

# WHATCOM COUNTY COUNCIL AGENDA BILL

NO. 2017-383

CLEARANCES	Initial	Date	Date Received in Council Office	Agenda Date	Assigned to:
Originator:	MK	11/21/17	<div style="text-align: center;"> <p>RECEIVED</p> <p>NOV 28 2017</p> <p>WHATCOM COUNTY COUNCIL</p> </div>	12/5/17	Finance/Council Consent Agenda
Division Head:					
Dept. Head:	KSG	11/21/17			
Prosecutor:	LS	11/22/17			
Purchasing/Budget:	BB	11/22/17			
Executive:	RS	11/28/17			

## TITLE OF DOCUMENT:

Contract for Services – KEPRO Employee Assistance Program (EAP) Provider

## ATTACHMENTS:

1. Letter to Executive Louws
2. Employee Assistance Program Contract for Services – effective January 1, 2018

SEPA review required? ( ) Yes ( x ) NO  
 SEPA review completed? ( ) Yes ( x ) NO

Should Clerk schedule a hearing ? ( ) Yes ( x ) NO  
 Requested Date:

**SUMMARY STATEMENT OR LEGAL NOTICE LANGUAGE:** (If this item is an ordinance or requires a public hearing, you must provide the language for use in the required public notice. Be specific and cite RCW or WCC as appropriate. Be clear in explaining the intent of the action.)

Following Request for Proposal 17-51 process, this Administrative Services' Contract for Services would continue a relationship with KEPRO as Whatcom County's employee assistance program provider.

## COMMITTEE ACTION:

## COUNCIL ACTION:

Related County Contract #:

Related File Numbers:

Ordinance or Resolution Number:

Please Note: Once adopted and signed, ordinances and resolutions are available for viewing and printing on the County's website at: [www.co.whatcom.wa.us/council](http://www.co.whatcom.wa.us/council).



**MEMORANDUM**

**RECEIVED**

NOV 22 2017

JACK LOUWS  
COUNTY EXECUTIVE

**TO:** Jack Louws, County Executive

**FROM:** Melissa Keeley, HR Special Projects Manager

**RE:** **EMPLOYEE ASSISTANCE PROGRAM (EAP)**

**DATE:** November 21, 2017

Enclosed for your review and signature are two (2) originals of an Administrative Services Contract between KEPRO and Whatcom County for employee assistance program services commencing January 1, 2018.

▪ **Background and Purpose**

The County has contracted with KEPRO (formerly APS Healthcare) for employee assistance program services since 2008. For the past ten years, KEPRO has provided high quality services for our supervisors, employees, and employees' households, and as a result of a recent Request for Proposal process I recommend we continue this successful relationship for the next three-year contract period.

KEPRO is a national company with a strong team and presence in the Pacific Northwest. More than half of its Washington EAP business is with public sector clients. It provides a six-visit EAP model for employees and household members, excellent management consultation services, strong on-line services, good reporting, and competitive pricing.

▪ **Funding Amount and Source**

KEPRO proposed a three-year guaranteed rate at \$2.45 per employee per month which is below its current rate in 2017 of \$2.64. This amount is funded through annual charges to departments and participating junior taxing districts. Annual cost for this program for the current number of County and district employees is \$27,342.

▪ **Differences from Previous Contract**

The recommended contract continues the same Scope of Work which includes 24/7 telephone access, six visits per incident per year, unlimited management consultations, ten hours per year of on-site training, three Critical Incident Stress Debriefings per year, legal and financial resources and on-line resources and support on a variety of topics. Optional services and fees increased from \$250 to \$275 per hour for on-site training beyond ten hours (rarely used).

Please feel free to call me at extension 5309 if you have questions or concerns regarding the terms of this agreement.

**WHATCOM COUNTY CONTRACT  
INFORMATION SHEET**

Whatcom County Contract No.

