TCMIS and TennCare policy and procedures and/or rules.
- b. The Contractor shall include sufficient information to show that they meet the following requirements:

- i. Documentation of emergency procedures that include steps to take in the event of a natural disaster by fire, water damage, sabotage, mob action, bomb threats, etc. This documentation shall be in the form of a formal Disaster Recovery Plan. The Contractor shall apply recognized industry standards governing Disaster Preparedness and Recovery including the ability to continue processing in the event that the central site is rendered inoperable.
  - ii. Employees at the site shall be familiar with the emergency procedures.
  - iii. Smoking shall be prohibited at the site.
  - iv. Heat and smoke detectors shall be installed at the site both in the ceiling and under raised floors (if applicable). These devices shall alert the local fire department as well as internal personnel.
  - v. Portable fire extinguishers shall be located in strategic and accessible areas of the site. They shall be vividly marked and periodically tested.
  - vi. The site shall be protected by an automatic fire suppressing system.
  - vii. The site shall be backed up by an uninterruptible power source system.
- c. The Contractor shall describe their secondary processing site and how quickly TennCare-POS operations can be transferred to that site. TennCare shall have direct, "read only" access allowing the designated staff to review the accuracy of TennCare data on the Contractor's system.

A.4.9. Program Integrity Requirements. The Contractor shall have TennCare-approved policies and procedures in place for ensuring protections against actual or potential fraud and abuse. The Contractor shall have a detailed Program Integrity Plan. The Program Integrity Plan shall define how the Contractor shall adequately identify and report suspected fraud and abuse by recipients, providers, by subcontractors and by the Contractor. The Program Integrity report shall be submitted yearly on the contract anniversary. The Contractor shall meet with TennCare and discuss the monitoring tools and controls necessary to protect against theft, embezzlement, fraudulent practices or other types of fraud and program abuse, and describe the type and frequency of training that shall be provided to detect fraud. All fraudulent activities or other program abuses shall be subject to the laws and regulations of the State of Tennessee and/or federal laws and regulations. The Contractor's Program Integrity Plan shall address the following requirements:

- a. Written Policies and Procedures. The Contractor shall develop written policies, procedures, and standards of conduct that articulate the Contractor's commitment to comply with all applicable federal and state standards for the prevention, detection and reporting of incidents of potential fraud and abuse by members, providers, subcontractors and the Contractor.
- b. Compliance Officer. The Contractor shall designate a Compliance Officer and a Compliance Committee, accountable to senior management, to coordinate with TennCare and other state agencies on any fraud or abuse case. The Contractor may identify different contacts for member fraud and abuse, provider fraud and abuse, subcontractor fraud and abuse, and Contractor fraud and abuse.
- c. Training and Education. The Contractor shall establish effective program integrity training and education for the Compliance Officer and all Contractor staff.
- d. Effective Lines of Communication between Contractor Staff. The Contractor shall establish effective lines of communication between the Compliance Officer and other Contractor staff.

- e. Well-Publicized Disciplinary Guidelines. The Contractor shall enforce program integrity standards through well-publicized disciplinary guidelines.
- f. The Contractor shall review and summarize network pharmacy audit findings on a quarterly basis.
- g. Internal Monitoring and Audit. The Contractor shall establish and implement procedures for internal monitoring and auditing. These activities and their reporting mechanism shall be defined in the Program Integrity Plan.
- h. Process for Reporting Potential or Actual Fraud and Abuse. The Contractor shall provide information and a procedure for members, providers and subcontractors to report incidents of potential or actual fraud and abuse to the Contractor and to TennCare.
- i. Development of Corrective Action Initiatives. The Contractor's program integrity plan shall include provisions for corrective action initiatives.
- j. Time Frame for Reporting Fraud and Abuse to the Department. The Contractor shall report incidents of potential or actual fraud and abuse to TennCare within forty-eight (48) hours of initiation of any investigative action by the Contractor or within forty-eight (48) hours of Contractor notification that another entity is conducting such an investigation of the Contractor, network providers, or the members. All reports shall be sent to TennCare in writing and shall include a detailed account of the incident, including names, dates, places, and suspected fraudulent activities.
- k. Cooperation with State and Federal Investigations. The Contractor shall cooperate with all fraud and abuse investigation efforts by TennCare and other state and federal offices.
- l. Failure to comply with the Program Integrity Requirements as defined herein may result in liquidated damages as provided in Attachment A.

A.4.10. Proprietary and Confidential Information

- a. All proprietary information, including but not limited to, provider reimbursement information provided to TennCare, shall be deemed confidential and not subject to disclosure under the Tennessee Public Records Act. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of federal law, State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with federal law, State law and ethical standards. Confidential information includes any non-public, confidential or proprietary information, whether written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, which is supplied by TennCare to the Contractor or acquired by the Contractor on behalf of TennCare under this Agreement.
- b. Confidentiality of Records and Duty to Protect. Strict standards of confidentiality of records shall be maintained in accordance with federal and state laws and regulations and TennCare policies, procedures and rules. The Contractor shall exercise the same or greater level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section. Confidential Information (i) shall be held by the Contractor in strictest confidence at all times; (ii) shall not be disclosed or divulged by the Contractor to any person or entity, except those employees and agents of the Contractor who require access to such information, and only after those employees and agents have been instructed that the information is subject to the confidentiality obligations set forth herein; and (iii) shall not be used by the Contractor for any purpose not set forth herein or otherwise authorized in writing by TennCare. Contractor shall diligently exercise the highest degree of care to preserve the privacy, security and integrity of, and prevent unauthorized access to, the Confidential Information. Contractor ensures

that it has established written policies and procedures relating to confidentiality, including the confidentiality of protected health information and eligibility information. Contractor ensures that it has implemented administrative, technical and physical safeguards and mechanisms that protect against the unauthorized or inadvertent disclosure of confidential information to any person or entity outside its organization not in accordance with this Agreement:

- c. The Contractor shall maintain the confidentiality of TennCare member information. Any information, whether written, graphic, oral, electronic, visual or fixed in any tangible medium or expression, relating to individuals enrolled in the TennCare program ("TennCare enrollees"), or relating to individuals who may be potentially enrolled in the TennCare program, which is provided to or obtained through the Contractor's performance under this Agreement, shall also be treated as confidential information to the extent that confidential status is afforded such information under State and federal laws or regulations. The Contractor shall ensure that access to this information shall be limited to the Contractor. The Contractor shall take measures to prudently safeguard and protect unauthorized use and/or disclosure of TennCare member information in its possession. The Contractor shall establish internal policies to ensure compliance with federal and state laws and regulations regarding confidentiality including, but not limited to, 42 CFR § 431, Subpart F, 42 USC §§ 1320d, all applicable Tennessee statutes and TennCare rules and regulations. In no event may the Contractor provide, grant, allow, or otherwise give, access to TennCare member information to anyone without the express written permission of TennCare. In the event that information is used and/or disclosed in any manner, the Contractor shall assume all liabilities under both State and federal law.
- d. The Contractor shall immediately notify TennCare of any and all occurrences where TennCare's Confidential information may have been breached and initiate appropriate action to prevent subsequent breaches
- e. Health Insurance Portability and Accountability Act of 1996 (HIPAA). In accordance with HIPAA regulations, the CONTRACTOR shall, at a minimum, comply with the following requirement:
  - (a) As a party to this Agreement, the CONTRACTOR hereby acknowledges its designation as a covered entity under the HIPAA regulations;
  - (b) The CONTRACTOR shall comply with the transactions and code set, privacy, and security regulations of the Health Insurance Portability and Accountability Act of 1996 by their designated compliance dates. Compliance includes meeting all required transaction formats and code sets with the specified data partner situations required under the regulations.
  - (c) The CONTRACTOR shall transmit/receive from/to its provider, subcontractors, clearinghouses and TENNCARE all transactions and code sets required by the HIPAA regulations in the appropriate standard formats as specified under the law and as directed by TENNCARE so long as TENNCARE direction does not conflict with the law;
  - (d) The CONTRACTOR shall agree that if it is not in compliance with all applicable standards defined within the transactions and code sets, privacy, security and all subsequent HIPAA standards, that it will be in breach of this Agreement and will then take all reasonable steps to cure the breach or end the violation as applicable. Since inability to meet the transactions and code sets requirements, as well as the privacy and security requirements can bring basic business practices between TENNCARE and the CONTRACTOR and between the CONTRACTOR and its providers and/or subcontractors to a halt, if for any reason the CONTRACTOR cannot meet the requirements of this Section, TENNCARE may terminate this Agreement in accordance with Section D.

- (e) Protected Health Information (PHI) data exchanged between the CONTRACTOR and TENNCARE is intended to be used only for the purposes of health care operations, payment and oversight and its related functions. All PHI data not transmitted for the purposes of health care operations and its related functions, or for purposes allowed under the federal HIPAA regulations will be de-identified to protect the individual enrollee's PHI under the privacy act;
- (f) Disclosures of Protected Health Information from the CONTRACTOR to TENNCARE shall be restricted as specified in the HIPAA regulations and will be permitted for the purposes of: health care operations, payment and oversight, Disclosures to TENNCARE from the CONTRACTOR shall be as permitted and/or required under the law.
- (g) The CONTRACTOR shall report to TENNCARE within forty-eight (48) hours of becoming aware of a security incident or any use or disclosure of Protected Health Information in violation of this Agreement by the CONTRACTOR, its officers, directors, employees, subcontractors or agents or by a third party to which the CONTRACTOR disclosed Protected Health Information;
- (h) The CONTRACTOR shall specify in its agreements with any agent or subcontractor of the CONTRACTOR that will have access to Protected Health Information that such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the CONTRACTOR pursuant to this Section;
- (i) The CONTRACTOR shall make available to TENNCARE enrollees the right to amend their Protected Health Information data in accordance with the federal HIPAA regulations. The CONTRACTOR shall also send information to enrollees educating them of their rights and necessary steps in this regard;
- (j) The CONTRACTOR shall make an enrollee's PHI data accessible to TENNCARE immediately upon request by TENNCARE;
- (k) The CONTRACTOR shall make available to TENNCARE within ten (10) business days of notice by TENNCARE to the CONTRACTOR such information as in the CONTRACTOR'S possession and is required for TENNCARE to make the accounting of disclosures required by 45 CFR § 164.528. At a minimum, the CONTRACTOR shall provide TENNCARE with the following information:
  - (1) the date of disclosure
  - (2) the name of the entity or person who received the HIPAA protected information, and if known, the address of such entity or person
  - (3) a brief description of the Protected Health Information disclosed, and
  - (4) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure.

In the event that the request for an accounting of disclosures is submitted directly to the CONTRACTOR, the CONTRACTOR shall within two (2) business days forward such request to TENNCARE. It shall be TENNCARE'S responsibility to prepare and deliver any such accounting requested. Additionally, the CONTRACTOR shall institute an appropriate record keeping process and procedures and policies to

enable the CONTRACTOR to comply with the requirements of this Section;

- (l) The CONTRACTOR shall make its internal policies and procedures, records and other documentation related to the use and disclosure of Protected Health Information available to TennCare and to the Secretary of Health and Human Services for the purposes of determining compliance with the HIPAA regulations upon request.
- (m) The CONTRACTOR shall create and adopt policies and procedures to periodically audit adherence to all HIPAA regulations, and for which CONTRACTOR acknowledges and promises to perform, including but not limited to, the following obligations and actions:
  - (1) Safeguards. CONTRACTOR agrees to use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information (ePHI) CONTRACTOR creates, receives, maintains, or transmits on behalf of TENNCARE.
  - (2) CONTRACTOR's Agents. CONTRACTOR agrees to ensure that any agent, including a subcontractor, to whom it provides ePHI that was created, received, maintained, or transmitted on behalf of TENNCARE agrees to use reasonable and appropriate safeguards to protect the ePHI.
  - (3) Notification of Security Incident. CONTRACTOR agrees to report to TENNCARE any use or disclosure of TENNCARE enrollee PHI or of any security incident of which CONTRACTOR becomes aware within forty-eight (48) hours
- (n) Upon termination, cancellation, expiration or other conclusion of the Agreement, and in accordance with Section D of this Agreement, the Contractor will, if feasible, return or destroy all PHI, in whatever form or medium (including any electronic medium) and all copies of an any data or compilations derived from and allowing identification of any individual who is a subject of that PHI. The Contractor will complete such return or destruction as promptly as possible, but not later than 30 days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement, including but not limited to, the provisions in Section and of this Agreement. The Contractor will identify any PHI that cannot feasibly be returned to or destroyed. Within such 30 days after the effective date of the termination, cancellation, expiration or other conclusion of the Agreement, including but not limited to, the provisions in Section and of this Agreement the Contractor will: (1) certify on oath in writing that such return or destruction has been completed; (2) identify any PHI which can not feasibly be returned or destroyed; and (3) certify that it will only use or disclose such PHI for those purposes that make its return or destruction infeasible;
- (o) The CONTRACTOR shall implement all appropriate administrative, technical and physical safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Agreement, including but not limited to, confidentiality requirements in 45 CFR parts 160 and 164 and 42 CFR Part 431;
- (p) The CONTRACTOR shall set up appropriate mechanisms to ensure minimum necessary access of its staff to Protected Health Information;

- (q) The CONTRACTOR shall create and implement policies and procedures to address present and future HIPAA regulation requirements as needed to include: use and disclosure of data; de-identification of data; minimum necessity access; accounting of disclosures; patients rights to amend, access, request restrictions, and right to file a complaint;
- (r) The CONTRACTOR shall provide an appropriate level of training to its staff and enrollees and/or require its on-site workforce to comply with TennCare training requirements regarding HIPAA related policies, procedures, enrollee rights and penalties prior to the HIPAA implementation deadlines and at appropriate intervals thereafter;
- (s) The CONTRACTOR shall be allowed to use and receive information from TENNCARE where necessary for the management and administration of this Agreement and to carry out business operations;
- (t) The CONTRACTOR shall be permitted to use and disclose PHI for the CONTRACTOR'S own legal responsibilities;
- (u) The CONTRACTOR will adopt the appropriate procedures and access safeguards to restrict and regulate access to and use by CONTRACTOR employees and other persons performing work for said CONTRACTOR to have only minimum necessary access to personally identifiable data within its organization;
- (v) The CONTRACTOR will continue to protect personally identifiable information relating to individuals who are deceased;
- (w) The CONTRACTOR will be responsible for informing its workforce of enrollee privacy rights in the manner specified under the regulations;
- (x) The CONTRACTOR must make available protected health information in accordance with 45 CFR § 164.524;
- (y) The CONTRACTOR must make available protected health information for amendment, where applicable, and incorporate any amendments to protected health information in accordance with 45 CFR §164.526; and
- (z) The CONTRACTOR shall obtain or provide a third (3<sup>rd</sup>) party certification of its HIPAA transaction compliance within ninety (90) days of execution of this Agreement.

f. Failure to comply with confidentiality provisions may result in liquidated damages.

A.4.11. Third Party Administrator Requirement

- a. The Contractor shall qualify as an Administrator (also described as "Third Party Administrator") in compliance with Tennessee Code Annotated (TCA) § 55-6-401, *et seq.* and shall be licensed to operate as an adjuster or settler of claims in connection with pharmacy benefits coverage in the State of Tennessee and shall be capable of providing or arranging for health care services provided to covered persons for whom it received payment and is engaged in said business and is shall do so upon and subject to the terms and conditions hereof.
- b. If during the term of this Contract, TennCare directs the Contractor, through a contract amendment, to operate as a risk-bearing entity for pharmacy services, the Contractor shall establish and maintain all financial reserves required by the Tennessee Department of

Commerce and Insurance of HMOs, Third Party Administrator, or Prepaid Limited Health Services Organization licensed by the State of Tennessee, including, but not limited to, the reserves required by Tennessee Code Annotated § 56-32-212 as amended or Tennessee Code Annotated § 56-51-136 as amended. The Contractor shall demonstrate evidence of its compliance (or process of compliance) with this provision to the Tennessee Department of Commerce and Insurance, TennCare Division, in the financial reports filed with that Department by the Contractor.

#### A.4.12. TennCare Member Identification Cards

- a. The Contractor shall provide each TennCare member with permanent pharmacy benefit identification (ID) card. This shall occur at least three (3) weeks prior to the commencement of the Contractor processing claims. The card shall comply with all state laws and NCPDP guidelines, as amended, regarding the information required on the card, as well as any other information required by TennCare, and must be approved by TennCare. In no event shall the Contractor print or otherwise include the individual TennCare enrollee's Social Security Number on any identification card required for the individual to access products or services provided under this Agreement. The Contractor shall provide pharmacy benefit identification cards for new TennCare members added to the TennCare eligibility file on an ongoing basis. The Contractor shall establish a process that allows enrollees request replacement cards. Replacement and new cards shall be produced and mailed by the Contractor on the 15<sup>th</sup> day of each month. Failure to meet this requirement may result in liquidated damages set forth in Attachment A.
- b. The Contractor shall establish and maintain a process to produce ID cards for new enrollees and issues replacement ID cards upon request from a TennCare enrollee. The Contractor shall be reimbursed for actual postage costs. Such costs shall be billed on a monthly basis to TennCare in addition to regular invoices and shall include substantiating documentation. The cost related to the production of the identification cards shall be included in the Contractor's base rate in this Contract.
- c. Other mailings pursuant to this Contract shall be mailed first class unless otherwise directed by the State. The actual postage cost shall be a pass-through item and shall be billed on a monthly basis to the TennCare Bureau in addition to regular invoices and shall include substantiating documentation. Printing and supply costs are to be included in the base rate of this Contract. The Contractor shall not invoice TennCare for Contractor business operations.

#### A.4.13 Returned Mail

The Contractor shall open all returned mail from any mailings to enrollees or providers to determine if the enrollee has moved, if the Contractor has the wrong address, and/or if the enrollee is communicating other information to the Contractor or to TennCare. The Contractor shall track returned mail and shall report monthly to the TennCare Bureau the number of pieces of returned mail, the reason the mail was returned and action taken by the Contractor. Included in this report shall be a list of all enrollees whose mail was undeliverable due to an incorrect address provided by TennCare. Nothing in this section shall prevent the Contractor from sub-contracting responsibilities returned mail to a vendor approved by TennCare.

Failure to report monthly to the Bureau or to open and appropriately manage returned mail may result in liquidated damages as described in Attachment A.

#### A.4.14 Website

The Contractor shall have available an up-to-date web-site dedicated to TennCare that shall aid providers and enrollees in all aspects of the pharmacy program. The web-site shall be available for TennCare approval at least one (1) month prior to the commencement of claims processing and be available on the internet two (2) weeks prior to the commencement of claims processing.

The web-site shall contain a home page with general pharmacy information with links to dedicated areas for prescribers, pharmacists and enrollees. Each of these sections shall contain information that shall answer, in an interactive format, the majority of questions that each group would ask. This shall include, but it not limited to:

- a. Home Page, which includes:
  - i. General information related to pharmacy benefit, and recent changes occurring within the TennCare Pharmacy Program, including pertinent fact sheets;
  - ii. Access to the Auto-exemption and Provider Attestation lists; and
  - iii. An interactive Preferred Drug List (PDL) with links to Clinical Criteria, Step Therapy criteria, and Quantity Limits
- b. Prescriber Page, which includes:
  - i. An interactive preferred drug list (PDL) of the TennCare pharmacy program, complete with hot-links from drugs to the prior authorization (PA) criteria established for those drugs and also linked to drug specific PA facsimile forms and drug specific web-based PA application;
  - ii. A search function which allows providers to enter a drug name and be routed to the drug in the interactive PDL;
  - iii. Procedures for obtaining Prior Authorizations (PA's), Call Center hours of operation and contact numbers; and
  - iv. Printable education material specific to prescribers.
- c. Pharmacist Page, which includes:
  - i. An interactive inquiry system using pharmacy providers' identifying number (i.e. NCPDP, NPI, etc) to verify the status of pending payments, RAs, and other supported function(s) as deemed necessary by TennCare;
  - ii. An on-line listing of the Contractors MAC drug list; and
  - iii. Printable on-line pharmacy handbook and Provider Education Material specific to Pharmacist.
- d. Enrollee Page, which includes:
  - i. A description of services provided including limitations, exclusions and out-of-network use;
  - ii. Information regarding what to do if the enrollee is unable to fill a prescription because PA is required, but has not been obtained, including information on the enrollee-initiated PA process;
  - iii. Printable education material specific to enrollees; and
  - iv. On-line search, by address or zip code, to locate the network pharmacies nearest to the enrollee.

A.4.15. The Contractor's system shall be a secure, HIPAA-compliant and data-encrypted electronic system. The system shall have the ability to be easily customized and have interactive communication capabilities to meet the needs of TennCare and its providers. The Contractor shall provide support and maintenance of the website and guarantee any data exchange between the Contractor and

TennCare or its providers and enrollees shall be secure and compliant with current HIPAA guidelines concerning data encryption and/or password protection. TennCare shall transmit eligibility/enrollment information to the Contractor by the standard HIPAA 834 transaction defined by the TennCare Companion Guide. The Contractor shall use this information to immediately (no more than two (2) business days) identify those enrollees who have no limits, have no pharmacy benefit, or are subject to limits, and make necessary systems changes to process claims accordingly. The NCPDP 1.1 formats shall be used for encounter reporting sent to TennCare.

- A.4.16 The Contractor shall participate in Tennessee's e-Prescribe initiatives, currently involving Rx Hub, Shared Health and SureScripts. The Contractor will be required to provide needed accurate data files to TennCare, or Tennessee's e-Prescribe partners, initially and on an ongoing basis, in the format and timeframes agreed to by TennCare, as required to support e-Prescribe. This may include, but is not limited to: electronic formulary files (denoting preferred or non-preferred drugs), electronic files denoting drugs requiring prior authorization (including specific PA criteria for each drug), electronic files denoting drugs and quantity limits (including specific information regarding the nature of such limits), weekly encounter files to update the ePrescribe platform, and links into the Contractor's web site for PA specific facsimile forms and criteria. The Contractor shall also coordinate the e-Prescribe initiatives within the pharmacy network it is managing for TennCare.

## **A.5. Drug Utilization Review and Provider Education**

### **A.5.1. Retrospective Drug Utilization Review (Retro-DUR)**

The Contractor shall provide TennCare with a Retrospective Drug Utilization Review (Retro-DUR) program. On a quarterly basis, the Retro-DUR system shall trend providers' prescribing habits and identify those who practice outside of their peers' norm. The Contractor's Retro-DUR system shall provide TennCare with provider practice analyses that include identification of prescribers who routinely prescribe non-preferred drugs. The Contractor's Retro-DUR system shall also identify patients who may be abusing resources through poly-pharmacy utilization patterns or visiting multiple providers. The Contractor shall produce reports that detail patient and prescriber trends and that identify potential quality of care problems and/or potential fraud and abuse. The Contractor's Retro-DUR system's intervention processes shall include, at a minimum, letter-based information to providers and a system for tracking provider response to the interventions.