201711024

Originating Department:	Administrative Services
Division/Program: (i.e. Dept. Division and Program)	Human Resources - BENEFITS
Contract or Grant Administrator:	Melissa Keeley, HR Special Projects Manager
Contractor's / Agency Name:	KEPRO

Is this a New Contract?    If not, is this an Amendment or Renewal to an Existing Contract?    Yes ☐    No ☐  
Yes ☒    No ☐    If Amendment or Renewal, (per WCC 3.08.100 (a)) Original Contract #: \_\_\_\_\_

Does contract require Council Approval?    Yes ☒    No ☐    If No, include WCC: \_\_\_\_\_  
(see Whatcom County Codes 3.06.010, 3.08.090 and 3.08.100)

Is this a grant agreement?  
Yes ☐    No ☒    If yes, grantor agency contract number(s): \_\_\_\_\_ CFDA#: \_\_\_\_\_

Is this contract grant funded?  
Yes ☐    No ☒    If yes, Whatcom County grant contract number(s): \_\_\_\_\_

Is this contract the result of a RFP or Bid process?    Contract \_\_\_\_\_  
Yes ☒    No ☐    If yes, RFP and Bid number(s): 17-51    Cost Center: 507320

Is this agreement excluded from E-Verify?    No ☐    Yes ☒    If no, include Attachment D Contractor Declaration form.

If YES, indicate exclusion(s) below:

<input checked="" type="checkbox"/> Professional services agreement for certified/licensed professional.	<input type="checkbox"/> Contract for Commercial off the shelf items (COTS).
<input checked="" type="checkbox"/> Contract work is for less than \$100,000.	<input type="checkbox"/> Work related subcontract less than \$25,000.
<input type="checkbox"/> Contract work is for less than 120 days.	<input type="checkbox"/> Public Works - Local Agency/Federally Funded FHWA.
<input type="checkbox"/> Interlocal Agreement (between Governments).	

<p>Contract Amount:(sum of original contract amount and any prior amendments):  \$ <u>2.45 PEPM for 2018-2020 \$27K per yr</u></p> <p>This Amendment Amount:  \$ _____</p> <p>Total Amended Amount:  \$ _____</p>	<p>Council approval required for; all property leases, contracts or bid awards <b>exceeding \$40,000</b>, and professional service contract amendments that have an increase greater than \$10,000 or 10% of contract amount, whichever is greater, <b>except when:</b></p> <ol style="list-style-type: none"> <li>1. Exercising an option contained in a contract previously approved by the council.</li> <li>2. Contract is for design, construction, r-o-w acquisition, professional services, or other capital costs approved by council in a capital budget appropriation ordinance.</li> <li>3. Bid or award is for supplies or equipment included approved in the budget.</li> <li>4. Contract is for manufacturer's technical support and hardware maintenance of electronic systems and/or technical support and software maintenance from the developer of proprietary software currently used by Whatcom County.</li> </ol>
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Summary of Scope: Employee Assistance Program services for Whatcom County's employees and families

Term of Contract:    January 1, 2018	Expiration Date:    December 31, 2020
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Contract Routing:	1. Prepared by: M Keeley	Date: 10/13/2017
	2. Attorney signoff: Daniel L. Gibson <i>DL</i> 11/22/17	Date: 10/27/17
	3. AS Finance reviewed: bbennett <i>BB</i>	Date: 10/20/17
	4. IT reviewed (if IT related): N/A	Date: _____
	5. Contractor signed: Joseph Doughen, CEO	Date: 11/22/2017
	6. Submitted to Exec.: _____	Date: 11-22-17
	7. Council approved (if necessary): _____	Date: _____
	8. Executive signed: _____	Date: _____
	9. Original to Council: _____	Date: _____

CONTRACT FOR SERVICES  
Employee Assistance Program (EAP)

Whatcom County Contract No.

201711024

**KEPRO Acquisitions, Inc.**, hereinafter referred to as "Contractor," and Whatcom County, hereinafter referred to as "County," agree and contract as set forth in this Agreement, including:

General Conditions, pp. 3 to 7,  
Exhibit A (Scope of Work), pp. 8 to 9,  
Exhibit B (Compensation), pp. 10 to 10,  
Exhibit C (Certificate of Insurance), pp. 11 to 14  
Exhibit D (Business Associate Agreement), pp. 15 to 22.

Copies of these items are attached hereto and incorporated herein by this reference as if fully set forth herein.

The term of this Agreement shall commence on the 1<sup>st</sup> day of January, 2018, and shall, unless terminated or renewed as elsewhere provided in the Agreement, terminate on the 31<sup>st</sup> day of December, 2020.