The Contractor shall have a qualified dedicated DUR Clinical Pharmacist prepare presentations and attend each quarterly meeting of the TennCare DUR Board to present Prospective DUR (Pro-DUR) and Retro-DUR data, findings, and as utilization data. The DUR Clinical Pharmacist shall be dedicated solely to the gathering of data, analysis of results, developing recommendations and presentation of such to TennCare and the TennCare DUR Board. The DUR Clinical Pharmacist shall schedule and conduct a Pre-DUR meeting with appropriate TennCare staff no less than four (4) weeks prior to the scheduled meeting. This pharmacist shall be outside the scope of the staffing section as noted in Section A.9. No less than ten (10) business days prior to the scheduled DUR meeting date, the DUR Clinical Pharmacist shall present to TennCare the proposed agenda for approval and later posting on the TennCare and Contractor's websites in compliance with Open Meetings Act (Sunshine Law) as defined in TCA § 8-44-01 *et seq.* No greater than two (2) weeks after the DUR meeting, the DUR Clinical Pharmacist shall schedule a Post-DUR meeting with appropriate TennCare staff. No greater than four (4) weeks after the DUR meeting the meeting minutes shall be available for review.

The Contractor shall also implement a complete Retro-DUR program to be coordinated and maintained by the full-time DUR Clinical Pharmacist dedicated to TennCare and supported by provider educators who are Tennessee-licensed pharmacists and additional clinical reviewers who are also Tennessee-licensed pharmacists. In addition, the Contractor's dedicated DUR Clinical Pharmacist shall be responsible for the operation of the DUR Board including the recruitment of DUR Board members, with consultation from TennCare.

A.5.1.1. Description of the Operation of the Retro-DUR Program -The Contractor shall provide to TennCare all necessary components of a Retro-DUR program and shall operationalize those as follows:

a. Establishment of a Drug Utilization Review (DUR) Board as follows:

- i. The Contractor's DUR Clinical Pharmacist shall recruit and maintain a DUR Board composed of five (5) physicians, five (5) pharmacists, one (1) nurse practitioner alternating with one (1) physician assistant as suggested by the Contractor and approved by TennCare. The Board composition shall comply with 42 CFR Chapter IV § 456.716(b). Board participants shall be required to submit a TennCare approved conflict of interest statement on an annual basis. Term lengths shall be staggered, as necessary, to assure only partial turnover of members in any given year.
- ii. Selection of DUR Board members shall be based on medical and pharmacy expertise and willingness to serve in this capacity and provide the services specified by TennCare in writing. Members shall be required to be available for quarterly meetings and to review drug information and drug utilization materials as necessary to improve patient quality of care, to prevent fraud and abuse, and to control the costs of drug utilization;
- iii. The Contractor shall determine quarterly dates for the DUR Board meetings, schedule the meeting location and determine the agenda for those meetings. Minutes for those meetings shall be taken by Contractor and the draft copy shall be available for review by the appropriate TennCare staff no greater than four (4) weeks after the scheduled DUR meeting. After approval, the draft minutes shall be disseminated to DUR Board members for approval at the next regularly scheduled DUR Board meeting. After approval of the minutes they shall be posted on the TennCare and Contractor's websites. The DUR Clinical Pharmacist shall prepare the following reports/information, at minimum, for presentation at DUR Board meetings:
  - (1) TennCare utilizing-members data;
  - (2) TennCare utilization by age demographics;
  - (3) TennCare utilization by top ten (10) therapeutic classes determined both by number of claims and by payment amount;
  - (4) TennCare top ten (10) drugs as ranked by claim count and by total payment;
  - (5) Pro-DUR data including totals of Pro-DUR messages sent and savings associated with the top ten (10) drugs associated with each Pro-DUR edit;
  - (6) Retro-DUR intervention analysis and cost savings information as associated with both member profile review and interventions and provider profile review and interventions;
  - (7) Reports and presentations should convey rolling twelve (12 ) month trends;
  - (8) Distribution of Clinical Alerts as prepared monthly by the Contractor's Clinical Management staff; and
  - (9) Additional reports, as requested by TennCare or the DUR Board.
- iv. The process of selecting DUR Board members shall incorporate suggestions concerning pharmacy providers from the Tennessee Pharmacists Association (TPA) and physicians with the Tennessee Medical Association (TMA) and/or other provider associations as designated by TennCare;
- v. The DUR Clinical Pharmacist shall consult with TennCare to obtain approval for the DUR Board appointments;
- vi. The primary role of the DUR Board shall be to provide program oversight and advice concerning provider education initiatives and current or proposed DUR

POS edits outlined in 42 CFR § 456.716. The DUR Board shall not be involved with PDL coverage decisions but shall be notified of current PDL changes; and

- vii. The Contractor shall send all DUR Board members a letter explaining that the responsibility for the Retro-DUR program is being transitioned to the Contractor. New members shall receive a Letter of Appointment that specifies the lengths of the appointment term.
- b. Recruit, maintain, and reimburse a panel of clinical pharmacists sufficient to review member profiles as noted in section A.5.1.1.e. below. The clinical pharmacists shall recommend appropriate interventions related to each profile reviewed.
- c. Develop, maintain and update a set of evidence-based clinical criteria that shall meet all CMS requirements and that shall be used to detect potential problems such as polypharmacy and related over-utilization, underutilization, drug-to-drug interactions, therapeutic duplications, incorrect drug dosage and duration of treatment, possible fraud and abuse issues, and other instances of inappropriate drug therapy as may also be related to a member's age or disease state.
- d. With input from TennCare and the DUR Board, the Contractor shall determine the focus of and generate data through the clinical criteria noted in Section A.5.1.1.c. above for each of four (4) quarterly provider profile runs and each of twelve (12) monthly member profile runs. Quarterly provider profile reviews shall be completed and results/interventions distributed to prescribers within ninety (90) days of the end of the quarter. Monthly member profile reviews shall be completed and results/interventions distributed to prescribers within sixty (60) days of the end of the month.
- e. After approval by TennCare of the focus of, and methodology to be used in, the member profile reviews, the Contractor shall produce eight hundred (800) member profiles per month, or a minimum of two thousand four hundred (2,400) member profiles per quarter, and distribute to clinical reviewers for review and determination of appropriate interventions to be taken. Any summaries, correspondence or other documents produced as a result of the review process shall be approved by TennCare prior to their distribution.
- f. After approval by TennCare of the focus of, and the methodology to be used in, the provider profile reviews, the Contractor shall produce two thousand, four hundred (2,400) provider profiles per quarter and determine appropriate interventions to address any potential problems identified during profile review. Unlike member profiling, provider profiles need not reviewed by clinical reviewers, as they simply detail members for whom a prescriber or pharmacy provider has prescribed or dispensed a medication under review for the quarter.
- g. Implement interventions designed to address problems identified during profile review. These interventions shall include at a minimum mailings sent to prescribers or pharmacy providers, but phone calls or visits may also be conducted if appropriate and/or upon the direction of TennCare. Mailings shall consist of an intervention letter to the prescriber or pharmacy provider detailing the reason for the letter, the purpose of the intervention and providing educational information. Member profile(s) illustrating the potential problem and suggesting corrective action may also be included, along with a provider response form seeking input for the value of the intervention. The postage associated with these mailings shall be reimbursed by TennCare as a pass-through cost.
- h. Maintain a system capable of tracking all interventions, both letters and direct communication, and determining cost savings related to the specific interventions. This system shall also record input received from providers regarding the value of the intervention.
- i. The Contractor shall establish and maintain a toll free telephone number and voice mail box to receive provider responses to Retro-DUR notices. The DUR Clinical pharmacist

shall be responsible for management of call backs from the inquires received through this line.

- j. Report quarterly to the DUR Board on monthly member reviews and quarterly provider reviews to include interventions taken, responses, and outcomes.
- k. Produce an Annual Drug Utilization Review Report for the TennCare program using the annual CMS requirements as stated in 42 CFR § 456.712.
- l. The Board may request additional reports as needed to conduct business as provided herein.

#### A.5.2. Retro DUR reporting system

- a. The Contractor shall provide a reporting system that tracks the outcomes of the Retro DUR initiatives. TennCare's Retro DUR initiatives are mainly focused on improving care quality. The Contractor's system shall be able to track the impact of DUR initiatives by comparing specified data elements pre and post intervention. The data elements tracked will vary according to the focus of study and/or type of intervention employed and may include, but shall not be limited to:
  - i. Drug change within a sixty (60) or ninety (90) day period of the intervention;
  - ii. Total number of drugs pre- and post- intervention;
  - iii. Change in dose/dosing frequency of medication within a sixty (60) or ninety (90) day period of intervention;
  - iv. Daily dose of drug in question pre- and post- intervention;
  - v. Assessment of various interactions (as relevant to the activity) pre- and post-intervention which may include drug-drug interactions (e.g., number of drugs identified and severity index), pregnancy interactions, disease state interactions, therapeutic duplications, allergy interactions, and age-related medication problems;
  - vi. Compliance with national guidelines (e.g., percentage of patients with CHF on beta-blocker, diuretic, etc.) depending on the disease state targeted by the RetroDUR initiative;
  - vii. Generic medication utilization;
  - viii. Emergency supply frequency;
  - ix. Prescription limit override frequency;
  - x. PDL compliance;
  - xi. Patient compliance;
  - xii. Hospitalizations and/or doctor visits pre and post intervention; and
  - xiii. Prescription and/or medical costs pre and post intervention.

#### A.5.3. Provider Education

The Contractor shall develop and implement ongoing educational programs for the TennCare provider community designed to improve provider awareness of TennCare pharmacy program policies and procedures and to assure PDL compliance by prescribers. These educational initiatives shall include, but not be limited to: provider letters, PDL distribution, POS messaging, training sessions, website postings of the PDL and other educational materials for prescribers. The Contractor shall prepare, for TennCare approval, provider letters containing information related to the operation of the TennCare pharmacy program. The Contractor shall prepare and maintain a document suitable for printing or posting to the TennCare website providing the PDL listing and all applicable drug prior authorization (PA) criteria including step-therapy algorithms. Prior authorization criteria and procedures shall be fully disclosed to TennCare. In each calendar year during the term of this Contract, the Contractor shall conduct four (4) training sessions annually related to the TennCare pharmacy program in with at least one (1) being in the east, middle, and west regions of Tennessee. The Contractor shall submit all training material to TennCare for approval at least sixty (60) days prior to the training session. If changes are requested, the Contractor shall resubmit the training material within ten (10) business days of

receipt of TennCare's recommendations. The Contractor shall distribute all Prior Authorization Call Center toll-free telephone numbers, facsimile numbers, web addresses and e-mail addresses as well as the appropriate mailing address for prior authorization requests at all provider training sessions and provider education programs.

- a. The Contractor shall develop notification and education strategies for TennCare providers. Educational topics for prescribers shall include, at a minimum: PDL program intent; the process that was used to develop the TennCare PDL and prior authorization criteria; how to access and use the PDL; how to access drug-specific prior authorization criteria; processes for obtaining prior authorization; prescription limits (including the associated auto-exemption list and the prescriber attestation process); other POS edits that may result in a prior authorization requirement; and the prescriber reconsideration process for denied prior authorizations. Educational topics for pharmacy providers shall include, at a minimum all those mentioned in the preceding paragraph as well as the requirements under the *Grier Revised Consent Decree (Modified)* and information concerning provision of the seventy-two (72) hour emergency supply in applicable situations.
- b. The Contractor shall provide an information plan detailing education to TennCare providers regarding the TennCare PDL and associated prior authorization programs. The Contractor shall provide education and notification processes and methods designed to increase TennCare PDL compliance rates and minimize transition disruptions.
- c. The Contractor shall assign one of its pharmacy educator pharmacists to perform the duties of in-house development of the Provider Educator program. The Provider Educator shall be responsible for the execution of the TennCare-approved communication strategies that shall be developed for TennCare provider groups.
- d. Upon TennCare approval, the Contractor shall develop and produce program material to be provided to TennCare for distribution and supplied directly by the Provider Educator to provider groups.
- e. The Contractor shall implement the agreed upon communication strategies through direct involvement with prescribers and pharmacy providers and a combination of site visits, telephone support, internet-based application, and direct mail.
- f. The Contractor shall develop a process or system to capture the activities of the field-based provider educators. On a quarterly basis, the Contractor shall summarize, review and offer recommendations to TennCare regarding provider education.

#### **A.6. Prior Authorization Unit**

- A.6.1.a The Contractor shall operate a Prior Authorization Review Unit. A prior authorization shall be required for all non-preferred drugs or utilization of preferred drugs outside of established guidelines. These established guidelines can include, but are not limited to: Step Therapy; Clinical Criteria; Pro-Dur edits such as Drug-Gender and Drug-Drug interactions; quantity limits; etc. Prior authorization services shall consist of prescription review by a licensed pharmacist or pharmacy technician to ensure that all predetermined clinically appropriate criteria have been met before the prescription may be dispensed and subsequently reimbursed. This Unit shall have the capacity to render clinical determinations, issue notices to requestors and make reconsiderations on a twenty-four (24) hours-a-day, and seven (7) days-a-week basis for approximately one million, two hundred thousand (1,200,000) covered lives.
- b. The Prior Authorization Unit shall accept requests for prior authorization by telephone, facsimile, mail and through a web-based application. All prior authorization determinations shall be based on criteria approved by TennCare. The Prior Authorization Unit shall be responsible for the entire prior authorization transaction, including initial determinations, handling complaints and reconsiderations, making final determinations associated with the TennCare PDL and other approved guidelines or processes and issuing notices in

accordance with TennCare approved protocols. TennCare shall also approve the Contractor's process flow and notification format used prior to implementation or changes. Operational criteria and updates shall also be disclosed to TennCare on a regular basis.

- c. The Contractor shall provide TennCare with toll-free (in-state and out-of-state) telephone and facsimile numbers, appropriate mailing address for prior authorization requests, and web-site address sixty (60) days prior to the date the Contractor assumes full responsibility for the pharmacy benefits program. This toll-free number shall be transferable to TennCare upon termination of this Contract. The Contractor shall also distribute this/these number(s) to providers at all training and provider education sessions. It is anticipated that a significant number of the prior authorization requests for the TennCare PDL and other associated prior authorizations shall be received through the telephone system.
- d. The Prior Authorization Unit shall effectively manage all contacts in an efficient manner. The Prior Authorization Unit shall provide an automated call distribution system with a greeting message when necessary and educational messages approved by TennCare while callers are on hold. The Prior Authorization unit shall install and maintain its telephone line in a way that allows calls to be monitored remotely by TennCare in real-time or retrieved if TennCare can provide the date, time, callers number, or enrollee identification for the purposes of evaluating Contractor performance. The Prior Authorization Unit's telephone greeting shall include a message that informs callers that such monitoring is occurring.
- e. Call monitoring by a third party, for accuracy and quality of information, shall be available at the location and from TennCare.
- f. The Prior Authorization Unit shall ensure that there is a backup telephone system in place that shall operate in the event of an interruption in operations of 10 (ten) minutes or longer, or other problems so that access to the unit by telephone is not disrupted. The contractor shall notify TennCare of any system or business interruption that is ten minutes or longer in duration. In no event should the back up telephone system be in an off shore site.
- g. The Prior Authorization Unit shall provide sufficient telecommunications capacity to meet TennCare's needs with acceptable call completion and abandonment rates as specified in the performance standards below. This capacity shall be scalable (both increases and decreases) to demand in the future.
- h. The Contractor shall ensure that qualified personnel responding to prior authorization requests are fully trained and knowledgeable about TennCare standards and protocols, have the capacity to handle all telephone calls, facsimiles and web requests at all times and have the upgrade ability to handle any additional call, facsimile or web request volume. The Contractor shall be responsible for adequate staffing and equipment at all times, especially during high peak times. Any additional staff or equipment needs shall be the responsibility of the Contractor. The Prior Authorization Unit shall provide licensed pharmacists during all hours of unit operation to respond to pharmacy related questions that require clinical interventions, reconsiderations and consultation, and provide physician support for responses to prior authorization request reconsiderations.
- i. The Contractor shall design and implement a contact management and reporting system with capabilities to include an electronic recording of all calls and to provide a complete record of communication and documents from providers and other interested parties. The Contractor shall provide complete online access by TennCare to all computer files and databases that support the system for applicable pharmacy programs and develop, maintain, and ensure compliance with TennCare confidentiality procedures/policies, including HIPAA requirements, within the call line department.
- j. The Contractor shall be responsible for a Quality Assurance program that shall be in place to sample calls and follow up calls to confirm the quality of responses, and caller satisfaction. The Contractor shall be responsible for providing quarterly reports on the

outcomes of the Quality Assurance program, and any training required to assure adherence to PA criteria and consistent application of such criteria across all PA Unit staff.

- k. The Contractor's staff shall assist TennCare with the development of clinical prior authorization review criteria. The Contractor shall develop drug-specific prior authorization forms for prescribers to use when sending a request via facsimile or via the web. The prior authorization forms shall be available to prescribers via web download or fax-on-demand. TennCare shall review and approve the PA request forms prior to distribution by the Contractor.
- l. The Contractor shall develop a process by which every request for prior authorization is handled with the same procedure. This may be done by developing an algorithm/hierarchy for every PA that can be requested or other process developed by the Contractor and approved by TennCare.
- m. The Contractor shall be responsible for meeting the following performance standards and is required to provide reports demonstrating that it has performed as follows:
  - i. The Prior Authorization Unit shall be available twenty-four (24) hours-a-day, seven (7) days-a-week, to respond to prior authorization requests, except for prior, written, TennCare-approved downtime.
  - ii. The Contractor shall provide sufficient staff, facilities, and technology such that eight-five percent (85%) of all call line inquiry attempts are answered within thirty (30) second on a day's basis. Answer percentage rate shall be defined as the number of calls answered through the Automatic Call Distributor (ACD) line divided by (total number of ACD incoming calls added to the number of abandoned calls). The total number of abandoned calls shall not exceed three percent (3%) per day.
  - iii. Calls shall be answered within thirty (30) seconds. If an automated voice response system is used as an initial response to inquiries, an option shall exist that allows the caller to speak directly with an operator. The Contractor shall provide sufficient staff such that average wait time to speak to a live representative shall not be in excess of thirty (30) seconds on a daily basis.
  - iv. All call line inquiries that require a call back, including general inquiries, shall be returned within one (1) business day of receipt one hundred percent (100%) of the time.
- n. The Prior Authorization Unit shall also process prior authorization requests from prescribers via facsimile transmission, web-based transmission and U.S. Mail. All forms of requests shall also be responded to within twenty-four (24) hours of receipt one hundred percent (100%) of the time.
- o. Activities of the Prior Authorization Unit shall be summarized and reported to TennCare as described in section A.10.2 of this agreement. Failure to meet any of these standards may result in liquidated damages set forth in Attachment A.

#### A.6.2. Prior Authorization Process

Upon receipt of a request, the pharmacy technician at the Prior Authorization Unit shall query patient and/or drug information. If the request is consistent with the prior authorization and/or medical necessity criteria approved by TennCare, the technician shall document the request in the Contractor pharmacy case management system and enter an override in TennCare-POS system for the appropriate period of time.

If the request is not consistent with the prior authorization criteria or protocols and the prescriber wishes to have the request escalated, the request shall be referred to a clinical pharmacist on the

Prior Authorization Unit. If upon review, the clinical pharmacist finds sufficient justification, the request shall be documented and an override entered in the TennCare-POS system. If sufficient justification is not evident this shall be documented and the request shall be denied. The Contractor shall generate a notice to the requestor for all prior authorization request denials as specified in Section A.11 of this Contract. If the request requires further escalation or the prescriber requests reconsideration of a denied PA request, the request shall be forwarded to the Contractor's physician for reconsideration and final review. A physician shall review all reconsideration requests for denials and shall be available by telephone at all times for clinical support.

A.6.3. Prior Authorization Reconsideration

The Contractor shall have a reconsideration process, administered by a board certified physician, in place available to providers who wish to challenge adverse prior authorization decisions. This process shall ensure that appropriate decisions are made and communicated to the prescriber within twenty-four (24) hours of the initial request by a prescriber. The Contractor shall develop policies and procedures regarding the reconsideration processes. These shall be reviewed and approved by TennCare prior to implementation. The Contractor shall notify providers of the reconsideration process with respect to re-review of adverse prior authorization decisions. The Contractor shall provide TennCare with monthly reports indicating the number of reconsideration requests, analysis and disposition.

A.6.4. Enrollee Appeals and Special Circumstances

TennCare also requires a reconsideration process when an enrollee appeals a prior authorization denial. The Contractor's staff shall respond to reconsideration requests from the TennCare Solutions Unit (TSU) within one (1) business day, while maintaining confidentiality of information. Contractor staff shall be consistently responsive, helpful and courteous when responding to the inquiries received from the TSU.

In addition to providing a reconsideration determination, upon notice of an appeal from the TennCare Solutions Unit (TSU), the Contractor shall produce and deliver to the TSU all pertinent information regarding that particular prior authorization request by the close of business in two (2) business days.

The Contractor shall furnish specific telephone numbers for TennCare Solutions Unit (TSU) staff to make contact with the Contractor after normal business hours, weekends, and holidays in order to assure eligibility and coverage issues can be addressed and corrected pursuant to an appeal by a TennCare enrollee. The Contractor's supervisory personnel shall be required to respond immediately to inquiries from TSU personnel. TSU may require the Contractor's staff to enter a TennCare enrollee's eligibility information and allow processing of pharmacy claims in "after-hours" situations.

A.6.5. Member-Initiated Prior Authorization Request

The Contractor shall establish a Member-initiated prior authorization process that allows TennCare enrollees to request a prior authorization when twenty four (24) hours have elapsed since the claim's denial at the POS without a prior authorization request being made by the prescriber. The Contractor shall implement and manage the Member-Initiated Prior Authorization Process as follows:

- a. The Contractor shall develop a Member Unit for incoming Member telephone calls regarding prior authorizations. The Unit shall be fully operational and ready to receive telephone calls on the date the Contractor assumes full responsibility for the pharmacy benefits program
- b. Upon receipt of a Member telephone call, the Contractor call service representative (hereinafter referred to as "CSR") shall authenticate the caller as a TennCare member or his/her authorized representative and confirm that twenty four (24) hours have elapsed since the provider submitted the claim and received the denial.

- c. If the requisite twenty four (24) hours have elapsed, the CSR shall obtain the Member's cardholder ID number, confirm the name of the drug the Member is requesting for approval, and the name and contact information of the prescriber. The CSR shall also note if the Member has previously received this drug.
- d. The CSR shall review the information in the reporting system to verify whether the prior authorization process has been initiated by the prescriber. If the prescriber has initiated the process, the CSR shall inform the Member of the status of the prior authorization request and ask the Member to contact the prescriber for any follow-up inquiries.
- e. If the prior authorization process has not been initiated by the prescriber, the CSR shall log a prior authorization request into the Reporting System based on the information provided by the Member. The Requester Type shall be logged as "Patient". This shall generate a facsimile to be sent to the prescriber requesting further information to determine if the Member meets the necessary criteria for the prior authorization to be granted. The prescriber has three (3) business days from the initial Member telephone call to respond to the request for further information.
- f. The Contractor shall implement an operational process to identify requests that are still pending after the three (3) business day period has passed.
- g. At the end of the above process, one of the four following outcomes shall result:
  - i. The prescriber does not reply to the Contractor within the three (3) business day period. If so, the Contractor shall automatically identify requests that have not received a response, and shall generate a letter that shall inform the Member of the outcome. The Contractor shall generate and mail one of two TennCare approved letters to the Member. If the Member has not taken the requested drug recently, the Prior Authorization Denied Notice shall be sent to that Member. If the Member has taken the requested drug recently, the Prior Authorization Denied -- Continuation of Benefits Notice shall be sent to that Member.
  - ii. The prescriber changes the drug initially requested to a drug on the PDL. If so, the Contractor shall log the outcome of the request into the Reporting System. The Contractor shall contact the Member to explain this outcome and shall generate and mail the appropriate TennCare approved Prescription Change Notice to the Member.
  - iii. The prescriber provides sufficient information to grant a prior authorization. If so, the Contractor shall log the outcome of the request into the Reporting System. The Contractor shall contact the Member to explain the outcome and shall generate and mail the TennCare approved PA Granted Notice to the Member.
  - iv. The prescriber contacts the Contractor, but the prior authorization request is denied for lack of clinical support. If so, the Contractor shall generate and mail one of two TennCare approved letters to the Member. If the Member has not taken the requested drug recently, the Prior Authorization Denied Notice shall be sent to that Member. If the Member has taken the requested drug recently, the Prior Authorization Denied -- Continuation of Benefits shall be sent to that Member. This shall inform the Member of his/her Continuation of Benefits rights through the appeals process.
- h. The contractor shall provide sufficient staff, facilities, and technology such that calls to the Member-Initiated Prior Authorization Unit achieve daily average speed to answer performance of eighty-five percent (85%) in thirty (30) seconds and daily call abandonment rates less than three percent (3%).