The general purpose or objective of this Agreement is to: provide Employee Assistance Program services to employees and their families, as more fully and definitively described in Exhibit A hereto. The language of Exhibit A controls in case of any conflict between it and that provided here.


The maximum consideration for the initial term of this agreement or for any renewal term shall not exceed \$2.45 per employee per month for all three years. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

Contractor acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 11.1, 21.1, 30.1, 31.2, 32.1, 34.2, and 34.3, if included, are totally and fully part of this contract and have been mutually negotiated by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

**CONTRACTOR:**

KEPRO ACQUISITIONS, INC.

  
Joseph A. Dougher, President and Chief Executive Officer

STATE OF PENNSYLVANIA       )  
  ) ss.  
COUNTY OF DAUPHIN       )

On this \_\_\_\_ day of \_\_\_\_\_, 2017, before me personally appeared Joseph A. Dougher to me known to be the President and Chief Executive Officer, KEPRO Acquisitions, Inc., and who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.


\_\_\_\_\_  
NOTARY PUBLIC in and for the Commonwealth of Pennsylvania, residing at \_\_\_\_\_.  
My commission expires \_\_\_\_\_.

**WHATCOM COUNTY:**

**Recommended for Approval:**

 11/22/2017  
Karen S. Goens Date

**Approved as to form:**

 11/22/17  
Prosecuting Attorney Date

**Approved:**

Accepted for Whatcom County:

By: \_\_\_\_\_  
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF WHATCOM )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2017, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

**CONTRACTOR INFORMATION:**

**KEPRO ACQUISITIONS, INC.**

Michelle Palmer, J.D.  
Contracts Director  
KEPRO Acquisitions, Inc.  
777 East Park Drive  
Harrisburg, PA 17111

Telephone: 717-265-7080  
Email: mpalmer@kepro.com

With copy to:

Susan Baker, Vice President, Operations  
6085 Marshalee Drive, Suite 110  
Elkridge, MD 21075

Contact Name: Alex Smith, Senior Account Executive

Contact Phone: 800-765-0770, ext. 4823  
Contact FAX: 425-885-9190  
Contact Email: asmith@kepro.com

## GENERAL CONDITIONS

### ***Series 00-09: Provisions Related to Scope and Nature of Services***

#### **0.1 Scope of Services:**

The Contractor agrees to provide to the County services and any materials as set forth in the project narrative identified as Exhibit "A" during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

### ***Series 10-19: Provisions Related to Term and Termination***

#### **10.1 Term:**

Services provided by Contractor prior to or after the term of this contract shall be performed at the expense of Contractor and are not compensable under this contract unless both parties hereto agree to such provision in writing. The term of this Agreement may be extended by mutual agreement of the parties; provided, however, that the Agreement is in writing and signed by both parties.

#### **10.2 Extension:**

The duration of this Agreement may be extended by mutual written consent of the parties, for a period of up to three years, and for a total of no longer than six years from the inception of this contract.

#### **11.1 Termination for Default:**

If the Contractor defaults by failing to perform any of the obligations of the contract or becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency or makes an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, first class postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. Termination shall be effective upon Contractor's receipt of the written notice, or within three (3) days of the mailing of the notice, whichever occurs first. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until all work called for has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

#### **11.2 Termination for Reduction in Funding:**

In the event that funding from State, Federal or other sources is withdrawn, reduced, or limited in any way after the effective date of this Agreement, and prior to its normal completion, the County may summarily terminate this Agreement as to the funds withdrawn, reduced, or limited, notwithstanding any other termination provisions of this Agreement. If the level of funding withdrawn, reduced or limited is so great that the County deems that the continuation of the programs covered by this Agreement is no longer in the best interest of the County, the County may summarily terminate this Agreement in whole, notwithstanding any other termination provisions of this Agreement. Termination under this section shall be effective upon receipt of written notice as specified herein, or within three days of the mailing of the notice, whichever occurs first.

#### **11.3 Termination for Public Convenience: Not Applicable**

### ***Series 20-29: Provisions Related to Consideration and Payments***

#### **20.1 Accounting and Payment for Contractor Services:**

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B." Where Exhibit "B" requires payments by the County, payment shall be based upon written claims supported, unless otherwise provided in Exhibit "B," by documentation of units of work actually performed and amounts earned, including, where appropriate, the actual number of days worked each month, total number of hours for the month, and the total dollar payment requested, so as to comply with municipal auditing requirements.

Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for the County or his designee (hereinafter referred to as the "Administrative Officer") the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract. Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than monthly, in accordance with the County's customary procedures, pursuant to the fee schedule set forth in Exhibit "B."

#### **21.1 Taxes:**

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to withhold for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance

with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes, including, but not limited to, Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

22.1 Withholding Payment: Not Applicable

23.1 Labor Standards:

The Contractor agrees to comply with all applicable state and federal requirements, including but not limited to those pertaining to payment of wages and working conditions, in accordance with RCW 39.12.040, the Prevailing Wage Act; the Americans with Disabilities Act of 1990; the Davis-Bacon Act; and the Contract Work Hours and Safety Standards Act providing for weekly payment of prevailing wages, minimum overtime pay, and providing that no laborer or mechanic shall be required to work in surroundings or under conditions which are unsanitary, hazardous, or dangerous to health and safety as determined by regulations promulgated by the Federal Secretary of Labor and the State of Washington.

***Series 30-39: Provisions Related to Administration of Agreement***

30.1 Independent Contractor:

The Contractor's services shall be furnished by the Contractor as an independent contractor, and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent contractor.

The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to employees of the County. The Contractor represents that he/she/it maintains a separate place of business, serves clients other than the County, will report all income and expense accrued under this contract to the Internal Revenue Service, and has a tax account with the State of Washington Department of Revenue for payment of all sales and use and Business and Occupation taxes collected by the State of Washington.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

30.2 Assignment and Subcontracting:

The performance of all activities contemplated by this agreement shall be accomplished by the Contractor. No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the County.

30.3 No Guarantee of Employment:

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

31.1 Ownership of Items Produced:

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with performance of this Agreement, shall be the sole and absolute property of the County.

31.2 Patent/Copyright Infringement: Not Applicable

32.1 Confidentiality:

The Contractor, its employees, subcontractors, and their employees shall maintain the confidentiality of all information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the County or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to, settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

33.1 Right to Review:

This contract is subject to review by any Federal, State or County auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Administrative Officer or by the County Auditor's Office. Such review may occur with or without notice and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for three (3) years after contract termination, and shall make them available for such review, within Whatcom County, State of Washington, upon request. Contractor also agrees to notify the Administrative Officer in advance of any inspections, audits, or program review by any individual, agency, or governmental unit whose purpose is to review the services provided within the terms of this Agreement. If no advance notice is given to the Contractor, then the Contractor agrees to notify the Administrative Officer as soon as it is practical.

34.1 Proof of Insurance:

The Contractor shall carry for the duration of this Agreement insurance with the following minimums:

Commercial General Liability - \$1,000,000.00 each occurrence

Automobile Liability - \$1,000,000 combined single limit

A Certificate of insurance, that also identifies the County as an additional insured for the above-listed coverage, is attached hereto as Exhibit "C". This insurance shall be considered as primary and non-contributory and shall waive all rights of subrogation. The County insurance shall not serve as a source of contribution.

Contractor shall also carry Managed Care Errors & Omissions coverage - \$5,000,000 per claim, with \$10,000,000 Aggregate. If this coverage is a claims made policy, and if the Contractor discontinues coverage either during the term of this contract or within three years of completion, the Contractor agrees to purchase tail coverage for a minimum of three years from the completion date of this contract or any amendment to this contract.

34.2 Industrial Insurance Waiver: Not Applicable

34.3 Defense & Indemnity Agreement:

The Contractor agrees to defend, indemnify and save harmless the County, its appointed and elective officers and employees, from and against all loss or expense, including, but not limited to, judgments, settlements, attorneys' fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at any time resulting therefrom, sustained by any person or persons and on account of damage to property, including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of the Contractor, its subcontractors, its successor or assigns, or its agents, servants, or employees, the County, its appointed or elected officers, employees or their agents, except only such injury or damage as shall have been occasioned by the sole negligence of the County or its appointed or elected officials or employees. In case of damages caused by the concurrent negligence of Contractor, its subcontractors, its successors or assigns, or its agents, servants, or employees, and the County, its appointed or elected officers, employees or their agents, then this indemnification provision is enforceable only to the extent of the negligence of the Contractor, its agents, or its employees.