**A.6.6. Administer Prior Authorization Program for the TennCare PDL**

- a. Prescriptions for non-preferred drugs shall require prior authorization (PA). A PA shall also be required for prescriptions that violate any of a variety of pro-DUR edits and/or are subject to clinical criteria or step therapy.
- b. The Contractor shall develop clinical prior authorization review criteria. CMS-approved reference books as well as current medical literature may be used to develop the criteria. The Contractor shall make all TennCare-approved prior authorization review criteria easily understood and widely available to TennCare providers through various media. The Contractor shall also present all prior authorization review criteria to the TennCare Pharmacy Advisory Committee prior to implementation.
- c. The Contractor shall develop a plan for administering the prior authorization program. The plan shall achieve the objective of compliance with the PDL without unduly disrupting access to care or increasing provider costs, and demonstrate the means by which this shall be accomplished.
- d. The Contractor shall provide prior authorization services for prescriptions written for non-preferred drugs or otherwise requiring PA. Prior authorization services shall consist of prescription review by a licensed pharmacist or pharmacy technician to ensure that all predetermined clinically appropriate criteria have been met before the prescription may be dispensed and subsequently reimbursed.
- e. The Contractor shall have an automated approval process for prior authorization based on the member's specific drug history with an emphasis on reduction of transactions and manual interventions.
- f. The Contractor shall ensure that all prior authorizations conducted by telephone meet the service and quality standards required by TennCare in this Contract.

**A.7. Pharmacy Help Desk**

- A.7.1 The Contractor shall operate a technical Pharmacy Help Desk with the capability to promptly respond to systems and claims submission inquiries from pharmacies providing services to TennCare recipients. The hours of operation shall be twenty four (24) hours per day and seven (7) days per week. Pharmacy inquiries arising from eligibility, benefit and DUR edits shall be resolved by this unit. The Help Desk shall also function as a recipient customer service unit after hours and on week ends and holidays. In no event should the Help Desk be in an off shore location.
- A.7.2. The Contractor shall provide a toll-free telephone number with capacity such that daily call blockage rates do not exceed point twenty-five percent (0.25%). This toll free number shall be transferable to TennCare upon contract termination. The Contractor shall provide TennCare with the Help Desk's toll free number sixty (60) days prior to the date the Contractor assumes full responsibility for the pharmacy benefits program. All telecommunication transaction cost are included in this Contract.
- A.7.3. The Contractor shall install, operate, monitor and support an automated call distribution system that has capability to provide messaging regarding time to live agent pick up, tele-FAQs and fax-on-demand. The contractor's system shall record all calls in a digital format. The contractor shall allow TennCare staff to monitor calls in real-time and hear specific calls made to the Help Desk if TennCare provides the date, time or callers number.
- A.7.4. The Contractor shall install, operate, monitor and support a contact management system that has capability to provide the management and *ad hoc* reporting needs of TennCare.

- A.7.5. The contractor shall provide sufficient staff, facilities, and technology such that the Technical Help Desk achieves daily average speed to answer performance of eighty-five percent (85%) in thirty (30) seconds and daily call abandonment rates less than three percent (3%).
- A.7.6. All Help Desk inquiries that require a call back shall be returned within one (1) business day of receipt one hundred percent (100%) of the time.
- A.7.7. The Help Desk shall have efficient escalation process with a pharmacist onsite between the hours of 7:00 a.m. and 9:00 p.m. Central Standard Time, Monday through Friday and 9:00 a.m. to 3:00 p.m. Central Standard Time on Saturdays. Pharmacists shall be on call outside of onsite hours and able to respond to escalated inquiries with one (1) hour if necessary.
- A.7.8. The Contractor shall identify and maintain a Help Desk agent who is very knowledgeable of the TennCare program. This agent shall be available twenty four (24) hours per day and seven (7) days per week. This individual shall assist with developing processes that support new initiatives, providing training to other contractor staff, participate in quality improvement activities and serve as TennCare's point of contact for priority inquiries.

**A.8 Pharmacy Network**

The Contractor shall establish and maintain a statewide pharmacy provider network of retail, specialty and Long Term Care Pharmacies, adequate to provide Pharmaceutical services and Pharmacy location sites available and accessible in accordance with the Terms and Conditions as set forth by TennCare. Other than those addressed in this Contract, the Contractor shall not collect any additional fees, rebates, premiums or revenue from processing TennCare claims. Pharmacies providing pharmaceutical services solely through the internet or mail order shall not be included in the network. A Specialty pharmacy network shall be established within the first year of this Contract. The specialty pharmacy network shall be the preferred provider of certain drugs identified by TennCare. The network specialty pharmacy shall agree to more favorable reimbursement rates on the designated products and possess unique clinical monitoring and distribution capabilities. Specialty pharmacy services may be provided through the mail. Retail pharmacies who offer mail prescriptions as part of their business may be included in the network, subject to quantity limits of the TennCare benefit.

- A.8.1 Access to Services. The Contractor shall maintain a network of pharmacy providers with a sufficient number of pharmacy providers who accept TennCare enrollees within each geographical location in the state so travel times do not exceed the allotted standard for a particular location. The Contractor shall consider the following:
  - a. The anticipated need to have a prescription filled outside the service area;
  - b. The expected utilization of services, taking into consideration the pharmaceutical needs of specific TennCare populations represented in the PBM;
  - c. The numbers and types (in terms of training, experience, and specialization) of pharmacy providers required to furnish the contracted TennCare services; and
  - d. The geographic location of pharmacy providers and TennCare enrollees, considering distance, travel time, the means of transportation ordinarily used by TennCare enrollees, and whether the location provides physical access for TennCare enrollees with disabilities.

The Contractor shall ensure that network pharmacy providers offer hours of operation that are no less than the hours of operation offered to commercial enrollees or comparable to TennCare fee-for-service, if the pharmacy provider serves only TennCare enrollees.

- A.8.2. Network Access. The Contractor shall maintain under contract a network of pharmacy providers to provide the covered services such that in urban areas, at least ninety percent (90%) of TennCare enrollees on average, live within two (2) miles of a retail pharmacy participating in the Contractor's network; in suburban areas, at least ninety percent (90%) of TennCare enrollees on average, live within five (5) miles of a retail pharmacy participating in the Contractor's network; and in rural areas, at least seventy percent (70%) of TennCare enrollees, on average, live within fifteen (15) miles of a retail pharmacy participating in the Contractor's network. Exceptions shall be justified and documented to the State on the basis of community standards. When requested by

TennCare, the Contractor shall make arrangements to provide pharmacy services to enrollees residing in locations where a suitable network provider is not available.

- A.8.3. The Contractor shall submit a monthly Provider Enrollment File that includes information on all providers of TennCare pharmacy services. The report shall include contract providers and all non-contract providers with whom the Contractor has a relationship. The Contractor shall submit this report in the format agreed to by TennCare. The Contractor shall submit this report by the 5<sup>th</sup> of each month, and upon TennCare request. Each monthly Provider Enrollment File shall include information on all providers of TennCare pharmacy services and shall provide a complete replacement for any previous Provider Enrollment File submission. Any changes in a provider's contract status from the previous submission shall be indicated in the file generated in the month the change became effective and shall be submitted in the next monthly file.
- A.8.4. The Contractor shall be required to produce a provider directory that shall be made available on the Contractor's web-page and in print by request. All provider directories shall be approved by TennCare prior to the Contractor's distribution. The Contractor shall provide a data file that shall include current pharmacy provider name, NPI, address(es), telephone numbers fax numbers, and hours of operation in the format prescribed by TennCare. In addition, the provider information used to populate the provider directory shall be submitted as a TXT file or such format as otherwise approved by TennCare and be produced using the same extract process as the actual provider directory. On a quarterly basis, the Contractor shall also be responsible for updating the pharmacy provider information in the provider directory.
- A.8.5. Pharmacy Notices. The Contractor shall assure that contracted pharmacies comply with TennCare notice requirements which include, but are not limited to prominent display of TennCare pharmacy poster and distribution of member notices from pharmacist to enrollee upon non-dispensing of a prescription for which PA is required. All notices must comply with requirements as provided in the *Grier Revised Consent Decree*. Failure to comply may result in damages as described in Attachment A.
- A.8.6. Pharmacy Audit. The Contractor shall establish and maintain a Program Integrity process. The process shall detect and prevent errors, fraud or abusive pharmacy utilization by enrollees, pharmacies or prescribers. The Contractor shall also review children's prescriptions at POS to screen for possible fraudulent attempts by adult recipients to obtain prescriptions for themselves. Pharmacies with aberrant claims or trends shall be contacted by the Contractor's staff to gain an acceptable explanation for the finding or to submit a corrected claim. The Contractor shall develop a trend or log of aberrancies that shall be shared with TennCare. Each quarter the Contractor shall summarize findings from the reports and meet with TennCare to address program revisions. Revisions to the desk audit reports and review process shall be provided at no cost to TennCare. Program Integrity activities shall be summarized and reported to TennCare as described in section A.10.2 of this agreement.
- a. TennCare shall request that the Contractor initiate a field audit when desk audits consistently identify aberrations that can not be explained by other means or upon requests from legal authorities or regulatory agencies. The objective of the field audit shall include financial recovery, and elimination of the aberrant practice. The Contractor shall have the qualified staff available to conduct field audits or have an agreement with a vendor acceptable to TennCare within ninety (90) days of on the date the Contractor assumes full responsibility for the pharmacy benefits program start date. The Contractor shall conduct ten (10) field audits per quarter.
- b. Verification of Benefits (VOB) Letters
- i. Each month, five hundred (500) randomly selected recipients shall be sent a letter requesting their reply to confirm whether they received the prescriptions processed in the preceding month and identified in the letter.
- ii. The process of identifying the claims for inclusion is as follows:
- (1) Only paid claims adjudicated during the previous month shall be included

- (2) Medications shall be in one of the classes identified on the "inclusion list" to be finalized by the parties; and
  - (3) Up to five (5) claims shall be included for each recipient. Once a recipient has been mailed a VOB letter, they shall be exempted from the VOB lettering process for the following six (6) months.
- iii. TennCare may request to include claims from up to 5 specific pharmacies during each month's run.
- c. Each mailing shall include a double-sided document including the letter on the front page, with the claim detail and signature line on the back, as well as a postage paid envelope for the recipient to use for the return mailing. The letters must be preapproved by TennCare.
  - d. TennCare shall be responsible for postage related to the mailing of these letters, as well as the return postage.
  - e. VOB responses shall be followed up on by the Contractor's audit unit and the Contractor will provide TennCare with a quarterly report on the findings from the responses.

A.8.7. Non-Network Providers. Pharmacies providing services to enrollees without a Provider Service Agreement are non-network providers. These providers may be reimbursed at a lower rate than network pharmacy providers. However, if the Contractor's network is unable to provide necessary, pharmacy services covered under this Contract to a particular enrollee, the Contractor shall adequately and timely cover these services out-of-network, at a network rate, for as long as a network pharmacy provider is unable to provide services. The non-network pharmacy provider shall coordinate with the Contractor with respect to payment, establishing a Sole Service Agreement as described in Attachment A. The Contractor shall ensure that co-pay cost to the enrollee is no greater than it would be if the services were furnished within the network. Under T.C.A. § 56-7-2359, the Contractor may not deny any licensed pharmacy or licensed pharmacist the right to participate as a participating provider in any policy, contract or plan on the same terms and conditions as are offered to any other providers of pharmacy services under the policy, contract or plan.

A.8.8. The Contractor shall participate in the State's efforts to promote the delivery of services in a culturally competent manner to all enrollees, including those with Limited English Proficiency and diverse cultural and ethnic backgrounds.

A.8.9. Provider Service Agreements. The Contractor shall assure the provision of all covered Pharmacy services specified in this Contract. The Contractor shall enter into agreements with providers who shall provide pharmacy services to the enrollees in exchange for payment from the State for services rendered. The Contractor should make every effort to enter into pharmacy provider agreements with those entities whose practices exhibit a substantive balance between TennCare and commercial customers. Provider agreements shall be between the pharmacy provider and Contractor, not between the pharmacy provider and TennCare.

A.8.9.1. The Contractor shall submit one copy of all template pharmacy provider agreements and copies of the face and signature pages in an electronic format agreed to by TennCare of all executed agreements to TennCare. This information should be refreshed annually or upon TennCare's request.

A.8.9.2. The Contractor shall execute provider agreements with participating pharmacies that maintain all federal, state and local licenses, certifications, and permits, without restriction, required to provide pharmaceutical services to TennCare enrollees and shall comply fully with all applicable laws and regulations. Further, all template pharmacy provider agreements and revisions shall be approved in advance by the TennCare pharmacy program and the Tennessee Department of Commerce and Insurance.

A.8.9.3. All pharmacy provider agreements executed by the Contractor, and all pharmacy provider agreements executed by subcontracting entities or organizations, pursuant to this Section shall, at a minimum, meet the following requirements and no other terms or conditions

agreed to by the Contractor and pharmacy provider shall negate or supersede the following requirements:

- a. Be in writing. All new pharmacy provider agreements and existing pharmacy provider agreements as they are renewed, shall include a signature page that contains Contractor and provider names, that are typed or legibly written, provider company with titles, dated signatures of all appropriate parties and all provider identifiers (i.e., tax identification number, DEA number, NPI number, etc.). Pharmacy providers shall not be allowed to modify the agreement as approved by TennCare. Any agreement submitted with alterations shall be rejected by the Contractor and returned to the submitting pharmacy provider.
- b. Specify the effective starting date of the pharmacy provider agreement.
- c. Specify in the pharmacy provider agreement that the agreement and its attachments contain all the terms and conditions agreed upon by the parties.
- d. Assure that the pharmacy provider shall not enter into any subsequent agreements or subcontracts for any of the work contemplated under the pharmacy provider agreement without approval of the Contractor.
- e. Specify that pharmacies may not refuse to provide pharmacy services to TennCare members solely because the member is unable to pay co-payment, as required by federal law. Refusal of services due to lack of co-payment shall be grounds for dismissal of the pharmacy provider.
- f. Specify that pharmacy providers may be asked to be the exclusive pharmacy for lock-in enrollees. The pharmacy provider shall not be required to continue providing services to an enrollee with whom the provider feels he/she cannot establish and/or maintain a professional relationship.
- g. Provide that pharmacists shall assist TennCare enrollees to comply with the following: TennCare PDL, Step Therapy and prior authorization requirements, resolving point-of-sale (POS) edits and other activities to allow the enrollees to optimize the benefit.
- h. Ensure that the pharmacy provider is not currently nor has ever been sanctioned by HHS-OIG and is prevented from participating in a federally-funded program such as TennCare.
- i. Verify that the pharmacy provider continues to be properly licensed by the State Board of Pharmacy.
- j. Specify pharmacy provider cooperation with all utilization review management, quality assurance, peer review, and other similar programs.
- k. Require that an adequate record system be maintained for recording services, servicing pharmacy, charges, dates and all other commonly accepted information elements for services rendered to enrollees pursuant to the agreement (including but not limited to such records as are necessary for the evaluation of the quality, appropriateness, and timeliness of services performed under the Pharmacy Agreement). This shall include the maintenance of a signature log that shall list the recipient's name, date the prescription(s) is/are picked up, and the prescription number(s). TennCare enrollees and their representatives shall be given access to their pharmacy records, to the extent and in the manner provided by Tennessee Code Annotated §§ 63-2-101 and 63-2-102, and be given copies upon request;
- l. Require that any and all records be maintained for a period not less than five (5) years from the close of the agreement and retained further if the records are under review or audit until the review or audit is complete. Said records shall be made available and furnished immediately upon request for fiscal audit, medical audit, medical review, utilization review, and other periodic monitoring upon request of authorized

representative of the Contractor or TennCare and authorized federal, state and Comptroller personnel.

- m. Provide that TennCare, U.S. Department of Health and Human Services, Tennessee State Board of Pharmacy, Tennessee Bureau of Investigation(TBI) State auditors, and other agencies as designated by TennCare shall have the right to evaluate through inspection, whether announced or unannounced, or other means any records pertinent to this Contract including quality, appropriateness and timeliness of services and such evaluation, and when performed, shall be performed with the cooperation of the pharmacy provider. Upon request, the pharmacy provider shall assist in such reviews including the provision of complete copies of prescription records, reports or any other media whether electronic or hardcopy.
- n. Provide for monitoring, whether announced or unannounced, of services rendered to enrollees sponsored by the Contractor and that services are compliant with all decrees, court orders, or judgments that are required of TennCare.
- o. Whether announced or unannounced, provide for the participation and cooperation in any internal and external quality management, quality improvement, utilization review, peer review and appeal procedures established by the Contractor and/or TennCare.
- p. Specify that the Contractor shall monitor the quality of services delivered under the agreement and initiate corrective action where necessary to improve quality of care, in accordance with that level of care that is recognized as acceptable professional practice in the respective community that the pharmacy provider practices and/or the standards established by TennCare.
- q. Require that the pharmacy provider comply with corrective action plans initiated by the Contractor or be subject to recoupment of funds, termination or other penalties determined by TennCare.
- r. Provide for submission of all reports and clinical information required by the Contractor.
- s. Require pharmacy providers safeguard information about enrollees according to applicable state and federal laws and all HIPAA regulations including, but not limited to 42 CFR § 431, Subpart F, and all applicable Tennessee statutes and TennCare rules and regulations. In no event may the Contractor provide, grant, allow, or otherwise give, access unless authorized by TennCare. The Contractor shall assume all liabilities under both state and federal law in the event that the information is disclosed in any manner.
- t. Provide the name and remittance address of the official payee to whom payment shall be made.
- u. Provide for prompt submission of information needed to make payment.
- v. Provide for payment to the pharmacy provider upon receipt of a clean claim properly submitted by the pharmacy provider within the required time frames specified in T.C.A. § 56-32-226 and Section A.2.2.1 of this Contract.
- w. Specify that the pharmacy provider shall accept payment or appropriate denial made by the Contractor (or, if applicable, payment by the Contractor that is supplementary to the enrollee's primary payor) plus the amount of any applicable cost sharing responsibilities, as payment in full for covered services provided and shall not solicit or accept any surety or guarantee of payment from the enrollee in excess of the amount of applicable cost sharing responsibilities. Enrollee shall include the patient, parent(s), guardian, spouse or any other legally responsible person of the patient being served.
- x. Specify that at all times during the term of the agreement, the pharmacy provider shall indemnify and hold TennCare harmless from all claims, losses, or suits relating to activities undertaken pursuant to the Contract between TennCare and the Contractor. This

indemnification may be accomplished by incorporating Section 4-20 of the TennCare/MCO Agreement available at [atp://www.tennessee.gov/TennCare/providers/TCBHOMCO.html](http://www.tennessee.gov/TennCare/providers/TCBHOMCO.html) in its entirety in the pharmacy provider agreement or by use of other language developed by the Contractor and approved by TennCare.

- y. Require the pharmacy provider to secure all necessary liability and malpractice insurance coverage as is necessary to adequately protect the Plan's enrollees and the Contractor under the agreement. The pharmacy provider shall provide such insurance coverage at all times during the agreement and upon execution of the pharmacy provider agreement furnish the Contractor with written verification of the existence of such coverage.
- z. Provide that any changes in applicable federal and state laws, TennCare rules and regulations or court orders, and revisions of such laws or regulations shall be followed as they become effective. If changes in the agreement result from revisions and/or applicable federal or state law materially affect the position of either party, the Contractor and pharmacy provider agree to negotiate further any amendment as may be necessary to correct any inequities.
- aa. Specify procedures and criteria for any alterations, variations, modifications, waivers, extension of the agreement termination date, or early termination of the agreement and specify the terms of such change. If provision does not require amendments be valid only when reduced to writing, duly signed and attached to the original of the agreement, then the terms shall include provisions allowing at least thirty (30) days to give notice of rejection and requiring that receipt of notification of amendments be documented (e.g., Certified Mail, facsimile, hand-delivered receipt, etc).
- bb. Specify that both parties recognize that in the event of termination of this Contract between the Contractor and TennCare for any of the reasons described in Section E. 5 of this Contract, the pharmacy provider shall immediately make available, to TennCare, or its designated representative, in a usable form, any or all records, whether medical or financial, related to the pharmacy provider's activities undertaken pursuant to the Contractor/pharmacy provider agreement. The provision of such records shall be at no expense to TennCare.
- cc. Include provisions for resolution of disputes either by arbitration or another process mutually agreed to by the parties. Specify the TennCare Provider Independent Review of Disputed Claims process shall be available to providers to resolve claims denied in whole or in part by the Contractor as provided at T.C.A. § 56-32-226(b).
- dd. Specify that the pharmacy provider shall be required to accept TennCare reimbursement amounts for TennCare covered services provided under the agreement between the pharmacy provider and Contractor to TennCare enrollees for TennCare covered services and the TennCare reimbursement shall be considered payment in full.
- ee. Specify that the Contractor shall give pharmacy providers prior written notice of a determination that a reduction in the provider fee schedule is necessary to remain with the maximum liability of this Contract and further, specify that the contractor shall give pharmacy providers thirty (30) days prior written notice of said reductions and the pharmacy provider shall agree to the adjusted rates;
- ff. Specify that a pharmacy provider shall have no more than ninety (90) calendar days from the date of rendering a health care service to file an initial claim with the Contractor except in situations regarding coordination of benefits or subrogation case that the pharmacy provider is pursuing payment from a third party or if an enrollee is enrolled in the plan with a retroactive eligibility date.
- gg. Ensure that the pharmacy provider shall use the best available information to identify recipients with primary insurance other than TennCare. In this case, the pharmacy shall submit NCPDP compliant coordination of benefit claim to the primary insurer and TennCare. TennCare is always the payor of last resort. In situations of enrollment in the plan

with a retroactive eligibility date, the minimum and maximum time frames for filing a claim shall begin on the date that the Contractor receives notification from TennCare of the enrollee's eligibility.

- hh. Specify that the pharmacy provider shall comply with the appeal process as provided in the *Grier* Revised Consent Decree including but not limited to assisting an enrollee by providing appeal forms and contact information including the appropriate address for submitting appeals for state level review. Specify that the pharmacy provider shall display notices of TennCare enrollee right to appeal adverse decisions affecting services and other applicable notices in public areas of their facility(ies) in accordance with TennCare rules, 1200-13-13-.11 and 1200-13-14-.12.
- jj. Specify that the pharmacy provider shall be compliant with Section 6032 of the Deficit Reduction Act of 2005 (DRA) with regard to policy development, employee training and whistle blower protection related to The False Claims Act, 31 U.S.C. §§ 3729-3733, *et seq.*
- kk. Specify that the pharmacy provider shall inform recipients of their options and submit emergency seventy-two (72) hour claims when requested.
- ll. Require that if any requirement in the pharmacy provider agreement is determined by TennCare to conflict with the Contract between TennCare and the Contractor, such requirement shall be null and void and all other provisions shall remain in full force and effect.
- mm. Specify that in the event that TennCare deems the Contractor is unable to timely process and reimburse claims and requires that the Contractor to submit pharmacy provider claims for reimbursement to an alternate claims processor to ensure timely reimbursement, the pharmacy provider shall agree to accept reimbursement at the Contractor's contracted reimbursement rate or the rate established by TennCare, whichever is greater.
- nn. The Contractor shall give TennCare and the Tennessee Department of Commerce and Insurance, TennCare Division, immediate notification in writing by Certified Mail of any administrative or legal action or complaint filed regarding any claim made against the Contractor by a pharmacy provider or enrollee that is related to the Contractor's responsibilities under this Contract including, but not limited to, notice of any arbitration proceedings instituted between a pharmacy provider and the Contractor. The Contractor shall ensure that all tasks related to the pharmacy provider agreement are performed in accordance with the terms of this Contract.
- oo. Specify that the pharmacy provider warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractors, or consultant to the pharmacy provider in connection with any work contemplated or performed relative to the agreement unless otherwise authorized by the Commissioner, Tennessee Department of Finance and Administration.
- pp. Specify that the pharmacy provider agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this contract or in the employment practices of the pharmacy provider on the grounds of disability, age, race, color, religion, sex, national origin, economic status, payment source, or any other classification protected by federal, Tennessee State constitutional, or statutory law.
- qq. The Provider Agreement shall provide for arbitration of disputes between the Contractor and the Provider. Sample language that may be used is as follows:

Any controversy or claim arising out of or relating to this Contract, or breach thereof, shall be settled by arbitration in accordance with the Rules of the American Arbitration Association, and judgment upon the award may be entered in any Court having

jurisdiction thereof. The parties are free to customize and refine the basic arbitration procedures to meet their particular needs.

- rr. The Provider Agreement shall provide for dispute resolution between the Contractor and the Provider. Sample language that may be used is as follows:

It is the intent of the parties that any controversy or claim arising out of or relating to this Contract, or breach thereof, shall be resolved by dispute resolution. The parties agree that should any dispute or controversy arise, the following steps toward resolution will be immediately taken: either party may initiate dispute resolution procedures by sending a certified or registered letter to the other party setting forth the particulars of the dispute, the terms of the contract involved, and a suggested resolutions of the problem; the recipient of the letter must respond within thirty (30) days with an explanation and response to the proposed solution; if the correspondence does not resolve the dispute, then the parties shall meet on at least one occasion and attempt to resolve the matter. The meeting should be in the county of the pharmacy; if this step does not produce a resolution then the parties agree to mediate or arbitrate the dispute. The parties are free to customize and refine the basic mediation and arbitration procedures to meet their particular needs.

- ss. Require the pharmacy providers to distribute the Prior Authorization Required form to enrollees whenever a prescription can not be filled due to a prior authorization requirement.

A.8.9.4 The Contractor shall ensure provider compliance with federal Law, when implemented, requiring that written prescriptions only be filled if they are presented on an approved tamper proof form. Failure of Provider to follow this law shall be grounds for dismissal from the network

A.8.10 Network Deficiency

Upon Notification from TennCare of a network deficiency, which shall be based on the Terms and Conditions for Access of the TennCare Waivers, the Contractor shall immediately provide written notice to enrollees living in the affected area of a provider shortage in the Contractor's network. The notice content shall be reviewed and approved by TennCare prior to distribution.

A.8.11. Provider Sole Service Agreements

The Contractor shall assure the provision of all covered Pharmacy services specified in this Contract. When necessary to fulfill the terms of this agreement, the Contractor shall enter into short term agreements with non-network pharmacy providers who shall provide pharmacy services to the enrollees for a specified period in exchange for payment from the Contractor for services rendered. The Contractor shall make every effort to enter into pharmacy provider agreements with those entities under the same rules and regulations as outlined in the pharmacy Provider Service agreement for In-Network pharmacy providers.

A.8.11. Return of TennCare-Specific Data

At termination of this Contract, whether or not before the Contract termination date, the Contractor shall deliver to TennCare in a TennCare-approved format, a list of the current provider network including, but not limited to demographic and credentialing information.

A.8.12. The Contractor shall have in place written policies and procedures for the selection and/or retention of pharmacy providers and policies and procedures shall not discriminate against particular pharmacy provider that service high risk populations or specialize in conditions that require costly treatment.

A.8.13. Should the Contractor decline to include individual or groups of pharmacy providers in its network, it shall give the affected pharmacy providers written notice of its decision.

## **A.9. Staffing**

The Contractor shall have total responsibility for hiring and management of any and all Contractor staff as determined necessary to perform the services in accordance with the terms of this Contract and shall provide a proposed staffing plan for review and approval by TennCare. The Plan shall include at a minimum, key staff identified below and corresponding job descriptions. The Contractor's failure to provide and maintain key staff may result in liquidated damages as set forth in Attachment A.

### **A.9.1. Staff Requirements**

- a. The Contractor shall provide to TennCare documentation verifying that all staff employed by the Contractor or employed as a sub-contractor are licensed to practice in his or her area of specialty. This documentation shall be supplied at the execution of this Contract and annually thereafter, due on September 15 of each year of the Contract. Failure to provide documentation verifying that all staff employed by the Contractor, or employed as a sub-contractor are licensed may result in liquidated damages as set forth in Attachment A.
- b. The Contractor shall provide TennCare with copies of resumes and job descriptions for all persons employed under this Contract. TennCare reserves the right, at its sole discretion, to request dismissal of Contractor staff and sub-contracted staff, for services under this Contract only, from this project based on performance deficiencies and/or lack of knowledge, skills or demonstrated expertise necessary to perform contracted activities.
- c. The Contractor shall reallocate staffing resources based on current TennCare program needs and current TennCare structure. Such reallocations may be requested of the Contractor by TennCare management.
- d. The Contractor shall ensure that all Contractor staff and sub-contracted staff are trained and knowledgeable regarding all applicable aspects of the TennCare Pharmacy Programs.
- e. The Contractor shall employ competent staff in all key positions listed below. If any key position becomes vacant, the Contractor shall employ an adequate replacement within sixty (60) days of the vacancy unless TennCare grants an exception to this requirement. Failure to fill vacancies within 60 days may result in liquidated damages as set forth in Attachment A.

A.9.2. A training plan shall be submitted and approved by TennCare within ten (10) business days of the execution of this Contract. Contractor shall be responsible for providing training to any newly hired Contractor staff and sub-contracted staff prior to those individuals performing any reviews. Training for newly hired Contracted staff and sub-contracted staff shall be approved by the Chief Pharmacy Officer at least seventy-two (72) hours in advance.

A.9.3. The Contractor shall provide staff that is current and knowledgeable in their respective areas of expertise. This staff shall provide quality consultation and technical assistance services regarding all matters pertaining to pharmacy benefits.

A.9.4. The Contractor shall, at a minimum, have at least fifty percent (50%) of its staff in the core disciplines available during the hours of 8:00 a.m. to 4:30 p.m. Central Standard Time, Monday through Friday, as required to fulfill the scope of services specified in this Contract. If the Contractor is not adequately staffed, TennCare may assess liquidated damages of two thousand, five hundred dollars (\$2,500) for each occurrence.

### **A.9.5. Staff Dedicated to TennCare**

### Pharmacy Contract Project Director and Staff

The Contractor shall designate and maintain, subject to TennCare approval, a Project Director for this Contract who has day-to-day authority to manage the total project. The Project Director shall be readily available to TennCare staff during regular working hours by working onsite at least seventy-five percent (75%) of the time within the TennCare Bureau. The Project Director shall be one hundred percent (100%) dedicated to the TennCare Pharmacy Program. The Contractor's staff addressed herein shall be available to attend meetings as requested by TennCare. TennCare shall provide office space for the Contractor's onsite Pharmacy Project Director and staff. The Contractor shall maintain sufficient levels of staff including supervisory and support staff with appropriate training, work experience, and expertise to perform all contract requirements on an ongoing basis including but not limited to the following personnel, all of whom shall be dedicated one hundred percent (100%) to TennCare.

- a. Two (2) clinical pharmacists on site;
- b. Four (4) provider educator pharmacists located in Tennessee. Three of these educators shall be field based in each of the regions of Tennessee and one office based on site. The Nashville based provider educator may serve as the presenter at Retro-Dur meetings due to the proximity to the Nashville location;
- c. One (1) data research analyst located on site;
- d. One (1) program coordinator located on site;
- e. One (1) system liaison located in contractors home office and available on site upon request from TennCare, and
- f. One (1) contract manager located in contractors home office, and available on site upon request from TennCare.

### **A.10. TennCare Reporting Requirements**

The Contractor shall submit accurate and complete reports to TennCare as described through this Contract. Reports shall meet the content, format and method of delivery requirements of TennCare. TennCare requires that all management reports be provided in accordance with the time frames set forth in the Performance and Deliverables section in Attachment A. Failure to provide reports as described herein may result in liquidated damages as set forth in Attachment A. All reports, analyses, and/or publications developed under this Contract shall be the property of TennCare. TennCare reserves the right to change reporting requirements and request *ad hoc* reports. All reporting shall be delivered through a web-based report library that can be imported to Microsoft Excel.

#### **A.10.1 Management Reports**

The Contractor shall provide TennCare with industry standard utilization and financial management reporting. The Contractor's management reports shall provide a summary of drug costs by therapeutic category, by top ranked drugs, and by benefit categories. Reports shall include, but not be limited to:

- a. Financial summary with change trend
- b. Utilization statistics
- c. Claim processing volume, processing time and other statistics;
- d. Cost trend reports
- e. Fraud detect/ Investigation activity
- f. DUR reports (retrospective and prospective)
- g. PDL reports
- h. Prior Authorization

- i. Call Center metrics
- j. Grievance, appeal volume, disposition and aging
- k. Prescriber profiles
- l. Rebate reports
- m. MAC savings report
- n. Pharmacy Access reports
- o. An electronic file of priced or paid claims
- p. All other reports referenced in the RFP

A.10.2. In addition to standard management reports, the Contractor shall provide the following additional capabilities and custom reports in a format agreed to by TennCare:

- a. Clinical Initiative Reports - As clinical programs are implemented, the Contractor's staff shall coordinate with TennCare to define additional reports to gauge the effectiveness of various clinical initiatives, including movement of market share within given therapeutic categories of the TennCare PDL. The criteria and format for clinical initiative reporting shall be mutually agreed upon by TennCare and the Contractor. The Contractor's utilization management reporting package shall be customizable to meet TennCare program analysis needs.
- b. Ad Hoc Reports - The Contractor shall be able to provide, at no extra cost to TennCare ad hoc reports that shall assist in managing the pharmacy benefit for TennCare members. Ad hoc reports shall be provided in a format agreed to by the TennCare and on a reasonable timetable.
- c. Decision Support Tools - The Contractor shall also furnish TennCare staff with access to a decision support system (DSS) that shall allow user defined queries to address managerial concerns that would normally be requested in an *ad hoc* report. The capability shall not diminish the Contractors responsibility for responding to requests for *ad hoc* reports.
- d. TennCare Staff Online Access - The Contractor shall provide the TennCare staff and their designees individual access to the Contractor's POS claims system, prior authorization system, decision support system and other information systems as necessary via an online, real time connection at no additional cost.
- e. Emergency Supply Aggregate Reports - The Contractor shall provide TennCare with monthly emergency supply aggregate reports that list the top 100 pharmacies entering emergency supplies and the top one hundred (100) prescribers associated with those overrides. The reports shall also include the top one hundred (100) drugs associated with emergency supplies as well as summary totals of overrides. The emergency supply reports shall be delivered to TennCare in electronic format via web-based report library, as described by TennCare.
- f. Emergency Supply Aggregate Interventions and Prior Authorization Operations - On a weekly basis, the Contractor shall monitor all emergency supply overrides performed by dispensing pharmacists at the point-of-sale, pursuant to the policy regarding dispensing of drugs not listed on the TennCare PDL and identify the top one hundred (100) prescribers of non-preferred drugs that were filled during the previous week.
- g. Monthly Claim Activity Reports - The Contractor shall produce reports that identify the numbers of, and reasons for, claims adjudicated-paid and adjudicated-denied (according to the TennCare definition of these terms). Reports shall separate claims by TennCare-defined provider type. Reports shall include, but not be limited to: billed amounts; paid amounts; basis of cost; quantity, days supply; generic drug name; generic drug code; recipient information; prescriber information; etc. In addition, claim activity reports shall identify paid, denied or rejected claims for each problem type and drug to satisfy federal annual reporting requirements to include, but not be limited to: quantity of batch electronic claims and paper claims received/processed in reporting period, year to date; and quantity of POS claims received/processed in reporting period, year to date. These reports shall be in an electronic format acceptable to TennCare such as MS Excel®.

- i. Monthly Batch Claim Operations Reports - The Contractor shall provide reports of data entry volumes and types of transactions with daily, weekly and monthly summaries.
- j. Monthly Pro-DUR Reports - The Pro-DUR systems capability shall provide operational and management reports. The reports listed below indicate the nature of TennCare's interests in this area. The system shall produce reports that identify Pro-DUR alert conditions including, but not limited to the following: number of messages generated; number of messages overridden; number of reversals/cancellations/denials; number and types of interventions by pharmacists, and the outcomes of such interventions; and, number and dollar amount of claim adjustments and reversals.
  - i. The system shall compile data and produce reports to demonstrate the cost effectiveness of the Pro-DUR component of the TennCare-POS according to state specifications and federal reporting requirements.
  - ii. The system shall generate Pro-DUR management reports that summarize alerts by type, pharmacy, prescribing physician, and other criteria as required by TennCare.
  - iii. The system shall allow the export of an electronic file or online system to be used by TennCare for further ad hoc analysis of Pro-DUR activity. The format and timing of the production of this file shall be defined during the DDI phase.
- k. Systems Help Desk and Prior Authorization Call Center Activity Reports - The Contractor shall produce reports on usage of the Systems Help Desk and Prior Authorization Call Center services, including numbers of inquiries, types of inquiries, and timeliness of responses.
- l. Prior Authorization Call Center Reporting - Prior Authorization Call Center reporting shall be provided on a weekly and monthly basis, and, at a minimum, shall include the following:
  - i. Total hours of daily call center access provided, and any downtime experienced.
  - ii. Call abandonment rate, and average abandon time by day.
  - iii. Average answer speed in seconds by day.
  - iv. Comprehensive report listing the type and disposition of all requests handled during the month. Report should provide approval rates by drug and therapeutic class
  - v. Request volume by prescriber and pharmacy, with indication of the key types of requests being received, including drug names and categories.
  - vi. Average ACD time of calls handled by day
  - vii. Total number of intervention requests received by day.
  - viii. Total number of PA requests processed by day.
  - ix. Total number of PA requests approved by day.
  - x. Total number of PA requests denied by day.
  - xi. Total number of intervention requests received by facsimile by day.
  - xii. Total number of intervention requests received by U.S. Mail by day.

xiii. Total number and types of complaints received from TennCare enrollees regarding any difficulties receiving pharmacy services under the TennCare Pharmacy Program by day.

m. Top 100 Narcotic Prescribers Report- Twice yearly the Contractor will report on the Top 50 prescribers of narcotic prescriptions including information needed to follow up with Managed Care Organizations (MOC) which includes, but is not limited to, number of claims, enrollees, enrollee demographic information such as MCO, and types/names of drugs prescribed.

A.10.3. The Contractor shall produce the monthly PDL compliance reports listed below. Failure to provide the reports as described below may result in the assessment of liquidated damages as set forth in Attachment A.

a. Monthly Cost Savings/Avoidance Report that includes: utilization shifts by drug and drug class; cost savings resulting from changes in prescribing, by drug and drug class; compliance with TennCare PDL drug classes by prescribers; expenditure per claim comparison (monthly/quarterly/yearly);

b. Monthly benefit limit report summarizing the number of recipients and claims encountering prescription limits, number of recipients and claims filled from Auto-Exemption list and number of recipients and claims filled through the Attestation process;

c. Quarterly evaluation of the effectiveness of the TennCare PDL and Prior Authorization programs, including recommendations for changes to TennCare PDL drugs, the criteria for review and approval of drugs, and protocols and procedures;

d. Monthly Supplemental Rebate Negotiations Status Report underway and/or completed, the status of negotiation outcomes and the product-specific financial impact of the supplemental rebates on the TennCare PDL;

e. Quarterly report on supplemental rebate invoicing including calculations of the net cost of effected drugs to TennCare;

f. Report on Total Estimated and Projected Future Savings from the TennCare PDL and Prior Authorization programs (monthly for the initial twelve (12) months of this contract and quarterly thereafter), and

g. Quarterly reports demonstrating the nature and extent of educational interventions to outlier prescribers and pharmacists and the outcomes of those interventions.

A.10.4. The Contractor shall produce the following Program Integrity reports. Daily reports shall be produced, reviewed and delivered daily Monday through Friday by 3:00pm CT. Monthly reports shall be produced and reviewed monthly by ten (10) business days after end of month. Failure to provide the reports as described below may result in the assessment of liquidated damages as set forth in Attachment A.

a. Ingredient Cost/Prescription Report: This daily report shall identify claims with a total cost that exceeds seven hundred and fifty dollars (\$750) at retail. The claims must be reviewed for reasonableness by a pharmacist to: identify incorrect claims submission, for identification medications for steorage to specialty vendors and for identification opportunities to suggest utilization management edits or benefit design changes.

b. Override Report: Daily claims paid with override, prior authorization or unique adjunction rule reporting.

c. Submitted Units/Rx (topical dosage forms only) This daily report shall identify claims where the total quantity exceeds four hundred and eighty (480) units per prescription for topical products and claims are reviewed by the Contractor for keying errors. The report shall identify incorrect claims submission and screen for inappropriate dosing.

- d. Enrollees Using Multiple Prescribers Report shall identify enrollees that exceed five (5) prescribing physicians per quarter, identify enrollees with potential lack of continuity or conflict resulting from multiple physician utilization, screen for patterns of medication abuse or overuse, and identify patients as candidates for MCO medical case management.
- e. Enrollee Use of Controlled Substances The report shall screen for inappropriate, duplicate or conflicting pharmacotherapy; screen for potential fraud or drug diversion; and identify patients for referral to pain management or substance abuse services. The report shall identify enrollees for pharmacy lock-in initiative. TennCare shall define the report base on the number of prescribers, pharmacies and percentage controlled substance dose exceeding the Maximum Daily Dose. The report shall be produced and reviewed monthly by ten (10) business days after end of month.
- f. Pharmacy DAW Code Submission The report shall identify claim reimbursement manipulation by inappropriate use of DAW codes and identify pharmacies with DAW claims exceeding three percent (3%) of generically available products. Individual claims must be reviewed for reasonableness. The report shall be produced and reviewed monthly by ten (10) business days after end of month.
- g. Pharmacy Claim Reversals Report The report shall identify pharmacies for which claim reversals may have manipulated payment by excessive reversals or failure to issue credits:
  - Reports pharmacies whose reversals total greater the three (3) percent or less than one percent (1%) of the total submitted prescription claims in a period. The report shall be produced and reviewed monthly by ten (10) business days after end of month.
- h. A report that shall identify pharmacies which are not maximizing generic switch opportunities and cost savings; screen for potential site audit for facility inspection or record keeping; and identify optimization of generic dispensing opportunities. Generic efficiency shall mean the number of generic prescriptions dispensed divided by the number of generic prescriptions plus the number of multi-source brand prescriptions. The calculation shall be based on a minimum of two hundred and fifty (250) claims per quarter and less than forty percent (40%) generic utilization. The report shall be produced and reviewed monthly by ten (10) business days after end of month.
- i. Pharmacy Submission of Package Size versus Days Supply The report shall identify claim manipulation by pharmacies by screening for invalid correlation between the quantity and days supply submitted (i.e., eye drops, ear drops, miscellaneous topical preparations). Report shall identify inconsistencies between package size and days supply for the following: eye, ear, nasal preparations, or other miscellaneous topical preparations. The report shall be produced and reviewed monthly by ten (10) business days after end of month.
- j. Pharmacy Time of Claims Submission The report shall identify prescription claims submitted between 10:00 p.m. and 6:00 a.m. and identify the number and type of prescriptions filled between this time period to evaluate for claim fraud, controlled substance abuse, and drug diversion.

A.10.5 HIPAA Reporting Requirements - The Contractor shall be required to execute approved HIPAA Business Agreement with TennCare as set forth in Attachment D.

A.10.6. The State, at its discretion, may choose to delegate oversight of portions of this contract to other agencies. The Contractor shall be required to produce reports for other state agencies in a manner consistent with the terms of the contract.

## A.11. Communication

### A.11.1. Notices

The Contractor shall be required to send individualized notices to enrollees, worded at a six (6<sup>th</sup>) grade reading level, unless otherwise approved by TennCare. Template notices shall be approved by TennCare. Notices should be printed with an assurance of non-discrimination both in English and Spanish that include, but not be limited to:

- a. Notification of prescription limits being met;
- b. Notification that a Prior Authorization request has been denied, which may or may not include a provision for continuation of benefits;
- c. Outcomes of a member initiated prior authorization request, which may include:
  - i. Prescription change;
  - ii. PA granted; or
  - iii. PA denied.
- d. Response to prescriber on outcome of prior authorization request. This may be completed by utilizing facsimile technology.

These notices shall be mailed daily, except Sunday, each week. The previous days claims and/or Prior Authorization requests shall be mailed the following day. Monday mailings shall include letters based on claims denied on Saturday and Sunday. The Contractor shall provide TennCare with a web-based system to search and view individual notices that have been sent. The Contractor shall have approval to subcontract the notice process as defined herein with the requisite approval from TennCare, but in no event shall off shore vendors be utilized. The direct postage cost for recipient Script Limit denial letters and prior authorization letters shall be a pass-through item. Failure to provide notices may result in liquidated damages as described in attachment A.

- A.11.2. Prescription Limit Letters The Contractor shall generate, and mail letters to recipients regarding claims denied for the Script Limit edit. The extract shall be inclusive of claims that have received the initial denial for exceeding the limit of five (5) scripts per month and/or two (2) brand name scripts per month. Recipients shall receive a maximum of two (2) letters monthly, related to the maximum of five scripts monthly and/or the maximum of two brand scripts monthly. If two (2) letters are generated in an extract for the same mailing, they shall be mailed as two separate pieces of mail. TennCare shall draft each of the two (2) possible recipient Script Limit denial letters for submission to the Contractor. Recipient letters shall be generated on TennCare letterhead. The return address on recipient letter mailing envelopes shall be identical to that on mailing envelopes for recipient ID cards:

TennCare Pharmacy Program  
c/o The Contractor Corp

- A.11.3. The Contractor shall open all returned mail from any mailings to enrollees or providers to determine if the enrollee has moved, if the Contractor has the wrong address and/or if the enrollee is communicating other information to the Contractor or to TennCare. The Contractor shall track returned mail and shall report monthly, in a yet to be determined mutually agreed upon format, to TennCare the number of pieces of returned mail, the reason the mail was returned and action taken by the Contractor. Included in this report shall be a list of all enrollees whose mail was undeliverable due to an incorrect address provided by TennCare. Failure to report monthly to the Bureau or to open and appropriately manage returned mail may result in liquidated damages as set forth in Attachment A.