It is further provided that no liability shall attach to the County by reason of entering into this contract, except as expressly provided herein. The parties specifically agree that this agreement is for the benefit of the parties only and this agreement shall create no rights in any third party.

35.1 Non-Discrimination in Employment:

The County's policy is to provide equal opportunity in all terms, conditions and privileges of employment for all qualified applicants and employees without regard to race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status. The Contractor shall comply with all laws prohibiting discrimination against any employee or applicant for employment on the grounds of race, color, creed, religion, national origin, sex, sexual orientation, age, marital status, disability, or veteran status, except where such constitutes a bona fide occupational qualification.

Furthermore, in those cases in which the Contractor is governed by such laws, the Contractor shall take affirmative action to insure that applicants are employed, and treated during employment, without regard to their race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status, except where such constitutes a bona fide occupational qualification. Such action shall include, but not be limited to: advertising, hiring, promotions, layoffs or terminations, rate of pay or other forms of compensation benefits, selection for training including apprenticeship, and participation in recreational and educational activities. In all solicitations or advertisements for employees placed by them or on their behalf, the Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.



The foregoing provisions shall also be binding upon any subcontractor, provided that the foregoing provision shall not apply to contracts or subcontractors for standard commercial supplies or raw materials, or to sole proprietorships with no employees.

35.2 Non-Discrimination in Client Services:

The Contractor shall not discriminate on the grounds of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, disability, or veteran status; or deny an individual or business any service or benefits under this Agreement; or subject an individual or business to segregation or separate treatment in any manner related to his/her/its receipt any service or services or other benefits provided under this Agreement; or deny an individual or business an opportunity to participate in any program provided by this Agreement.

36.1 Waiver of Noncompetition: Not Applicable

36.2 Conflict of Interest:

If at any time prior to commencement of, or during the term of this Agreement, Contractor or any of its employees involved in the performance of this Agreement shall have or develop an interest in the subject matter of this Agreement that is potentially in conflict with the County's interest, then Contractor shall immediately notify the County of the same. The notification of the County shall be made with sufficient specificity to enable the County to make an informed judgment as to whether or not the County's interest may be compromised in any manner by the existence of the conflict, actual or potential. Thereafter, the County may require the Contractor to take reasonable steps to remove the conflict of interest. The County may also terminate this contract according to the provisions herein for termination.

37.1 Administration of Contract:

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington. The Contractor also agrees to comply with applicable federal, state, county or municipal standards for licensing, certification and operation of facilities and programs, and accreditation and licensing of individuals.

The County hereby appoints, and the Contractor hereby accepts, the Whatcom County Executive, and his or her designee, as the County's representative, hereinafter referred to as the Administrative Officer, for the purposes of administering the provisions of this Agreement, including the County's right to receive and act on all reports and documents, and any auditing performed by the County related to this Agreement. The Administrative Officer for purposes of this agreement is:

Melissa Keeley, HR Special Projects Manager  
311 Grand Avenue, Suite 107  
Bellingham, WA 98225  
(360) 778-5309

37.2 Notice:

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement except service of process, notice shall be given by the Contractor to the County's Administrative Officer under this Agreement. Notice to the Contractor for all purposes under this Agreement shall be given to the address provided by the Contractor herein above in the "Contractor Information" section. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

38.1 Certification of Public Works Contractor's Status under State Law: Not Applicable

38.2 Certification Regarding Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions: Not Applicable

38.3 E-Verify: Not Applicable

***Series 40-49: Provisions Related to Interpretation of Agreement and Resolution of Disputes***

40.1 Modifications:

Either party may request changes in the Agreement. Any and all agreed modifications, to be valid and binding upon either party, shall be in writing and signed by both of the parties.

40.2 Contractor Commitments, Warranties and Representations: Not Applicable

41.1 Severability:

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

41.2 Waiver:

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto. The failure of the County to insist upon strict performance of any of the covenants and agreements of this Agreement, or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect.