The Contractor shall have the right to subcontract this requirement after approval by TennCare.

- A.11.4 Contact for Privacy and/or Security Event Notice.

Notification for the purposes of Section A.11 shall be either verbal or in writing and shall be made by EMAIL or facsimile transmission with recipient confirmation, or shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system. Any such communications shall be made immediately upon Contractor becoming aware of the event, but in no event shall contractor wait more than forty-eight (48) hours

to provide notice. All such communications made in writing shall be verbally confirmed within eight (8) hours of the communication with the recipient or the recipient's agent.  
The State:

Privacy Office  
Office of General Counsel  
Bureau of TennCare  
310 Great Circle Road  
Nashville TN 37243  
(615) 507-6855 (Phone)  
(615) 532-7322 (FAX)

The Contractor:

Mike Bennof, Executive Vice President  
SXC Health Solutions, Inc.  
2441 Warrenville Road  
Suite 610  
Lisle, IL 60532  
[mike.bennof@sxc.com](mailto:mike.bennof@sxc.com)  
Telephone # 630-577-3290  
FAX # 630-577-3101

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

## **A.12. Business Continuity and Contingency Plan – Disaster Recovery, System Back-up**

### **A.12.1. Business Continuity and Contingency Plan**

The Contractor shall deliver a preliminary Business Continuity and Contingency Plan (BCCP) during the Transition and Implementation activities, and shall update and test this plan as agreed upon with TennCare. The plan shall be in accordance with state standards as established by the Tennessee Emergency Management Agency (TEMA) for Continuity of Operations Plan documentation. The BCCP plan shall establish adequate backup processes for all PBM systems and operational functions and address the potential impacts of disaster occurrence. Contingency plans are composed of two (2) fundamental operations - System Back-up and Disaster Recovery.

### **A12.2. System Back-up and Disaster Recovery Contractor Requirements:**

- a. The Contractor shall establish and maintain daily back-ups that are adequate and secure for all computer software and operating programs, databases, files, and systems, operations, and user documentation (in electronic and non-electronic form) that are updated on a daily basis.
- b. The Contractor shall establish and maintain a weekly back-up that is adequate and secure for all computer software and operating programs, databases, files, and systems, operations, and user documentation (in electronic and non electronic form).
- c. The Contractor shall develop a plan for physical and system security that shall identify all potential security hazards at the physical site, including systems and networks, and shall identify the associated protection plans for the system assets and controls.
- d. The Contractor shall follow all applicable technical standards for site and system security during the operation of the system, using best practices as developed by the National Institute of Standards and Technology (NIST).
- e. The Contractor shall provide for off-site storage of back-up operating instructions, procedures, reference files, systems documentation, programs, procedures, and

operational files. Procedures shall be specified for updating off-site materials.

- f. The Contractor shall establish and maintain complete daily back-ups of all data and software and support the immediate restoration and recovery of lost or corrupted data or software.
- g. Disaster planning documentation and procedures shall be approved by TennCare and put in place before system operations begin.
- h. The Contractor shall provide for a back-up processing capability at a remote site(s) from the Contractor's primary site, such that normal payment processing, as well as other system and TennCare services deemed necessary by TennCare, can continue in the event of a disaster or major hardware problem at the primary site(s).
- i. All proposed off-site procedures, locations, and protocols shall be approved by the Bureau in advance.
- j. The Contractor shall clearly document all of the components and file systems that would be required for a full restore.
- k. The Contractor shall document batch processes as to sender, receiver, location, process, date and databases updated and have a plan that details how each batch process would be supported and carried out to achieve a full restore.
- l. In the event of a disaster, the Contractor shall specify the respective time frames deemed reasonably necessary for complete recovery.
- m. The recovery period, in the event of a catastrophic disaster, shall not exceed thirty (30) calendar days.
- n. The recovery period, in the event of a disaster caused by criminal acts or natural disasters, shall not exceed ten (10) calendar days.
- o. The Contractor shall take all steps necessary to fully recover the data and/or system from the effects of a disaster and to reasonably minimize the recovery period.
- p. The Contractor shall perform back-up demonstrations at no additional cost to the Bureau. Failure to successfully demonstrate the procedures may be considered grounds for termination of this Contract. TennCare reserves the right to waive part or all of the demonstrations. In the event the Contractor's test is deemed by the Bureau to be unsuccessful, the Contractor shall continue to perform the test until satisfactory, at no additional cost.
- q. The Contractor shall develop a Business Continuity and Contingency Plan that identifies the core business processes involved in the system.
- r. The BCCP Plan shall be available and present at the TennCare site.
- s. The BCCP shall identify potential system failures for each core business process.
- t. The BCCP shall contain a risk analysis for each core business process.
- u. The BCCP shall contain an impact analysis for each core business process.
- v. The BCCP shall contain a definition of minimum acceptable levels of outputs for each core business process.
- w. The BCCP shall contain documentation of contingency plans.

- x. The BCCP shall contain definition of triggers for activating contingency plans.
- y. The BCCP shall contain discussion of establishment of a business resumption team.
- z. The BCCP shall address maintenance of updated disaster recovery plans and procedures.
- aa. The BCCP shall address planning for replacement of personnel to include:
  - i. Replacement in the event of loss of personnel before or after signing this Contract;
  - ii. Replacement in the event of inability by personnel to meet performance standards;
  - iii. Allocation of additional resources in the event of the Contractor's inability to meet performance standards;
  - iv. Replacement/addition of personnel with specific qualifications;
  - v. Time frames necessary for replacement;
  - vi. Contractor's capability of providing replacements/additions with comparable experience; and
  - vii. Methods for ensuring timely productivity from replacements/additions.
- bb. The system shall maintain appropriate checkpoint/restart capabilities and other features necessary to ensure reliability and recovery, including telecommunications for voice and data circuits, and disaster recovery.
- cc. The Contractor shall be required to prepare and maintain a Disaster Recovery Plan as part of the BCCP and provide TennCare with up-to-date copies at least once a year during the term of this Contract. The disaster recovery plan shall be submitted to TennCare for approval prior to the systems implementation and whenever changes are required.
- dd. The Contractor shall ensure that each aspect of the Disaster Recovery Plan is detailed as to both Contractor and TennCare responsibilities and shall satisfy all requirements for federal certification. Normal PBM related day-to-day activities and services shall be resumed within five (5) working days of the inoperable condition at the primary site(s).
- ee. The Contractor shall dedicate two (2) Subject Matter Experts (SMEs) to be onsite to participate in the disaster recovery drills.
- ff. The Contractor shall coordinate with the State to demonstrate any near real-time failover capabilities in the primary data center or between primary and backup data centers in support of business continuity requirements. Failure to successfully demonstrate failover capabilities may be considered grounds for termination of this Contract. TennCare reserves the right to waive part or all of the demonstrations. In the event the Contractor's test is deemed by the Bureau to be unsuccessful, the Contractor shall continue to perform the test until satisfactory, at no additional cost to the State.
- gg. The Disaster Recovery Plan shall address Checkpoint/restart capabilities.
- hh. The Disaster Recovery Plan shall address retention and storage of backup files and software.
- ii. The Disaster Recovery Plan shall address Hardware backup for the main processor(s).
- jj. The Disaster Recovery Plan shall address network backup for voice and data telecommunications circuits.
- kk. The Disaster Recovery Plan shall address Contractor provided voice and data telecommunications equipment.

- ll. The Disaster Recovery Plan shall address the Uninterruptible Power Source (UPS) at both the primary and alternate sites with the capacity to support the system and its components.
- mm. The Disaster Recovery Plan shall address the continued processing of TennCare transactions (claims, eligibility, provider file, and other transaction types), assuming the loss of the Contractor's primary processing site. This shall include interim support for the Bureau online component of the TCMIS and how quickly recovery may be accomplished.
- nn. The Disaster Recovery Plan shall address back-up procedures and support to accommodate the loss of online communication between the Contractor's processing site and TennCare.
- oo. The Disaster Recovery Plan shall contain detailed file back-up plan and procedures, including the off-site storage of crucial transaction and master files. The plan and procedures shall include a detailed frequency schedule for backing up critical files and (if appropriate to the back-up media) their rotation to an off-site storage facility. The off-site storage facility shall provide security of the data stored there, including protections against unauthorized access or disclosure of the information, fire, sabotage, and environmental considerations.
- pp. The Disaster Recovery Plan shall address the maintenance of current system documentation and source program libraries at an off-site location.
- qq. The Contractor shall provide documentation defining back-up processing capacity and availability. Included shall be a prioritized listing of all of the Contractor's back-up processing that shall be performed at the back-up processing facility in the event of an inoperable condition at the primary site. Estimated back-up processing capacity utilization shall be included for each back-up processing item listed. Documentation shall include written agreements with the management of the back-up processing facility. Agreements shall identify duties and responsibilities of all parties involved as well as specify the level of back-up service to be provided to the Bureau.
- rr. The Contractor shall demonstrate the disaster recovery capability for all critical system components at a remote site once during the first year of this Contract period and no less often than every two (2) calendar years, in accordance with the 45 CFR §95.621(f). The demonstration at the remote site shall be performed for all administrative, manual, input, processing, and output procedures functions, and include:
  - i. The processing of one (1) daily and one (1) weekly payment processing cycle, at a minimum;
  - ii. A test of all online transactions;
  - iii. A test of query and reporting capability; and
  - iv. Verification of the results against the corresponding procedures and production runs conducted at the primary site.

A.12.3. Business Continuity and Contingency Plan Deliverables:

- a. Submit BCCP and Disaster Recovery Plans to the Bureau at least sixty (60) days prior to assumption of PBM operations.
- b. Submit a Security Plan within thirty (30) calendar days of Contract Implementation, and update annually thereafter.

**B. CONTRACT TERM:**

- B.1. This Contract shall be effective for the period commencing on June 1, 2008 and ending on May 31, 2011. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.
- B.2. Term Extension. The State reserves the right to extend this Contract for an additional period or periods of time representing increments of no more than one year and a total contract term of no more than five (5) years, provided that such an extension of the contract term is effected prior to the current, contract expiration date by means of an amendment to the Contract. If the extension of the Contract necessitates additional funding beyond that which was included in the original Contract, the increase in the State's maximum liability will also be effected through an amendment to the Contract, and shall be based upon payment rates provided for in the original Contract.

**C. PAYMENT TERMS AND CONDITIONS:**

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Thirty Four Million Five Hundred Thousand Dollars (\$34,500,000.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

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

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.
  - a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
  - b. The Contractor shall be compensated based upon the following payment rates:
    - (1) For service performed from June, 2008, through September 30, 2008, the following rates shall apply:

Service Description	Amount (per compensable increment)
Installation Cost (Paid in Three Equal Installments) 1/3 Due Three Months Prior to Delivery of Services 1/3 Due Two Months Prior to Delivery of Services 1/3 Due Upon Delivery of Services	\$ 0

- (2) For service performed from October 1, 2008, through September 30, 2009, the following rates shall apply:

<b>Service Description</b>	<b>Amount</b> (per compensable increment)
Monthly Administrative Fee	\$ 692,250 / month
Clinical Pharmacist Based in Nashville	\$ 16,830 / month
Clinical Pharmacist Based in Nashville	\$ 16,830 / month
Provider Educator Based in Nashville	\$ 16,830 / month
Provider Educator Based in Field	\$ 16,830 / month
Provider Educator Based in Field	\$ 16,830 / month
Provider Educator Based in Field	\$ 16,830 / month
Data Research Analyst Based in Nashville	\$ 9,180 / month
Program Coordinator Based in Nashville	\$ 13,006 / month
System Liaison Based in Contractor's Home Office	\$ 9,180 / month
Contract Manager Based in Contractor's Home Office	\$ 11,476 / month

- (3) For service performed from October 1, 2009, through September 30, 2010, the following rates shall apply:

<b>Service Description</b>	<b>Amount</b> (per compensable increment)
Monthly Administrative Fee	\$ 727,598 / month
Clinical Pharmacist Based in Nashville	\$ 17,672 / month
Clinical Pharmacist Based in Nashville	\$ 17,672 / month
Provider Educator Based in Nashville	\$ 17,672 / month
Provider Educator Based in Field	\$ 17,672 / month
Provider Educator Based in Field	\$ 17,672 / month
Provider Educator Based in Field	\$ 17,672 / month
Data Research Analyst Based in Nashville	\$ 9,639 / month
Program Coordinator Based in Nashville	\$ 13,656 / month
System Liaison Based in Contractor's Home Office	\$ 9,639 / month
Contract Manager Based in Contractor's Home Office	\$ 12,049 / month

- (4) For service performed from October 1, 2010, through May 31, 2011, the following rates shall apply:

<b>Service Description</b>	<b>Amount</b> (per compensable increment)
Monthly Administrative Fee	\$ 763,977 / month
Clinical Pharmacist Based in Nashville	\$ 18,555 / month
Clinical Pharmacist Based in Nashville	\$ 18,555 / month
Provider Educator Based in Nashville	\$ 18,555 / month
Provider Educator Based in Field	\$ 18,555 / month
Provider Educator Based in Field	\$ 18,555 / month
Provider Educator Based in Field	\$ 18,555 / month
Data Research Analyst Based in Nashville	\$ 10,121 / month
Program Coordinator Based in Nashville	\$ 14,339 / month
System Liaison Based in Contractor's Home Office	\$ 10,121 / month
Contract Manager Based in Contractor's Home Office	\$ 12,652 / month

- (5) Should the Contract be amended for Extension of Services, for the services performed from June 1, 2011, through May 31, 2012, the following rates shall apply:

<b>Service Description</b>	<b>Amount</b> (per compensable increment)
Monthly Administrative Fee	\$ 802,176 / month
Clinical Pharmacist Based in Nashville	\$ 19,483 / month
Clinical Pharmacist Based in Nashville	\$ 19,483 / month
Provider Educator Based in Nashville	\$ 19,483 / month
Provider Educator Based in Field	\$ 19,483 / month
Provider Educator Based in Field	\$ 19,483 / month
Provider Educator Based in Field	\$ 19,483 / month
Data Research Analyst Based in Nashville	\$ 10,627 / month
Program Coordinator Based in Nashville	\$ 15,056 / month
System Liaison Based in Contractor's Home Office	\$ 10,627 / month
Contract Manager Based in Contractor's Home Office	\$ 13,284 / month

- (6) Should the Contract be amended for Extension of Services, for the services performed from June 1, 2012, through May 31, 2013, the following rates shall apply:

<b>Service Description</b>	<b>Amount (per compensable increment)</b>
Monthly Administrative Fee	\$ 842,285 / month
Clinical Pharmacist Based in Nashville	\$ 20,457 / month
Clinical Pharmacist Based in Nashville	\$ 20,457 / month
Provider Educator Based in Nashville	\$ 20,457 / month
Provider Educator Based in Field	\$ 20,457 / month
Provider Educator Based in Field	\$ 20,457 / month
Provider Educator Based in Field	\$ 20,457 / month
Data Research Analyst Based in Nashville	\$ 11,158 / month
Program Coordinator Based in Nashville	\$ 15,808 / month
System Liaison Based in Contractor's Home Office	\$ 11,158 / month
Contract Manager Based in Contractor's Home Office	\$ 13,949 / month

- c. Rebate Bonus - Per Section A.3.5.2., Annual Rebates for each year of the contract shall be calculated on the basis of any rebates obtained outside of the OBRA rebates. Annually, if the Contractor exceeds the upper figure of the allowed supplemental rebate percentage range they shall receive an annual bonus based on the following table:

Exceed by less than one percent (1%)	One hundred thousand dollars (\$100,000)
Exceed by more than or equal to one percent (1%), but less than two percent (2%)	Two hundred thousand dollars (\$200,000)
Exceed by more than or equal to two percent (2%), but less than three percent (3%)	Six hundred thousand dollars (\$600,000)
Exceed by more than or equal to three percent (3%)	One million, two hundred thousand dollars (\$1,200,000)

- d. Rebate Bonus - Per Section A.3.5.2., Annual Rebates for each year of the contract shall be calculated on the basis of any rebates obtained outside of the OBRA rebates. The Table below lists the Contractor's Annual Allowed Supplemental Percentage for each year of the contract:

	October 1, 2008-September 30, 2009	October 1, 2009-September 30, 2010	October 1, 2010-May 31, 2011	June 1, 2011-May 31, 2012	June 1, 2012-May 31, 2013
<b>Annual Allowed Supplemental Rebate Percentage</b>	8.35%	8.35%	8.35%	8.35%	8.35%

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

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

Bureau of TennCare  
310 Great Circle Road  
Nashville TN 37243

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

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

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

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

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

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

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

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

**D. STANDARD TERMS AND CONDITIONS:**

- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least sixty (60) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the State of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment C, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
  - b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall

be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

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

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

**E. SPECIAL TERMS AND CONDITIONS:**

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

The State:

Deputy Commissioner  
Department of Finance and Administration  
Bureau of TennCare  
310 Great Circle Road  
Nashville TN 37243  
(615) 507-6483 (Phone)

(615) 741-0882 (FAX)

The Contractor:

Mike Bennof, Executive Vice President  
SXC Health Solutions, Inc.  
2441 Warrenville Road  
Suite 610  
Lisle, IL 60532  
[mike.bennof@sx.com](mailto:mike.bennof@sx.com)  
Telephone # 630-577-3290  
FAX # 630-577-3101

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

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. State Ownership of Work Products. The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." The State shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.
- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.
  - b. The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.
  - c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
  - d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.
- E.5 Breach. A party shall be deemed to have breached the Contract if any of the following occurs:
- failure to perform in accordance with any term or provision of the Contract;
  - partial performance of any term or provision of the Contract;
  - any act prohibited or restricted by the Contract, or
  - violation of any warranty.

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

- a. Contractor Breach— The State shall notify Contractor in writing of a Breach.
- (1) In event of a Breach by Contractor, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity.
  - (2) Liquidated Damages— In the event of a Breach, the State may assess Liquidated Damages. The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced, Attachment A and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or other section of this Contract.

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

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

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

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

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

damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Takeover.

- b. **State Breach**— In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

E.6. **Printing Authorization.** The Contractor agrees that no publication coming within the jurisdiction of *Tennessee Code Annotated*, Section 12-7-101, *et. seq.*, shall be printed unless a printing authorization number has been obtained and affixed as required by *Tennessee Code Annotated*, Section 12-7-103 (d).

E.7. **Competitive Procurements.** This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or contracted services. Such procurements shall be made on a competitive basis, where practical. The Contractor shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Contract. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification, approved by the Deputy Commissioner, for such decision and non-competitive procurement.

E.8. **State Furnished Property.** The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.

E.9. **Incorporation of Additional Documents.** Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. All Clarifications and addenda made to the Contractor's Proposal
- c. The Request for Proposal and its associated amendments
- d. Technical Specifications provided to the Contractor
- e. The Contractor's Proposal

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

E.10. **Workpapers Subject to Review.** The Contractor shall make all audit, accounting, or financial analysis workpapers, notes, and other documentation available for review by the Comptroller of the Treasury or his representatives, upon request, during normal working hours either while the analysis is in progress or subsequent to the completion of this Contract.

E.11. **Lobbying.** The Contractor certifies, to the best of its knowledge and belief, that:

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

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

- E.12. Public Funding Notice. All notices, informational pamphlets, press releases, research reports, signs and similar public notices prepared and released by the Contractor relative to this Contract shall include the statement, "This project is funded by an agreement with the State of Tennessee." Any such notices by the Contractor shall approved by the State.
- E.13. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.
- E.14. Confidentiality of Records. Strict standards of confidentiality of records shall be maintained in accordance with the law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of State law and ethical standards and shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with State law and ethical standards.

The Contractor shall be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of the State's information as the Contractor exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure.

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

- E.15. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be

brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.

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

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

- E.17. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," the Contractor shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. The Contractor shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract.

- E.18. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

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

- E.19. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.

- E.20. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

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

E.21. HIPAA Compliance. The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

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

E.22. Contractor Commitment to Diversity. The Contractor shall comply with and make reasonable business efforts to exceed the commitment to diversity represented by the Contractor's proposal responding to RFP-318.65-257 (Attachment 6.3, Section B, Item B.13.) and resulting in this Contract.

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

E.23. Tennessee Bureau of Investigation Medicaid Fraud and Abuse Unit (MFCU) Access to Contractor and Provider Records Office of TennCare Inspector General Access to Contractor, Provider, and Enrollee Records

Pursuant to the Health Insurance Portability and Accountability Act (HIPAA) privacy regulations, MFCU and TennCare OIG shall be health oversight agencies as defined at 45 C.F.R. §§ 164.501 and 164.512(d) and 65 F.R. § 82462. When acting in their respective capacities as health oversight agencies, MFCU and TennCare OIG do not need authorization to obtain enrollee protected health information (PHI). Because MFCU and TennCare OIG will request the information mentioned above for health oversight activities,

"minimum necessary" standards do not apply to disclosures to MFCU or TennCare OIG that are required by law. See 45 C.F.R. §§ 164.502(b)(2)(iv), 164.502(b)(2)(v), and 164.512(d).

The Contractor shall immediately report to MFCU all factually based known or suspected fraud, abuse, waste and/or neglect of a provider or Contractor, including, but not limited to, the false or fraudulent filings of claims and/or the acceptance or failure to return money allowed or paid on claims known to be false or fraudulent. The Contractor shall not investigate or resolve the suspicion, knowledge or action without informing MFCU, and must cooperate fully in any investigation by MFCU or subsequent legal action that may result from such an investigation.

The Contractor and all its health care providers who have access to any administrative, financial, and/or medical records that relate to the delivery of items or services for which TennCare monies are expended, shall, upon request, make them available to MFCU or TennCare OIG. In addition, the MFCU must be allowed access to the place of business and to all TennCare records of any Contractor or health care provider, during normal business hours, except under special circumstances when after hour admission shall be allowed. MFCU shall determine any and all special circumstances.

The Contractor and its participating and non-participating providers shall report TennCare enrollee fraud and abuse to TennCare OIG. The Contractor and/or provider may be asked to help and assist in investigations by providing requested information and access to records. Shall the need arise, TennCare OIG must be allowed access to the place of business and to all TennCare records of any TennCare Contractor or health care provider, whether participating or non-participating, during normal business hours.

The Contractor shall inform its participating and non-participating providers that as a condition of receiving any amount of TennCare payment, the provider must comply with this Section of this Contract regarding fraud, abuse, waste and neglect.

#### E.23.1. Prevention/Detection of Provider Fraud and Abuse

The Contractor shall have internal controls and policies and procedures in place that are designed to prevent, detect, and report known or suspected fraud and abuse activities. The Contractor shall have adequate staffing and resources to investigate unusual incidents and develop and implement corrective action plans to assist the Contractor in preventing and detecting potential fraud and abuse activities.

The Contractor shall provide monthly reports to TennCare that describe pharmacy provider dispensing patterns that statistically identify the pharmacy as an outlier that may be representative of potential fraudulent, abusive or wasteful dispensing patterns. Additionally, the Contractor shall provide specific recommendations to TennCare, via a plan of correction that will eliminate the potentially fraudulent, abusive or wasteful dispensing patterns of these specific pharmacy providers. The reports shall be due on the fifteenth (15th) day of the month for the previous month's pharmacy claims.

Failure by the Contractor to provide the monthly reports listed above in a complete and timely manner may result in the assessment of liquidated damages by TennCare of one hundred dollars (\$100) per day during the first month violations are identified. Liquidated damages will increase to two hundred dollars (\$200) per day for the second consecutive month violations are identified. TennCare will monitor the delivery and content of these reports and notify the Contractor of any violations as well as any possible sanctions related to those violations. The Contractor shall have thirty (30) calendar days, following written notification, to correct all violations prior to assessment of liquidated damages by TennCare. The Contractor shall submit to TennCare, within five (5) business days, a corrective action plan for each violation. Such notices will be sent to the Contractor via certified U.S. Mail.

#### E.23.2. Fraud and Abuse Compliance Plan

The Contractor shall have a written Fraud and Abuse compliance plan. A paper and electronic copy of the plan shall be provided to the State Office of the Inspector General. The Contractor's specific internal controls and policies and procedures shall be described in a comprehensive written plan and be maintained on file with the Contractor for review and approval by the State Office of the Inspector General within ninety (90) days of the effective date of this Agreement. The State Office of the Inspector General shall provide notice of approval, denial, or modification to the Contractor within thirty (30) days of review. The Contractor shall make any requested updates or modifications available for review to TennCare and/or the State

Office of the Inspector General as requested by TennCare and/or the State Office of the Inspector General within thirty (30) days of a request. The State shall not transfer their law enforcement functions to the Contractor. At a minimum the written plan shall:

- i. Ensure that all officers, directors, managers and employees know and understand the provisions of the Contractor's fraud and abuse compliance plan;
- ii. Contain procedures designed to prevent and detect potential or suspected abuse and fraud in the administration and delivery of services under this contract;
- iii. Include a description of the specific controls in place for prevention and detection of potential or suspected abuse and fraud, such as:
  - Claims edits;
  - Post-processing review of claims;
  - Provider profiling and credentialing;
  - Prior authorization;
  - Utilization management;
  - Relevant subcontractor and provider agreement provisions;
  - Written provider and enrollee material regarding fraud and abuse referrals.
- iv. Contain provisions for the confidential reporting of plan violations to the designated person as described in item E.23.4. below;
- v. Contain provisions for the investigation and follow-up of any compliance plan reports;
- vi. Ensure that the identities of individuals reporting violations of the plan are protected;
- vii. Contain specific and detailed internal procedures for officers, directors, managers and employees for detecting, reporting, and investigating fraud and abuse compliance plan violations;
- viii. Require any confirmed or suspected provider fraud and abuse under state or federal law be reported to TBI MFCU (Medicaid Fraud Control Unit) and that enrollee fraud and abuse be reported to the State Office of the Inspector General;
- ix. Ensure that no individual who reports plan violations or suspected fraud and abuse is retaliated against.

E.23.3. The Contractor shall comply with the applicable requirements of the Model Compliance Plan for HMOs when the final model plan is issued by the U.S. Department of Health and Human Services, the Office of Inspector General (OIG).

E.23.4. The Contractor shall designate an officer or director in its organization who has the responsibility and authority for carrying out the provisions of the fraud and abuse compliance plan.

E.23.5. The Contractor shall submit an annual report to the State Office of the Inspector General that includes summary results of fraud and abuse tests performed as required by E.23.2.iii. and detailed in the Contractor's Fraud and Abuse compliance plan. The report should cover results for the year ending June 30 and be submitted by September 30 each year. This information in this report shall be provided in accordance with and in a format as described in the Contractor's approved compliance plan.

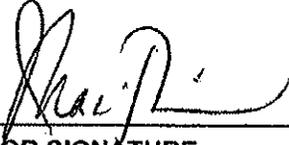
E.24. Failure to Meet Agreement Requirements - It is acknowledged by TennCare and the Contractor that in the event of failure to meet the requirements provided in this Contract and all documents incorporated herein, TennCare will be harmed. The actual damages that TennCare will sustain in the event of and by reason of such failure are uncertain, are extremely difficult and impractical to ascertain and determine. The parties therefore acknowledge that the Contractor shall be subject to damages and/or sanctions as described in Section A of this Contract. It is further agreed that the Contractor shall pay TennCare liquidated damages as directed by TennCare and not to exceed the fixed amount as stated in Section A of this Contract and identified in Attachment A of the *pro forma* contract; provided however, that if it is finally determined that the Contractor would have been able to meet the Contract requirements listed in Section A of this Contract

but for TennCare's failure to perform as provided in this Contract, the Contractor shall not be liable for damages resulting directly therefrom.

- E.25. Offer of Gratuities. By signing this contract, the Contractor signifies that no member of or a delegate of Congress, nor any elected or appointed official or employee of the State of Tennessee, the General Accounting Office, Department of Health and Human Services, CMS, or any other federal agency has or will benefit financially or materially from this procurement. This Contract may be terminated by TennCare if it is determined that gratuities of any kind were offered to or received by any of the aforementioned officials or employees from the Contractor, his agent, or employees and may result in termination of the Contract as provided in Section D4.
- E.26. Records Discovery. In addition to the records audits referenced in D.9, the Contractor shall make available all records of whatever media (correspondence, memoranda, databases, worksheets, training material, etc.), in their original form, be it electronic or paper, including emails with metadata preserved. These records shall be produced to TennCare at no cost to the State, as required to satisfy evidence discovery demands of any of litigation, including state or federal class action, affecting TennCare. The State shall endeavor to keep the evidence discovery requests as limited as reasonably possible. The Contractor shall retain the right to object in court to any evidence discovery requests it may feel is too broad or otherwise unduly burdensome.
- E.27. Notwithstanding any language or provisions in Section E to the contrary, upon termination of this Contract for any reason, the Contractor shall transfer to the State all rights, title and interest in any personal computer work stations, hardware, software, furnishings, copiers, printers, fax machines and office equipment purchased pursuant to this Contract. In the event that the Contractor determines that any such furnishings or equipment should be disposed of prior to the termination of this Contract, such disposition must be subject to the prior written approval of TennCare.

IN WITNESS WHEREOF:

SXC HEALTH SOLUTIONS, INC.:



5/2/2008

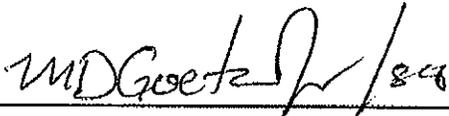
MT/MAB  
6/5/08

CONTRACTOR SIGNATURE

DATE

MARK A. THIERER, PRESIDENT AND CHIEF OPERATING OFFICER (above)

DEPARTMENT OF FINANCE AND ADMINISTRATION  
BUREAU OF TENNCARE:



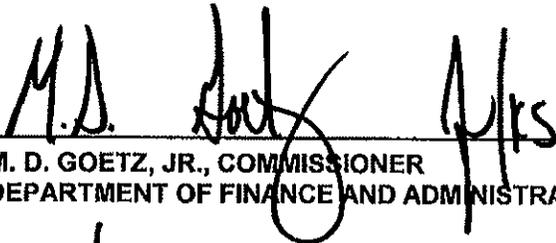
5/30/08

M.D. Goetz  
06-05-08

M. D. GOETZ, JR., COMMISSIONER  
DEPARTMENT OF FINANCE AND ADMINISTRATION

DATE

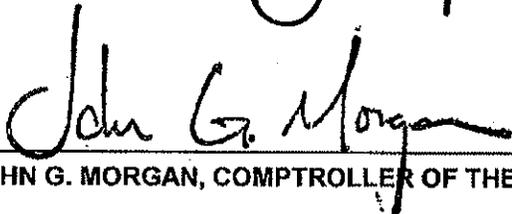
APPROVED:



6/6/08

M. D. GOETZ, JR., COMMISSIONER  
DEPARTMENT OF FINANCE AND ADMINISTRATION

DATE



6/4/08

JOHN G. MORGAN, COMPTROLLER OF THE TREASURY

DATE

**PERFORMANCE, DELIVERABLES AND DAMAGES**

The table below summarizes Performance Measures and Deliverables described in other sections of this Contract. Included in the table are delivery schedules and non-performance damages. TennCare shall monitor the Contractor's performance meeting the required standards. If TennCare determines that the Contractor has failed to meet requirements of this Contract, TennCare shall notify the Contractor by certified U.S. Mail. Upon notification of a violation, the Contractor shall submit to TennCare, within five (5) business days, a Corrective Action Plan to avoid future violations. If damages are assessed, TennCare shall reduce the Contractor's payment for administrative services in following month's invoice by the amount of damages. In the event that damages due exceed TennCare fees payable to Contractor in a given payment cycle, TennCare shall invoice Contractor for the amount exceeding the fees payable to Contractor, that shall be paid by Contractor within thirty (30) calendar days of the invoice date.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.1 Implementation	<p>Contractor shall complete all implementation actions prior to "go-live" date and according to the implementation timeline provided by the Contractor to TennCare. The Contractor shall receive TennCare's sign-off that each action has been completed successfully. Implementation action steps include the following minimum items:</p> <ul style="list-style-type: none"> <li>• Benefit plan designs loaded, operable and tested;</li> <li>• Perform comprehensive systems testing (including interface testing with all third parties) and quality assurance audits, with results reported to the TennCare prior to the "Go-Live";</li> <li>• Eligibility feed formats loaded and tested end to end;</li> <li>• Operable and tested toll-free numbers;</li> <li>• Signed agreements for Retail Pharmacy and Long-term Care Pharmacy networks;</li> <li>• Account management, Help Desk and Prior Authorization staff hired and trained;</li> <li>• Established billing/banking requirements;</li> <li>• Complete notifications to pharmacies and prescribers regarding contractor change;</li> <li>• Each component shall be met by an agreed upon deadline in an implementation timeline provided by Contractor to TennCare.</li> </ul> <p>Implementation action requirements may include other items necessary to meet the claims processing commencement date of July 1, 2008, 1:00 a.m. CST ; and</p>	Due prior to the claims processing commencement date of October 1, 2008, 1:00 a.m. Central Standard Time (CST)	Contractor may, in the State's discretion, be required pay to TennCare amount of ten thousand dollars (\$10,000.00) per day for each day full implementation of the project is delayed by fault of the Contractor. This guarantee is dependent upon Contractor receiving necessary information and approvals from TennCare in a timely manner.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
	<ul style="list-style-type: none"> <li>• Claims history and existing prior authorizations and overrides shall be migrated to Contractors POS system</li> </ul>		
A.2.2 Claim payment and Remittance Services	The Contractor shall distribute and mail TennCare outputs as required by this Contract including, but not limited to: provider checks and remittance advices, returned claims, notices, provider bulletins, provider manuals and special mailings.	The Contractor shall mail checks and remittance advices to pharmacy providers each week on Fridays, with the exception of Holiday weeks. With notice, holiday production shall not delay the process by more than two (2) business days. TennCare shall be notified no later than two (2) business days of any systems or operational issues that may impact disbursements by the prescribed timelines. For checks to be issued on Friday, the Contractor shall deliver two files to the State, in an electronic media suitable to the State, by 10:00 a.m. CST, Thursday of each week.	Penalty may, in the State's discretion, be \$1,000 per day files are overdue.
A.2.2 Encounter Data Files	All adjudicated claims (encounters) shall be transferred to TennCare or on a schedule designated by TennCare.	File transfer due weekly and due ten (10) business days after end of reporting week.	If the Contractor fails to produce the report, the calculation of the damages may, in the State's discretion, begin on the first day following the due date of the report and continue until receipt of the report by TennCare. Penalty may, in the State's discretion, be \$5,000 per week.
A.2.3 POS Claims	The Contractor shall process ninety-nine point five percent (99.5%) of POS pharmacy claims within ten (10) seconds on a daily basis. This is the time from when the claim is received by the Contractor's processor to the time the results are transmitted from the Contractor's processor and shall include all procedures required to complete claim adjudication.	Ninety-nine point five percent (99.5%) of claims process shall process to completion within ten (10) seconds on a daily basis.	If ninety-nine point five percent (99.5%) of claims are not processed within the ten (10) second time frame then the daily penalty may, in the State's discretion, be \$1,000 per day of non-compliant processing.
A.2.3. POS Downtime	System will operate without unscheduled or unapproved downtime. For purposes hereof "downtime" shall be any interruption involving more than 10% of	No unscheduled or unapproved downtime.	\$2,500 per occurrence of unscheduled or unapproved downtime if deemed by TennCare to

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
	production for a period greater than 15 minutes.		be the result of contractor shortcomings.
A.2.3. POS Downtime Notification	<p>Contractor shall report to TennCare immediately (within one (1) hour) upon knowledge of downtime.</p> <p>TennCare is to identify staff to be contacted after normal business hours in the event of an interruption of service.</p>	Report is due within one (1) hour, upon knowledge of downtime.	Immediate report is due within one (1) hour upon knowledge of the downtime. \$7,500 one time damage may, in the State's discretion, be assessed for not reporting immediately.
A.2.3 Batch Electronic Media (EMC) Claims Processing	<p>The Contractor shall receive claims in electronic format, separate tape from diskette, convert diskette to tape, schedule tapes for immediate processing and return media to submitting providers within three (3) business days. The Contractor shall assign identification control numbers to all batch claims within three (3) business days of receipt. The Contractor shall maintain electronic backup of batch claims for the duration of the contract. If TennCare requests copies of batch electronic claims, these shall be provided within three (3) business days of request.</p> <p>As requested, the Contractor shall provide the batch files as they were originally received. These files shall be delivered to the TennCare site by Virtual Private Network connection.</p> <p>Electronic batch claims shall be submitted through a sequential terminal, or similar method that shall allow batch and POS claims to be adjudicated through the same processing logic. New providers requesting to submit batch claims shall provide at least a thirty (30) day notice and shall conform to the standard Change Control and testing process.</p>	Return media claims to submitting providers within three (3) business days of receipt, assignment of identification control numbers to all batch claims within three (3) business days of receipt and provide TennCare with copies of batch electronic claims within three (3) business days of request.	Calculation of the damages may, in the State's discretion, begin on the first day following the due date and continue until receipt of the report by TennCare. Penalty may, in the State's discretion, be \$1,000 per day.
A.2.3 POS Downtime Occurrence Reports	<p>The Contractor shall provide TennCare with updates at regular intervals during a sustained downtime. TennCare shall be presented with recovery options as appropriate. Upon full recovery, the Contractor shall provide TennCare with a System Down Analysis describing root cause issues and actions to mitigate future downtime occurrences.</p> <p>Transaction reports shall include: volume,</p>	Report is due within five (5) business days after full system recovery.	Daily penalty may, in the State's discretion, be \$1,000 per day. Calculation of the damages will begin on the sixth business day following full system recovery.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
	longest response time and average response time. Statistics shall be provided to TennCare within ten (10) business days following the end of each calendar month that any downtime occurred.		
A.2.3 Aged Checks Not Cashed	The Contractor shall provide TennCare Fiscal Services Unit a monthly report detailing all checks remitted to providers on behalf of the State that remain outstanding (have not been cashed) greater than ninety (90) days.	Contractor shall provide TennCare with a monthly report of remitted checks as stipulated. Reports are due monthly, due on the 15 <sup>th</sup> day of the month following the reporting period.	Penalty may, in the State's discretion, be \$500 per week that report is overdue.
A.2.3 Aged Account Payable Notices	The Contractor shall ensure that collection letters are sent to pharmacies that maintain an accounts-payable balance to the State greater than ninety (90) days. These notices shall be sent within five (5) workdays of becoming ninety (90) days old.	Contractor shall provide TennCare with a monthly report of notices that had been sent. Reports are due monthly, ten (10) business days after end of month of reporting period.	If Contractor fails to send notice, the penalty may, in the State's discretion, be \$100 per provider notice per month.
A.2.4 Claim Validation	<p>The Contractor system shall approve for payment only those claims for members eligible to receive pharmacy services at the time the service was rendered. The Contractor shall immediately notify TennCare of any and all claims that have been erroneously processed, and initiate appropriate action to correct the errors.</p> <p>In the event that claims are inappropriately denied the Contractor may be assessed damages denied the Contractor may be assessed damages</p>	Reimbursement or damages resulting from this section may be applied to as offsets to future administrative fees.	<p>The Contractor shall reimburse TennCare for the cost of all claims paid as a result of contractor error.</p> <p>Penalty for claims inappropriately denied may, in the State's discretion, be \$100 per occurrence.</p>
A.2.8 Reversals and Adjustments	The system shall provide an efficient means of reversing or adjusting claims both before and after the claim has been transmitted to the TCMIS. The result of the adjustment shall be transferred to TCMIS for further processing. TennCare shall make no payments to the Contractor for reversed, voided or adjusted claims.	Contractor shall process all reversals requested by TennCare Fiscal Services Unit within thirty (30) days and provide confirmation to TennCare Fiscal Services Unit when that such has occurred.	A damage of \$100 may, in the State's discretion, be assessed per transaction that has not been reversed or adjusted within thirty (30) days of written request of TennCare Fiscal Services Unit.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.3.2 PDL , Step Therapy and Prior Authorization Changes	The Contractor shall implement changes in the POS system for PDL, Step Therapy, Prior Authorization requirements and all supporting systems within forty-five (45) days of approval from TennCare. Such changes to the POS system shall require provider notification thirty (30) days prior to the implementation. TennCare shall identify the targeted provider for each notification.	Implement changes and issue notification in specified time frames	Calculation of the damages may, in the State's discretion, begin on the first day following the due date and continue until required changes with proper notice are implemented. Penalty may, in the State's discretion, be \$1,000 per day.
A.3.4 TennCare Pharmacy Advisory Committee Support	The Contractor shall attend, support and facilitate meetings of the TennCare Pharmacy Advisory Committee (PAC) as necessary to maintain the TennCare PDL.	Approved meeting materials shall be distributed ten (10) business days prior to PAC meetings. Draft minutes shall be submitted to TennCare with two (2) weeks of PAC meeting.	Calculation of the damages may, in the State's discretion, begin on the first day following the due date for meeting material or minutes and may continue until delivered. Penalty may, in the State's discretion, be \$1,000 per day.
A.3.5 Drug Rebate Dispute Data	The Contractor shall provide to the agency or business of the State's choosing, any and all appropriate, accurate, and balanced pharmacy level claims data needed to resolve or avoid any Medicaid or supplemental drug rebate disputes.	This data shall be provided to TennCare within fifteen (15) days of a request by TennCare	Calculation of the damages may, in the State's discretion, begin on the first day following the due date and continue until receipt of the report by TennCare. Penalty may, in the State's discretion, be \$1,000 per business day.
A.3.5 Delinquent Rebate Payment Notices	<p>The Contractor shall ensure that written notification is sent to Drug Manufacturers concerning forty-five (45) day past-due undisputed account balances within fifty (50) days after the original invoice date.</p> <p>The Contractor shall also ensure that written notification is sent to Drug Manufacturers concerning seventy-five (75) day past-due undisputed account balances within eighty (80) days after the original invoice date.</p> <p>The Contractor shall also ensure that written notification is sent to Drug Manufacturers concerning ninety (90) day past-due undisputed account balances within ninety-five (95) days after the original invoice date.</p> <p>These notices shall remind the labeler that interest shall be assessed on all past due accounts as stipulated by their contract with the State.</p>	<p>Contractor shall provide TennCare with copies of all reports sent pursuant to this section.</p> <p>Reports due monthly, ten (10) business days after end of month of reporting period.</p>	If Contractor fails to send notice, the penalty may, in the State's discretion, be \$100 per Manufacturer per day independent of other dunning periods.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.3.5 Rebate Invoicing	The Contractor shall generate and issue quarterly Rebate invoices. Provide the designated TennCare staff data files that contain the specific information and in the specified format as required by TennCare	The quarterly Medicaid Drug Rebate invoices shall be generated for all pharmaceutical manufacturers and TennCare approval by thirty (30) days after the end of the quarter.	Penalty may, in the State's discretion, be \$1,000 per invoice per day invoice overdue.
A.3.5 Rebate Dispute Resolution	The Contractor shall be responsible for dispute resolution pertaining to supplemental rebates. The Contractor shall perform unit resolution based on unit resolution performed on CMS Rebates. The Contractor shall perform all other dispute resolution activities with pharmaceutical manufacturers pertaining to supplemental rebate calculations and collections.	Within ninety (90) days of dispute the contractor shall present the State with an analysis of why the monies were disputed and remedies.	Penalty may, in the State's discretion, be \$1,000 per day past ninety (90) day timeframe of analysis and proposed remedy.
A.3.5 Delinquent Rebate Payment Interest Accrual	The Contractor shall ensure that all Drug Manufacturers are charged interest as stipulated in each Manufacturer's respective Supplemental Drug Rebate Contract. Interest shall be calculated on only the Manufacturer's undisputed account balance unless written notification is provided by TennCare to do otherwise.		Failure by Contractor to start accruing interest on the date stipulated in the individual supplemental rebate agreements may, in the State's discretion, result in a penalty of \$1,000 for every non-compliant invoice issued.
A.3.5 Supplemental Rebate Administration	If the Contractor falls below the allowed range for the supplemental rebate percentage they shall be financially liable for the full amount of difference between the actual amount collected and the amount that would have been collected if the lowest figure of the allowed range had been achieved.	Annually, the Contractor shall determine the supplemental rebates collected as a percentage of drug-spend as defined in Section A.3.5.2. This figure shall be verified by TennCare.	100% of the difference between the supplemental rebate amount that would have been paid to the state if the Contractor had performed at the lowest end of the allowed supplemental rebate percentage range vs. the actual supplemental rebate amount paid to the state.
A.4.8 Disaster Preparedness and Recovery-Business Interruption	The Contractor shall submit the Contractor's Business Continuity/Disaster Recovery plan for their Central Processing Site to TennCare. If requested, test results of the plan shall be made available to TennCare	Plan due upon commencement of claims processing and annually on the anniversary date of the initial claims processing	Penalty may, in the State's discretion, be \$1000 per week that report is overdue.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.4.8 Disaster Preparedness and Recovery-Business Interruption	The Contractor shall comply with their Contractor's Business Continuity/Disaster Recovery plan.	TennCare shall determine the final need to move to the disaster recovery plan based on the Contractor's recommendation.	Penalty may, in the State's discretion, be \$10,000 per day Contractor is non-compliant with their Business Continuity/Disaster Recovery Plan
A.4.9 Program Integrity	The Contractor shall have TennCare-approved policies and procedures in place for ensuring protections against actual or potential fraud and abuse.	The Contractor shall have a detailed Program Integrity Plan. The Contractor shall complete all tasks as described in the Program Integrity Plan on a quarterly and annual basis.	\$2,500 per occurrence of non compliance with the Program Integrity Plan.
A.4.10 Proprietary and Confidential Information	All information provided TennCare, including but not limited to, provider, reimbursement and enrollee information shall be deemed confidential.	The Contractor shall immediately notify TennCare of any and all occurrences were TennCare's Confidential information may have been breached and initiate appropriate action to prevent subsequent breaches.	\$2,500 per occurrence of breach.
A.4.12 Member Identification Cards	The Contractor shall provide each TennCare enrollee with a NCPDP compliant pharmacy benefit identification (ID) card. The Contractor shall also provide enrollee with replacements cards.	Replacement and new cards shall be produced and mailed by the Contractor on the 15 <sup>th</sup> day of each month.	Delays in producing ID cards may, in the State's discretion, result in \$1,000 per day damages.
A.4.13 Mail Procedures	The Contractor shall open all returned mail from any mailings to enrollees or providers within thirty (30) days of receipt to determine if the enrollee has moved, if the Contractor has the wrong address, and/or if the enrollee is communicating other information to the Contractor or to TennCare. The Contractor shall track returned mail and shall report monthly to TennCare the number of pieces of returned mail, the reason the mail was returned and action taken by the Contractor. Included in this report shall be a list of all enrollees whose mail was undeliverable due to an incorrect address provided by TennCare.	Monthly report, due ten (10) business days after end of month of reporting period, beginning the first full month after the report format has been agreed to by the parties.	Calculation of the damages may, in the State's discretion, begin on the first day following the report due date and continue until receipt of the report by TennCare. Penalty may, in the State's discretion, be \$2,500 per week.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.4.16 E-Prescribe	The Contractor shall participate in TennCare's E-Prescribe initiatives.	Provide accurate data files in the format agreed to as necessary to support E-Prescribe.	Damages for delays or errors may, in the State's discretion, be assessed at \$1,000 per day begin on the first day following the file due date.
A.5 Drug Utilization Review Program	The Contractor shall provide on a quarterly basis <ul style="list-style-type: none"> <li>• Provider and patient trending</li> <li>• Meetings and facilitation</li> <li>• Reports and website</li> </ul>	Approved meeting materials shall be distributed ten (10) days prior to DUR meetings. Draft minutes shall be submitted to TennCare with four (4) weeks of DUR meeting.	Calculation of the damages may, in the State's discretion, begin on the first day following the due date for meeting material or minutes and continue until delivered. Penalty, in the State's discretion, may be \$1,000 per day.
A.6 Prior Authorization Unit Reports	The Prior Authorization Unit Reports are covered by Management Reports provided in section A.10.2		Failure by the Contractor to provide the Prior Authorization Call Center reports listed in a complete and timely manner may, in the State's discretion, result in the assessment of liquidated damages by TennCare of one hundred dollars (\$100) per day during the first month violations are identified. Liquidated damages may, in the State's discretion, increase to two hundred dollars (\$200) per day for the second consecutive month violations are identified.
A.6.1 Prior Authorization Processing time	The contractor shall complete all requests for prior approval within twenty four (24) hours given sufficient information to make a determination.	Contractor must document the receipt and determination time for every request for PA. This must be provided to TennCare on a quarterly basis. Explanation must be given for falling outside the twenty four (24) hour timeframe.	One hundred (\$100) dollars per PA not processed within twenty four (24) hours