42.1 Disputes:

a. General:

Differences between the Contractor and the County, arising under and by virtue of the Contract Documents, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Administrative Officer shall be final and conclusive.

b. Notice of Potential Claims:

The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Administrative Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within ten (10) days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the work performed, labor and material used, and all costs and additional time claimed to be additional.

c. Detailed Claim:

The Contractor shall not be entitled to claim any such additional compensation, or extension of time, unless within thirty (30) days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

d. Arbitration: Not Applicable

43.1 Venue and Choice of Law:

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Whatcom. This Agreement shall be governed by the laws of the State of Washington.

44.1 Survival:

The provisions of paragraphs 11.1, 11.2, 11.3, 21.1, 22.1, 30.1, 31.1, 31.2, 32.1, 33.1, 34.2, 34.3, 36.1, 40.2, 41.2, 42.1, and 43.1, if utilized, shall survive, notwithstanding the termination or invalidity of this Agreement for any reason.

45.1 Entire Agreement:

This written Agreement, comprised of the writings signed or otherwise identified and attached hereto, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

**EXHIBIT "A"**  
(SCOPE OF WORK)

**EAP General Program Services**

Employer wishes to provide an Employee Assistance Program (EAP) for its employees through which employees and their immediate family members or dependents are able to obtain appropriate and necessary care for problems they may suffer, and for such other personal problems as may interfere with their work productivity and general well-being. Immediate family members or dependents are defined as anyone living in the employee's household, including significant others and any dependents living outside of the home.

KEPRO agrees to provide such program to Employer and consists of the following services:

- a) A plan of assistance, including referral to local outside agencies, for employees and their dependents who seek assistance for personal problems, which includes problem assessment, education, information, and assistance with initial crisis management. Such personal problems may include, but are not limited to, family or relationship problems, parenting difficulties, work related problems, substance use and abuse, grief and loss, emotional and physical abuse, and anxiety and depression. Fees incurred by any employee or family member at agencies other than APS are not included in the EAP coverage and are the full responsibility of the employee or eligible family member.
- b) Counseling sessions including an initial evaluation to identify problems, with follow-up contact as deemed appropriate by the counselor. KEPRO agrees to provide a maximum of **six (6)** counseling sessions (hours) per incident per year for each eligible employee and their family members. A counselor may deem it necessary to hold longer sessions to facilitate the needs of the client. If session length is extended, the number of sessions is reduced to equal a maximum of counseling hours.
- c) KEPRO shall make EAP masters and doctorate level counselors available telephonically 24 hours a day, 365 days a year. When clinically appropriate, the EAP telephonic Counselor will arrange for an EAP assessment to take place in person.
- d) KEPRO shall coordinate Critical Incident Stress Debriefing (CISD) services in the event Employer suffers a catastrophic event, including but not limited to violence in the workplace, injury or death of an employee, or natural disaster. Services provided, if clinically appropriate, include telephonic assessment, group debriefing of affected employees, and follow up. KEPRO will provide up to **three (3)** CISD services, not to exceed **seven (7) hours total**, per year throughout the term of this Agreement.
- e) Management Consultations are also offered to Employer's Managers and Supervisors for professional problems, which may include but are not limited to, performance problems, an employee's personal problems, team-building and communication problems.
- f) KEPRO shall provide Employer with Standard Utilization Reports at least on a quarterly basis. Such report shall include, but not be limited to, the following information: (a) Statistics on referrals; (b) Summary of presenting problems; (c) Statistics on utilization; and (d) Trends and recommendations. The parties agree that this report shall be provided in consideration of and in compliance with all applicable confidentiality laws. Occasionally, Employer may request special (non-standard) reports from KEPRO.
- g) KEPRO shall designate one or more persons to serve as liaison with Employer for the implementation and maintenance of the Agreement.
- h) KEPRO will assist in the promotion of the EAP services by making the following available:
  - EAP Brochures, wallet cards and posters throughout the year.
  - Employee Newsletters and Manager Newsletters sent via email from KEPRO to the Employer contact for distribution to employees.
  - On-site training hours. These hours are a part of the yearly capita rate. Employer may choose, in any combination adding up to **ten (10) hours per year**, from the programs listed below. Additional services may be

purchased on a fee-for-service basis at any time during the year.