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.6.4 Prior Authorization Reconsideration	The Contractor shall respond to all reconsideration requests within one (1) business day.	The Contractor shall provide quarterly reports indicating the timeframe and outcome of every prior authorization reconsideration.	\$200 per occurrence of failure to respond to reconsideration within one (1) business day
A.6.4 Prior Authorization Reconsideration	The Contractor shall supply TSU with all pertinent information pertaining to reconsideration requests within two (2) business days.	The Contractor shall provide quarterly reports indicating the timeframe and outcome of every prior authorization reconsideration.	\$200 per occurrence of failure to supply all pertinent information within two (2) business days
A.8.5 Pharmacy Network	The Contractor shall ensure that network pharmacies comply with all provisions of enrollee notices.	The Contractor's shall utilize feedback from TennCare, other state agencies, and enrollees, in addition to the audit process to perform additional training to pharmacies regarding notice obligations.	\$100 per instance of failure of the Contractor to ensure pharmacies are compliant with notice requirements
A.9.5 Key Staff Position	The Contractor shall employ competent staff in all key positions listed in Section A.9.5.	Replacement staff shall be in place within sixty (60) days of vacancies, unless TennCare grants an exception to the requirement	Calculation of the damages may, in the State's discretion, begin on the sixty-first day following the vacancy of the position and may continue until monthly until the position is filled. The penalty may, in the State's discretion, be \$2,500 per month in addition to the salary of the position being withheld from the monthly payment.
A.9.5 Key Staff Licensure	The Contractor shall provide to TennCare documentation verifying the state licensure of key staff.	The Contractor shall provide TennCare copies of current Tennessee licenses for key staff	Calculation of the damages may, in the State's discretion, begin on the annually on September 16 and may continue until receipt of the licensure verification by TennCare. Penalty may, in the State's discretion, be \$2,500 per week per employee.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.10.1 Management Reports	<p>The Contractor shall provide TennCare with industry standard utilization and financial management reporting. The Contractor's management reports shall provide a summary of drug costs sorted by therapeutic category, by top ranked drugs, and by benefit categories. Reports shall include, but not be limited to:</p> <ul style="list-style-type: none"> <li>• Financial summary with change trend</li> <li>• Utilization statistics</li> <li>• Claim processing volume and statistics</li> <li>• Cost trend reports</li> <li>• Fraud detection/ Investigation activity</li> <li>• DUR reports (retrospective and prospective)</li> <li>• PDL reports</li> <li>• Prior Authorization</li> <li>• Call Center metrics</li> <li>• Reconsideration volume, disposition and aging</li> <li>• Prescriber profiles</li> <li>• Rebate reports</li> <li>• MAC savings report</li> <li>• Pharmacy Access reports</li> <li>• An electronic file of priced or paid claims</li> <li>• All other reports referenced in the RFP</li> <li>• Pharmacy Desk Audits</li> </ul>	Monthly and quarterly reports are due ten (10) business days after the end of the reporting period.	Damages may, in the State's discretion, be assessed weekly. Calculation of the damages will begin on the first day following the report due date and may continue until receipt of the report by TennCare. Penalty may, in the State's discretion, be \$2,500 per week, per report.
A.10.2 Ad Hoc Reports	The Contractor shall be able to provide, at no extra cost to TennCare <i>ad hoc</i> reports that shall assist in managing the pharmacy benefit for TennCare members. <i>Ad hoc</i> reports shall be provided in a format described by TennCare and in an agreed upon timetable.		Failure by the Contractor to produce Ad Hoc reports in an agreed upon timeframe may, in the State's discretion, result in the assessment of liquidated damages by TennCare of one hundred dollars (\$100) per day during the first month violations are identified. Liquidated damages may, in the State's discretion, increase to two hundred dollars (\$200) per day for the second consecutive month violations are identified.

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
A.10.2 Emergency Supply Aggregate Reports	The Contractor shall provide TennCare with reports summarizing all emergency supply overrides performed by dispensing pharmacists at the point-of-sale, pursuant to the policy regarding dispensing of drugs not listed on the TennCare PDL. The reports shall be on a weekly and monthly basis and list the top one hundred (100) pharmacies entering emergency supplies and the top one hundred (100) prescribers associated with those overrides. The reports shall also include the top one hundred (100) drugs associated with emergency supplies as well as summary totals of overrides. The emergency supply reports shall be delivered to TennCare in electronic format by a web-based report library, as agreed to by TennCare.	Reports shall be delivered on a weekly and monthly basis no longer than five (5) business days after the ending of the week/month.	Failure by the Contractor to provide emergency supply Aggregate Report may, in the State's discretion, result in the assessment of liquidated damages by TennCare of one hundred dollars (\$100) per day during the first month violations are identified. Liquidated damages may, in the State's discretion, increase to two hundred dollars (\$200) per day for the second consecutive week or month violations are identified.
A.10.3 PDL Compliance Report	The Contractor shall monitor compliance by prescribers and pharmacists with the TennCare PDL and report that information to TennCare monthly, quarterly, and semiannually, and provide suggestions for improving PDL compliance.	Report shall be delivered within forty-five (45) days following the period, but not earlier than thirty (30) days following the period.	Penalty may, in the State's discretion, be \$2500 per week that report is overdue.
A.11.1 Enrollee Notices	The Contractor shall be required to send individualized notices to enrollees, worded at a six (6 <sup>th</sup> ) grade reading level, on a daily basis except for Sunday	Notices shall be approved by TennCare and include prior authorization denial notices, prescription limit notices, lock-in notices, or other notice as directed by TennCare.	Failure by the Contractor to produce notices in such a manner may, in the State's discretion, result in liquidated damages of one hundred dollars (\$100) per notice
E.5 Breach, Partial Default	In the event of a Breach, the State may declare a Partial Default. In that case, the State shall provide the Contractor written notice of: (1) the date that Contractor shall terminate providing the service associated with the Breach; and (2) the date the State shall begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State	Contract Performance Standard	The amount of liquidated damages that may, in the State's discretion, be assessed against the Contractor shall be at the discretion of the State, in accordance with the specific penalty provisions contained in

PERFORMANCE MEASURE	STANDARD / REQUIREMENT	DELIVERABLE	DAMAGE
	<p>may revise the time periods contained in the notice written to the Contractor.</p> <p>In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts that would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) business days any requested material from Contractor. The State shall make the final and binding determination of said amount.</p>		<p>the base Contract, and not exceed ten percent (10%) of the maximum payments previously made by TennCare to Contractor</p>
<p>E.23.1, Prevention/Detection of Provider Fraud and Abuse</p>	<p>The Contractor shall provide monthly reports to TennCare that describe pharmacy provider dispensing patterns that statistically identify the pharmacy as an outlier that may be representative of potential fraudulent, abusive or wasteful dispensing patterns. Additionally, the Contractor shall provide specific recommendations to TennCare, via a plan of correction that will eliminate the potentially fraudulent, abusive or wasteful dispensing patterns of these specific pharmacy providers.</p>	<p>The reports shall be due on the fifteenth (15th) day of the month for the previous month's pharmacy claims.</p>	<p>Failure by the Contractor to provide the monthly reports listed above in a complete and timely manner may, in the State's discretion, result in the assessment of liquidated damages by TennCare of one hundred dollars (\$100) per day during the first month violations are identified. Liquidated damages will increase to two hundred dollars (\$200) per day for the second consecutive month violations are identified.</p>

## DEFINITIONS

The terms used in this Contract shall be given the meaning used in the Rules and Regulations of the Bureau of TennCare. However, the following terms when used in this Contract, shall be construed and/or interpreted as follows, unless the context expressly requires a different construction and/or interpretation. In the event of a conflict in language between the Definitions, Attachments, and other Sections of this Contract, the language in this Section of the Contract shall govern.

1. **340B Pharmacy** - A pharmacy participating a special drug discount program authorized by Section 340B of the Public Health Service Act. Participation is limited to the following types of providers: Consolidated Health Centers, AIDS clinics and drug programs, Black Lung Clinics, Federally Qualified Health Center Look-a-likes, Disproportionate Share Hospitals, Hemophilia treatment centers, Native Hawaiian health centers, Urban Indian clinics/638 tribal centers, Title X family planning clinics, STD clinics, TB clinics.
2. **ACD** - Automatic Call Distributor (ACD) is a system or device that distributes incoming calls to a specific group of representatives and designated terminals.
3. **AMP** - Average Manufacturer Price, a reference drug price calculated by CMS. It is based on data provided by pharmaceutical manufacturers. This value is used to calculate Medicaid Drug Rebates for state Medicaid programs.
4. **AWP** - Average Wholesale Price is a reference price for prescription drug products. Pharmacy reimbursement can be calculated based on AWP minus a percentage. The AWP amount is provided by commercial publishers of drug pricing data such as First Data Bank or Thomson Medical Economics.
5. **BHO** - Behavioral Health Organization is an entity which organizes and assures the delivery of mental health and substance abuse services.
6. **Business Interruption** - Any disruption in operations that is equal to or longer than ten minutes in duration.
7. **Clean Claim** - A claim received by the PBM for adjudication, and which requires no further information, adjustment, or alteration by the provider of the services in order to be processed and paid by the PBM.
8. **CHF** - Congestive Heart Failure is a condition in which the heart's function as a pump to deliver oxygen rich blood to the body is inadequate to meet the body's needs.
9. **CMS** - Centers for Medicare & Medicaid Services [formerly Health Care Financing Administration (HCFA)].
10. **CSR** - Customer Service Representative is person working in a call center operation.
11. **DAW** - Dispense as Written - A prescription that can not be filled with a generic because the prescriber has indicated Dispense as Written on the prescription.
12. **Disaster** - A negative event that significantly disrupts business operations for more than one hour.
13. **Disenrollment** - The discontinuance of a member's entitlement to receive covered services under the terms of this Contract, and deletion from the approved list of members furnished by TennCare to the Contractor.
14. **DDI Phase** - Design Development and Implementation
15. **DEA Number** - A Drug Enforcement Agency Number is a series of numbers assigned to a health care provider allowing them to write prescriptions for controlled substances. The DEA number is often used as a prescriber identifier.

16. **DESI Drug** - A drug that has been designated as experimental or ineffective by the Food and Drug Administration (FDA).
17. **DSS** - A decision support system is a database and query tool.
18. **DUR** - Drug Utilization Review is program is to improve patient safety and care and to reduce overall drug costs. Medicaid DUR programs are required by the federal Omnibus Budget Reconciliation Act of 1990 to provide prospective claim edits, retrospective analysis and educational programs.
19. **Pro-DUR** - A point of sale claim edit to facilitate drug utilization review objectives.
20. **Retro-DUR** - A post payment claims analysis to facilitate drug utilization review objectives.
21. **EMC** - Electronic Media Claims.
22. **Enrollee** - Any person who has enrolled in the TennCare program in accordance with the TennCare Rules and Regulations. (See Member or Recipient, also).
23. **FAQs** - Frequently Asked Questions.
24. **FIR** - Functional and Informational Requirements.
25. **FTE** - Full time equivalent position.
26. **FUL** - Most current Federal Upper Limit price as listed by CMS.
27. **GCN** - Generic Code Number.
28. **GSN** - Generic Sequence Number.
29. **HIPAA** - Health Insurance Portability and Accountability Act of 1996 at 45 Code of Federal Regulations Sections 160 and 164.
30. **Hot Site** - An alternative facility with the capability to readily assume responsibility for carrying out the activities carried out at the Contractor's main site.
31. **IVR or IVRU** - Interactive voice response unit is a telephone technology that allows a computer to detect voice and touch tones using a normal phone call and provide individualized system generated information for callers.
32. **IRS** - Drugs that are identical, related or similar to drugs identified as LTE (less than effective) by the FDA.
33. **Limited English Proficiency** - Refers to individuals have a limited ability to read, speak, write, or understand English.
34. **"Lock In"** - A restrictive logic that limits claims at point of sale claims to selected prescribers or pharmacies. Members under this restriction are said to be "locked-In".
35. **Long-Term Care** - The services of one of the following: a nursing facility (NF); An Intermediate Care Facility for the Mentally Retarded (ICF/MR), or a Home and Community-Based Services (HCBS) waiver program. (Services provided under a HCBS waiver program are considered to be alternatives to long-term care).
36. **LTE** - Drugs that the Food and Drug Administration (FDA) considers to be Less Than Effective because there is a lack of substantial evidence of effectiveness for all labeled indications and for which there is no compelling justification for their medical need.

37. **MAC** - Maximum Allowable Cost.
38. **MCO** - A managed care organization participating in the TennCare program.
39. **Member** - Any person who has enrolled in the TennCare program in accordance with the TennCare Rules and Regulations. (See Enrollee or Recipient, also).
40. **NCPDP** - National Council of Prescription Drug Programs.
41. **NDC** - National Drug Code Number.
42. **NPI** - National Provider Identification Number.
43. **NTIS** - National Technical Information Service operated by the US Department of Commerce.
44. **OBRA** - Omnibus Budget Reconciliation Act
45. **OIR** - Office of Information Resources
46. **OTC** - Over-the-counter medications.
47. **PA** - Prior Authorization - A program requirement where certain therapies must gain approval before payment can be authorized.
48. **PDL** - Preferred Drug List.
49. **PHI** - Protected Health Information, as defined in HIPAA (45 C.F.R. §§ 160 and 164).
50. **POS** - Point-of-Sale.
51. **Pro-DUR** - Prospective Drug Utilization Review.
52. **Provider** - An institution, facility, agency, person, corporation, partnership, or association approved by TennCare which accepts as payment in full for providing benefits the amounts paid pursuant to a provider agreement with an MCO.
53. **QM/QI** - The ongoing process of assuring that the delivery of health care is appropriate, timely, accessible, available, and medically necessary and in keeping with established guidelines and standards and reflective of the current state of medical knowledge, and the effort to assess and improve the performance of a program or organization. Quality Improvement includes quality assessment and implementation of corrective actions to address any deficiencies identified.
54. **RA** - Remittance Advice.
55. **Recipient** - Any person who has enrolled in the TennCare program in accordance with the TennCare Rules and Regulations. (See Member or Enrollee, also).
56. **Retro-DUR** - Retrospective Drug Utilization Review.
57. **RFP** - Request for Proposal.
58. **State** - The State of Tennessee, including, but not limited to, any entity or agency of the state, such as the Department of Finance and Administration, the Office of Inspector General, the Bureau of TennCare, the Medicaid Fraud Control Unit, the Department of Mental Health and Developmental Disabilities, the Department of Children's Services, the Department of Health, the TennCare Division within the Department of Commerce and Insurance and the Office of the Attorney General.

59. **Step Therapy** - A program requirement to begin drug therapy with the most cost-effective and safest drug therapy and progressing to other more costly or risky therapy, only if necessary. The objectives are to control costs and minimize risks.
60. **Subcontract** - An agreement entered into by the Contractor with any other organization or person who agrees to perform any administrative function or service for the Contractor specifically related to securing or fulfilling the Contractor's obligations to TennCare under the terms of this Contract, (e.g., marketing) when the intent of such an agreement is to delegate the responsibility for any major service or group of services required by this Contract.
61. **Subcontractor** - Any organization or person who provides any function or service for the Contractor specifically related to securing or fulfilling the Contractor's obligations to TennCare under the terms of this Contract.
62. **System/Business Interruption** - Any event that affects more than five percent (5%) of POS transactions and call center operations, or a data integrity issue that compromises the confidentiality of the system of data contained within the system.
63. **TCA** - Tennessee Code Annotated.
64. **TCMIS** - TennCare Management Information System.
65. **TennCare** - The program administered by the single state agency, as designated by the state and CMS, pursuant to Title XIX of the Social Security Act and the Section 1115 research and demonstration waiver granted to the state of Tennessee and any successor programs.
66. **TBI / TBI MFCU** - The Tennessee Bureau of Investigation's Medicaid Fraud Control Unit has the authority to investigate and prosecute (or refer for prosecution) violations of all applicable state and federal laws pertaining to fraud in the administration of the Medicaid program, the provision of medical assistance, the activities of providers of medical assistance in the state Medicaid program (TennCare), allegations of abuse or neglect of patients in health care facilities receiving payments under the state Medicaid program, misappropriation of patients' private funds in such facilities, and allegations of fraud and abuse in board and care facilities.
67. **TPN** - A compounded nutritional prescription for patients unable to gain nourishment through their gastrointestinal tract.
68. **U & C** - Usual and customary price.
69. **UOM** - Unit of Measure.
70. **WAC** - Wholesale Acquisition Cost represents the manufacturer's published *catalog* or *list* price for a drug product to wholesalers. WAC does not represent actual transaction prices and does not include prompt pay or other discounts, rebates or reductions in price.

**ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE**

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	SXC Health Solutions, Inc.
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	75-2578509

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



**CONTRACTOR SIGNATURE**

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

*MARK A. THIERER, PRESIDENT AND CHIEF OPERATING OFFICER*

**PRINTED NAME AND TITLE OF SIGNATORY**

*5/2/2008*

**DATE OF ATTESTATION**

**HIPAA BUSINESS ASSOCIATE AGREEMENT**

*IN COMPLIANCE WITH PRIVACY AND SECURITY RULES*

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT ("Agreement") is between **The State of Tennessee, Department of Finance and Administration, Bureau of TennCare**, 310 Great Circle Road, Nashville, TN 37243 ("Covered Entity") and **SXC HEALTH SOLUTIONS, INC.** located at 2441 Warrenville Road, Suite 610, Lisle, IL 60532 ("Business Associate"), including all office locations and other business locations at which Business Associate data may be used or maintained. Covered Entity and Business Associate may be referred to herein individually as "Party" or collectively as "Parties."

**BACKGROUND**

Covered Entity acknowledges that it is subject to the Privacy and Security Rules (45 CFR Parts 160 and 164) promulgated by the United States Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191.

If Business Associate provides services to Covered Entity pursuant to one or more contractual relationships, said Agreements are detailed below and hereinafter referred to as "Service Agreements."

<b>LIST OF AGREEMENTS AFFECTED BY THIS HIPAA BUSINESS ASSOCIATE AGREEMENT</b>	<b>Execution Date</b>
SXC Health Solutions, Inc: Pharmacy Management and Preferred Drug List Services	June 1, 2008

In the course of executing Service requests, Business Associate may come into contact with, use, or disclose Protected Health Information ("PHI") (defined in Section 1 below). Said Service Agreements are hereby incorporated by reference and shall be taken and considered as a part of this document the same as if fully set out herein.

In accordance with the federal privacy and security regulations set forth at 45 C.F.R. Part 160 and Part 164, Subparts A, C, and E, which require Covered Entity to have a written memorandum with each of its internal Business Associates, the Parties wish to establish satisfactory assurances that Business Associate will appropriately safeguard PHI and, therefore, execute this Agreement.

**1. DEFINITIONS**

1.1 Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103, 164.304, 164.504 and 164.501.

1.2 "Breach of the Security of the [Business Associate's Information] System" shall mean the unauthorized acquisition, including, but not limited to, access to, use, disclosure, modification or destruction, of unencrypted computerized data that materially compromises the security, confidentiality, or integrity of personal information maintained by or on behalf of the Covered Entity under the terms of Tenn. Code Ann. § 47-18-2107 and this Agreement.

- 1.3 "Commercial Use" means obtaining protected health information with the intent to sell, transfer or use it for commercial, or personal gain, or malicious harm; sale to third party for consumption, resale, or processing for resale; application or conversion of data to make a profit or obtain a benefit contrary to the spirit of this Agreement, including but not limited to presentation of data or examples of data in a conference or meeting setting where the ultimate goal is to obtain or gain new business.
- 1.4 "Designated Record Set" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.5 "Electronic Protected Health Information" (ePHI) shall have the meaning set out in its definition at 45 C.F.R. § 160.103.
- 1.6 "Encryption" means the process using publicly known algorithms to convert plain text and other data into a form intended to protect the data from being able to be converted back to the original plain text by known technological means.
- 1.7 "Health Care Operations" shall have the meaning set out in its definition at 45 C.F.R. § 164.501.
- 1.8 "individual" shall have the same meaning as the term "individual" in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 1.9 "Marketing" means the act or process of promoting, selling, leasing or licensing any information or data for profit without the express written permission of Covered Entity.
- 1.10 "Privacy Officer" shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a)(1). The Privacy officer is the official designated by a Covered Entity or Business Associate to be responsible for compliance with HIPAA regulations.
- 1.11 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A, and E.
- 1.12 "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity. PHI includes information in any format, including but not limited to electronic or paper.
- 1.13 "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.501.
- 1.14 "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.
- 1.15 "Security Event" shall mean an immediately reportable subset of security incidents which incident would include:
- a) a suspected penetration of Business Associate's information system of which the Business Associate becomes aware but for which it is not able to verify within FORTY-EIGHT (48) HOURS (of the time the Business Associate became aware of the suspected incident) that enrollee PHI or other confidential TennCare data was not accessed, stolen, used, disclosed, modified, or destroyed;
  - b) any indication, evidence, or other security documentation that the Business Associate's network resources, including, but not limited to, software, network routers, firewalls, database and application servers, intrusion detection systems or other security appliances, may have been damaged, modified, taken over by proxy, or otherwise compromised, for which Business Associate cannot refute the indication within FORTY-EIGHT (48) HOURS of the time the Business Associate became aware of such indication;
  - c) a breach of the security of the Business Associate's information system(s)(see definition 1.2 above), by unauthorized acquisition, including, but not limited to, access to or use, disclosure, modification or destruction, of unencrypted computerized data and which incident materially compromises the security, confidentiality, or integrity of TennCare enrollee PHI; and/or

- d) the unauthorized acquisition, including but not limited to access to or use, disclosure, modification or destruction, of unencrypted TennCare enrollee PHI or other confidential information of the Covered Entity by an employee or authorized user of Business Associate's system(s) which materially compromises the security, confidentiality, or integrity of TennCare enrollee PHI or other confidential information of the Covered Entity.

If data acquired (including but not limited to access to or use, disclosure, modification or destruction of such data) is in encrypted format but the decryption key which would allow the decoding of the data is also taken, the parties shall treat the acquisition as a breach for purposes of determining appropriate response.

1.16 "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information" at 45 CFR Parts 160 and 164, Subparts A and C.

## **2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Privacy Rule)**

2.1 Compliance with the Privacy Rule. Business Associate agrees to fully comply with the requirements under the Privacy Rule applicable to "business associates," as that term is defined in the Privacy Rule and not use or further disclose PHI other than as permitted or required by this Agreement, the Service Agreements, or as Required by Law. In case of any conflict between this Agreement and the Service Agreements, this Agreement shall govern.

2.2 Privacy Safeguards and Policies. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the Service Agreement(s), this Agreement or as required by Law. This includes the implementation of administrative, physical, and technical safeguards to reasonably and appropriately protect the Covered Entity's PHI against any reasonably anticipated threats or hazards, utilizing the technology commercially available to the Business Associate (See also Section 3.2). The Business Associate shall maintain appropriate documentation of its compliance with the Privacy Rule, including, but not limited to, its policies, procedures, records of training and sanctions of members of its workforce.

2.3 Business Associate Contracts. Business Associate shall require any agent, including a subcontractor, to whom it provides PHI received from, maintained, created or received by Business Associate on behalf of Covered Entity, or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI or other confidential TennCare information, to agree, by written contract with Business Associate, to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

2.4 Mitigation of Harmful Effect of Violations. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

2.5 Reporting of Violations in Use and Disclosure of PHI. Business Associate agrees to require its employees, agents, and subcontractors to promptly report to Business Associate any use or disclosure of PHI in violation of this Agreement and to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement. The Business Associate shall report such violation to Covered Entity within TWO (2) BUSINESS DAYS of event.

2.6 Access of Individual to PHI and other Requests to Business Associate. If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate agrees to provide access to PHI in a Designated Record Set to Covered Entity in order to meet its requirements under 45 CFR § 164.524. If Business Associate receives a request from an Individual for a copy of the individual's PHI, and the PHI is in the sole possession of the Business Associate, Business Associate will provide the requested copies to the individual and notify the Covered Entity of such action within two (2) business days of completion of the request. If Business Associate receives a request for PHI in the possession of the Covered Entity, or receives a request to exercise other individual rights as set forth in the Privacy Rule, Business Associate shall promptly forward the request to Covered Entity within two (2) business days. Business Associate shall then assist Covered Entity as necessary in responding to the request in a timely manner. If a Business Associate provides copies of PHI to the individual, it may charge a reasonable fee for the copies as the regulations shall permit.

2.7 Requests to Covered Entity for Access to PHI. The Covered Entity shall forward to the Business Associate within two (2) business days any Individual's request for access to or a copy of their PHI that shall require Business Associate's participation, after which the Business Associate shall provide access to or deliver such information as follows:

- a) The Parties understand that if either Party receives a request for access to or copies of PHI from an Individual which the Party may complete with only its own onsite information, the time for such response shall be thirty (30) days, with notification to the Covered Entity upon completion.
- b) If Covered Entity does not have the requested PHI onsite and directs Business Associate to provide access to or a copy of his/her PHI directly to the Individual, the Business associate shall have sixty (60) days from the date of the Individual's request to provide access to PHI or deliver a copy of such information to the Individual. The Business Associate shall notify the Covered Entity when it completes the response.
- c) If the Covered Entity receives a request and requires information from the Business Associate in addition to the Covered Entity's onsite information to fulfill the request, the Business Associate shall have thirty (30) days from date of Covered Entity's notice to provide access or deliver such information to the Covered Entity so that the Covered Entity may timely respond to the Individual within the sixty (60) day requirement of 45 CFR § 164.524.
- d) If the Party designated above responding to the Individual's request is unable to complete the response to the request in the time provided, that Party shall provide the Individual with a written statement of the reasons for the delay and the date by which the Party will complete its action on the request. The Party may extend the response time once for no more than thirty (30) additional days.

2.8 Individuals' Request to Amend PHI. If Business Associate receives PHI from Covered Entity in a Designated Record Set, Business Associate agrees to make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526, regarding an Individual's request to amend PHI. The Business Associate shall make the amendment promptly in the time and manner designated by Covered Entity, but shall have thirty (30) days notice from Covered Entity to complete the amendment to the Individual's PHI and to notify the Covered Entity upon completion.

2.9 Recording of Designated Disclosures of PHI. Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

2.10 Accounting for Disclosures of PHI. The Business Associate agrees to provide to Covered Entity or to an Individual, in time and manner designated by Covered Entity, information collected in accordance with this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. The Covered Entity shall forward the Individual's request requiring the participation of the Business Associate to the Business Associate within two (2) business days, after which the Business Associate shall provide such information as follows:

- a) If Covered Entity directs Business Associate to provide accounting of disclosures of the Individual's PHI directly to the Individual, the Business Associate shall have sixty (60) days from the date of the Individual's request to provide access to or deliver such information to the Individual. The Covered Entity shall provide notice to the Business Associate in time to allow the Business Associate a minimum of thirty (30) days to timely complete the Individual's request.
- b) If the Covered Entity elects to provide the accounting to the Individual, the Business Associate shall have thirty (30) days from date of Covered Entity's notice of request to provide information for the Accounting to the Covered Entity so that the Covered Entity may timely respond to the Individual within the sixty (60) day period.
- c) If either of the Parties is unable to complete the response to the request in the times provided above, that Party shall notify the Individual with a written statement of the reasons for the delay and the date by which the Party will complete its action on the request. The Parties may extend the response time once for no more than thirty (30) additional days.

- d) The accounting of disclosures shall include at least the following information: (1) date of the disclosure; (2) name of the third party to whom the PHI was disclosed, (3) if known, the address of the third party; (4) brief description of the disclosed information; and (5) brief explanation of the purpose and basis for such disclosure.
- e) The Parties shall provide one (1) accounting in any twelve (12) months to the Individual without charge. The Parties may charge a reasonable, cost-based fee, for each subsequent request for an accounting by the same individual if he/she is provided notice and the opportunity to modify his/her request. Such charges shall not exceed any applicable State statutes or rules.

2.11 Minimum Necessary. Business Associate agrees it must limit any use, disclosure, or request for use or disclosure of PHI to the minimum amount necessary to accomplish the intended purpose of the use, disclosure, or request in accordance with the requirements of the Privacy Rule.

2.11.1 Business Associate represents to Covered Entity that all its uses and disclosures of, or requests for, PHI shall be the minimum necessary in accordance with the Privacy Rule requirements.

2.11.2 Covered Entity may, pursuant to the Privacy Rule, reasonably rely on any requested disclosure as the minimum necessary for the stated purpose when the information is requested by Business Associate.

2.11.3 Business Associate agrees to adequately and properly maintain all PHI received from, or created or received on behalf of, Covered Entity

2.12 Privacy Compliance Review upon Request. Business Associate agrees to make its internal practices, books and records, including policies, procedures, and PHI, relating to the use and disclosure of PHI received from, created by or received by Business Associate on behalf of Covered Entity available to the Covered Entity or to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the requester, for purposes of determining Covered Entity's or Business Associate's compliance with the Privacy Rule.

2.13 Cooperation in Privacy Compliance. Business Associate agrees to fully cooperate in good faith and to assist Covered Entity in complying with the requirements of the Privacy Rule.

### **3. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (Security Rule)**

3.1 Compliance with Security Rule. Business Associate agrees to fully comply with the requirements under the Security Rule applicable to "business associates," as that term is defined in the Security Rule. In case of any conflict between this Agreement and Service Agreements, this Agreement shall govern.

3.2 Security Safeguards and Policies. Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the covered entity as required by the Security Rule. This includes specifically, but is not limited to, the utilization of technology commercially available at the time to the Business Associate to protect the Covered Entity's PHI against any reasonably anticipated threats or hazards. The Business Associate understands that it has an affirmative duty to perform a regular review or assessment of security risks, conduct active risk management and supply best efforts to assure that only authorized persons and devices access its computing systems and information storage, and that only authorized transactions are allowed. The Business Associate will maintain appropriate documentation of its compliance with the Security Rule.

3.3 Security Provisions in Business Associate Contracts. Business Associate shall ensure that any agent, including a subcontractor, to whom it provides electronic PHI received from, maintained, or created for Covered Entity or that carries out any duties for the Business Associate involving the use, custody, disclosure, creation of, or access to PHI supplied by Covered Entity, shall execute a bilateral contract (or the appropriate equivalent if the agent is a government entity) with Business Associate, incorporating the same restrictions and conditions in this Agreement with Business Associate regarding PHI.

3.4 Tennessee Consumer Notice of System Breach. Business Associate understands that the Covered Entity is an "information holder" (as may be Business Associate) under the terms of Tenn. Code Ann. § 47-18-2107, and that in the event of a breach of the Business Associate's security system as defined by that statute and Definition 1.2 of this agreement, the Business Associate shall indemnify and hold the Covered Entity harmless for expenses and/or damages related to the breach. Such obligation shall include, but is not limited to, the mailed notification to any Tennessee resident whose personal information is reasonably believed to have been acquired by an unauthorized individual. In the event that the Business Associate discovers circumstances requiring notification of more than one thousand (1,000) persons at one time, the person shall also notify, without unreasonable delay, all consumer reporting agencies and credit bureaus that compile and maintain files on consumers on a nationwide basis, as defined by 15 U.S.C. § 1681a, of the timing, distribution and content of the notices. Substitute notice, as defined by Tenn. Code Ann. § 47-18-2107(e)(2) and (3), shall not be permitted except as approved in writing in advance by the Covered Entity. The parties agree that PHI includes data elements in addition to those included by "personal information" under Tenn. Code Ann. § 47-18-2107, and agree that Business Associate's responsibilities under this paragraph shall include all PHI.

3.5 Reporting of Security Incidents. The Business Associate shall track all security incidents as defined by HIPAA and shall periodically report such security incidents in summary fashion as may be requested by the Covered Entity, but not less than annually within sixty (60) days of the anniversary of this Agreement. The Covered Entity shall not consider as security incidents, for the purpose of reporting, external activities (port enumeration, etc.) typically associated with the "footprinting" of a computing environment as long as such activities have only identified but not compromised the logical network perimeter, including but not limited to externally facing firewalls and web servers. The Business Associate shall reasonably use its own vulnerability assessment of damage potential and monitoring to define levels of Security Incidents and responses for Business Associate's operations. However, the Business Associate shall expediently notify the Covered Entity's Privacy Officer of any Security Incident which would constitute a Security Event as defined by this Agreement, including any "breach of the security of the system" under Tenn Code Ann. § 47-18-2107, within TWO (2) BUSINESS DAYS. The Business Associate shall likewise notify the Covered Entity within TWO (2) BUSINESS DAYS of any unauthorized acquisition including but not limited to use, disclosure, modification, or destruction of PHI by an employee or otherwise authorized user of its system of which it becomes aware.

3.5.1 Business Associate shall identify in writing key contact persons for administration, data processing, Marketing, Information Systems and Audit Reporting within thirty (30) days of execution of this Agreement. Business Associate shall notify Covered Entity of any reduction of in-house staff persons during the term of this Agreement in writing within ten (10) business days.

3.6 Contact for Security Event Notice. Notification for the purposes of Sections 2.5, 3.4 and 3.5 shall be in writing made by certified mail or overnight parcel within TWO (2) BUSINESS DAYS OF the event, with supplemental notification by facsimile and/or telephone as soon as practicable, to:

Privacy Officer  
Bureau of TennCare  
310 Great Circle Rd.  
Nashville Tennessee  
Phone: (615) 507-6855  
Facsimile: (615) 532-7322

3.7 Security Compliance Review upon Request. Business Associate agrees to make its internal practices, books, and records, including policies and procedures relating to the security of electronic PHI received from, created by or received by Business Associate on behalf of Covered Entity, available to the Covered Entity or to the Secretary of the United States Department of Health in Human Services or the Secretary's designee, in a time and manner designated by the requester, for purposes of determining Covered Entity's or Business Associate's compliance with the Security Rule.

3.8 Cooperation in Security Compliance. Business Associate agrees to fully cooperate in good faith and to assist Covered Entity in complying with the requirements of the Security Rule.

#### **4. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

4.1 Use of PHI for Operations on Behalf of Covered Entity. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services (i.e., treatment, payment or health care operations) for, or on behalf of, Covered Entity as specified in Service Agreements, provided that such use or disclosure would not violate the Privacy and Security Rule, if done by Covered Entity.

4.2 Other Uses of PHI. Except as otherwise limited in this Agreement, Business Associate may use PHI within its workforce as required for Business Associate's proper management and administration, not to include Marketing or Commercial Use, or to carry out the legal responsibilities of the Business Associate.

4.3 Third Party Disclosure Confidentiality. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or, if permitted by law, this Agreement, and the Service Agreement, provided that, if Business Associate discloses any PHI to a third party for such a purpose, Business Associate shall enter into a written agreement with such third party requiring the third party to: (a) maintain the confidentiality, integrity, and availability of PHI and not to use or further disclose such information except as Required By Law or for the purpose for which it was disclosed, and (b) notify Business Associate of any instances in which it becomes aware in which the confidentiality, integrity, and/or availability of the PHI is breached within TWO (2) BUSINESS DAYS of event.

4.4 Data Aggregation Services. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation Services to Covered Entity as permitted by 42 CFR § 164.504(e)(2)(I)(B).

4.5 Other Uses Strictly Limited. Nothing in this Agreement shall permit the Business Associate to share PHI with Business Associate's affiliates or contractors except for the purposes of the Service Agreement(s) between the Covered Entity and Business Associate(s) identified in the "LIST OF AGREEMENTS AFFECTED BY THIS [BUSINESS ASSOCIATE] AGREEMENT & HIPAA REQUIREMENTS" on page one of this Agreement.

4.6 Covered Entity Authorization for Additional Uses. Any use of PHI or other confidential TennCare information by Business Associate, its affiliate or Contractor, other than those purposes of this Agreement, shall require express written authorization by the Covered Entity, and a Business Associate agreement or amendment as necessary. Activities which are prohibited include, but not are not limited to, Marketing, as defined by 45 CFR § 164.503 or the sharing for Commercial Use or any purpose construed by Covered Entity as Marketing or Commercial use of TennCare enrollee personal or financial information with affiliates, even if such sharing would be permitted by federal or state laws.

4.7 Prohibition of Offshore Disclosure. Nothing in this Agreement shall permit the Business Associate to share, use or disclose PHI in any form via any medium with any third party beyond the boundaries and jurisdiction of the United States without express written authorization from the Covered Entity.

4.8 Data Use Agreement - Use and Disclosure of Limited Data Set. Business Associate may use and disclose a Limited Data Set that Business Associate creates for Research, public health activity, or Health Care Operations, provided that Business Associate complies with the obligations below. Business Associate may not make such use and disclosure of the Limited Data Set after any cancellation, termination, expiration, or other conclusion of this Agreement.

4.9 Limitation on Permitted Uses and Disclosures. Business Associate will limit the uses and disclosures it makes of the Limited Data Set to the following: Research, public health activity, or Health Care Operations, to the extent such activities are related to covered functions, including business planning and development such as conducting cost-management and planning-related analysis related to managing and operating Business

Associates functions, formulary development and administration, development and improvement of methods of payment or coverage policies, customer service, including the provision of data analysis for policy holders, plan sponsors, or other customers, to the extent such activities are related to covered functions, provided that PHI is not disclosed and disclosure is not prohibited pursuant to any other provisions in this Agreement related to Marketing or Commercial use.

## 5. OBLIGATIONS OF COVERED ENTITY

5.1 Notice of Privacy Practices. Covered Entity shall provide Business Associate with the notice of Privacy Practices produced by Covered Entity in accordance with 45 CFR § 164.520, as well as any changes to such notice.

5.2 Notice of Changes in Individual's Access or PHI. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses.

5.3 Notice of Restriction in Individual's Access or PHI. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use of PHI.

5.4 Reciprocity for Requests Received by Business Associate. The Parties agree that this Section (Section 5) is reciprocal to the extent Business Associate is notified or receives an inquiry from any individual within Covered Entity's covered population.

## 6. PERMISSIBLE REQUESTS BY COVERED ENTITY

6.1 Requests Permissible under HIPAA. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy or Security Rule.

## 7. TERM AND TERMINATION

7.1 Term. This Agreement shall be effective as of the date on which it has been signed by both parties and shall terminate when all PHI which has been provided, regardless of form, by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if the Parties agree that it is unfeasible to return or destroy PHI, subsection 7.3.5 below shall apply.

7.2 Termination for Cause. This Agreement authorizes and Business Associate acknowledges and agrees Covered Entity shall have the right to immediately terminate this Agreement and Service Agreement in the event Business Associate fails to comply with, or violates a material provision of this Agreement and any provision of the Privacy and Security Rules.

7.2.1 Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

- a) Provide notice of breach and an opportunity for Business Associate to reasonably and promptly cure the breach or end the violation, and terminate this BAA if Business Associate does not cure the breach or end the violation within the reasonable time specified by Covered Entity; or

- b) Immediately terminate this BAA if Business Associate has breached a material term of this BAA and cure is not possible; or
- c) If termination, cure, or end of violation is not feasible, Covered Entity shall report the violation to the Secretary.

7.3 Effect of Termination. Upon termination of this Agreement for any reason, except as provided in subsections 7.3.2 and 7.3.5 below, Business Associate shall at its own expense either return and/or destroy all PHI and other confidential information received, from Covered Entity or created or received by Business Associate on behalf of Covered Entity. This provision applies to all confidential information regardless of form, including but not limited to electronic or paper format. This provision shall also apply to PHI and other confidential information in the possession of sub-contractors or agents of Business Associate.

7.3.1 The Business Associate shall consult with the Covered Entity as necessary to assure an appropriate means of return and/or destruction and shall notify the Covered Entity in writing when such destruction is complete. If information is to be returned, the Parties shall document when all information has been received by the Covered Entity.

7.3.2 This provision (Section 7.3 and its subsections) shall not prohibit the retention of a single separate, archived file of the PHI and other confidential TennCare information by the Business Associate if the method of such archiving reasonably protects the continued privacy and security of such information and the Business Associate obtains written approval at such time from the Covered Entity. Otherwise, neither the Business Associate nor its subcontractors and agents shall retain copies of TennCare confidential information, including enrollee PHI, except as provided herein in subsection 7.3.5.

7.3.3 The Parties agree to anticipate the return and/or the destruction of PHI and other TennCare confidential information, and understand that removal of the confidential information from Business Associate's information system(s) and premises will be expected in almost all circumstances. The Business Associate shall notify the Covered Entity whether it intends to return and/or destroy the confidential with such additional detail as requested. In the event Business Associate determines that returning or destroying the PHI and other confidential information received by or created for the Covered Entity at the end or other termination of the Service Agreement is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible.

7.3.4 Except for Business Associate Agreements in effect prior to April 21, 2005 when the Security Rule became effective, for the renewal or amendment of those same Agreements, or for other unavoidable circumstances, the Parties contemplate that PHI and other confidential information of the Covered Entity shall not be merged or aggregated with data from sources unrelated to that Agreement, or Business Associate's other business data, including for purposes of data backup and disaster recovery, until the parties identify the means of return or destruction of the TennCare data or other confidential information of the Covered Entity at the conclusion of the Service Agreement, or otherwise make an express alternate agreement consistent with the provisions of Section 7.3 and its subsections.

7.3.5 Upon written mutual agreement of the Parties that return or destruction of PHI is unfeasible and upon express agreement as to the means of continued protection of the data, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

## 8. MISCELLANEOUS

8.1 Regulatory Reference. A reference in this Agreement to a section in the Privacy and/or Security Rule means the section as in effect or as amended.

8.2 Amendment. The Parties agree to take such action to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191. Business Associate and Covered Entity shall comply with any amendment to the Privacy and Security Rules, the Health Insurance Portability and Accountability

Act, Public Law 104-191, and related regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended.

8.3 Survival. The respective rights and obligations of Business Associate under Section 7.3 of this Agreement shall survive the termination of this Agreement.

8.4 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and the Business Associate to comply with the Privacy and Security Rules.

8.5 Headings. Paragraph Headings are used in this Agreement are for the convenience of the Parties and shall have no legal meaning in the interpretation of the Agreement.

8.6 Notices and Communications. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be delivered by hand, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party at the appropriate facsimile number or address as set forth below, or to such other party, facsimile number, or address as may be hereafter specified by written notice. (For purposes of this section, effective notice to "Respective Party" is not dependent on whether the person named below remains employed by such Party.) The Parties agree to use their best efforts to immediately notify the other Party of changes in address, telephone number, fax numbers and to promptly supplement this Agreement as necessary with corrected information.  
**Notifications relative to Sections 2.5, 3.4 and 3.5 of this Agreement must be reported to the Privacy Officer pursuant to Section 3.6.**

**COVERED ENTITY:**

Darin Gordon  
Deputy Commissioner  
Department of Finance and Adm.  
Bureau of TennCare  
310 Great Circle Road  
Nashville, TN 37243  
(615) 507-6443  
Fax: (615) 253-5607

**BUSINESS ASSOCIATE:**

Mike Bennof  
Executive Vice President  
SXC Health Solutions, Inc.  
2441 Warrenville Road  
Suite 610  
Lisle, IL 60532  
Telephone: 630-577-3290  
Fax: 630-577-3101

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the date of hand delivery; as of the date specified for overnight courier service delivery; as of three (3) business days after the date of mailing; or on the day the facsimile transmission is received mechanically by the facsimile machine at the receiving location and receipt is verbally confirmed by the sender.

8.7 Strict Compliance. No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect, or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.

8.8 Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

8.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee except to the extent that Tennessee law has been pre-empted by HIPAA and without giving effect to principles of conflicts of law. Jurisdiction shall be Davidson County, Nashville, Tennessee, for purposes of any litigation resulting from disagreements of the parties for purpose of this Agreement and the Service Agreement (s).