- EAP Supervisor Training
- EAP Employee Orientation, no charge for additional sessions during the 1<sup>st</sup> year
- Wellness Education Training

i) Legal and Financial Resources: KEPRO shall provide access to telephonic and face-to-face assistance by legal and financial specialists. Intake/requests for services shall be made via toll-free number through a KEPRO EAP counselor. Services shall include:

- a. Free 30 minute telephonic or face-to-face consultation with local attorney. Topics of assistance include, among others: civil/consumer issues, personal/family issues, financial matters, real estate, criminal matters, IRS issues, consumer credit services, and estate planning. Twenty-five percent (25%) reduction in fees if network attorney is retained.
- b. Free 30-minute telephone consultation with a financial representative for the following issues, among others: retirement planning, college funding, life insurance needs, charitable giving, deferred compensation, or debt. Consultations are provided at no cost to the employee or household member by certified and/or licensed, as applicable, financial organizations or independent agents. Following consultation, any services purchased from the organization or agent, if any, would be the responsibility of the employee or household member.

j) [www.EAPHelplink.com](http://www.EAPHelplink.com): KEPRO shall provide access to the EAPHelplink.com site. Employer will have a specific company code for entering the site.

k) Optional Services provided on a fee-for-service basis at the request of the Employer.

l) Exclusions: The following services are specifically excluded from the Scope of Services provided under this Agreement.

- Services not listed as Covered Services.
- Biofeedback and hypnotherapy.
- Services required by court order, or as a condition of parole or probation, not, however, to the exclusion of services to which the Member would otherwise be entitled.
- Services for remedial education including evaluation or medical treatment of learning disabilities or minimal brain dysfunction; developmental and learning disorders; behavioral training; or cognitive rehabilitation.
- Medical treatment or diagnostic testing related to learning disabilities, developmental delays, or educational testing or training.
- Services received from a non-network Provider, unless pre-approved by APS.
- Psychological testing. (psychological testing is not necessary to determine an appropriate referral to a Network Provider to receive Covered Services, or alternatively, to determine appropriate referrals to community resources for non-covered services)
- Sleep therapy.
- Medical treatment of congenital and/or organic disorders associated with permanent brain dysfunction, including without limitation, organic brain disease, Alzheimer's disease and autism.
- IQ testing. (IQ testing is not necessary to determine an appropriate referral to a Plan Provider to receive Covered Services, or alternatively, to determine appropriate referral to community resources for non-covered services.)
- Medical treatment for chronic pain.
- Services involving medication management or medication consultation with a psychiatrist.
- Fitness for Duty

**EXHIBIT "B"**  
**(COMPENSATION)**

**Service Fee and Payment Terms**

Employer shall remit payment to KEPRO on a monthly basis in advance of the service period according to the fee schedule listed below:

<b>Total Covered Employees</b>	<b>1/1/2018 – 12/31/2018 PEPM Rate</b>	<b>1/1/2019 – 12/31/2019 PEPM Rate</b>	<b>1/1/2020 – 12/31/2020 PEPM Rate</b>
930	\$2.45	\$2.45	\$2.45

The service fee is due on the first (1<sup>st</sup>) day of each billing period during the initial term and for all subsequent renewal terms of this Agreement.

Employer shall annually remit written verification of the total number of employees.

The following is a list of Optional Services that may be purchased on a fee-for-service basis:

**\$275 per hour:** On-site management training beyond the ten hours included in the capitated rate.

**\$275 per hour:** Critical Incident Stress Debriefing services beyond the seven total hours included in the capitated rate.

**Direct Cost:** Travel Expenses: KEPRO direct cost for travel and related expenses (meals, lodging and miscellaneous expenses) for KEPRO staff to travel to Employer worksites for services in addition to covered contract implementation and administrative meetings. Travel expenses are not charged for KEPRO providers to render covered on-site services unless approved in advance by the Employer.

**Negotiated Rates:** Customized materials prepared at Employer's request.

**Scope of Coverage**

It is noted that the Employer has offices in the following sites:

Whatcom County, WA  
Skagit County, WA

**EXHIBIT "C"**  
(CERTIFICATE OF INSURANCE)



**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
11/10/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Marsh USA Inc. Six PPG Place, Suite 300 Pittsburgh, PA 15222 Attn: Pittsburgh.certrequest@marsh.com  102336748-Prop-17-18	<b>CONTACT</b> NAME: PHONE: (A/C, No, Ext): FAX: (A/C, No): E-MAIL: ADDRESS:  <b>INSURER(S) AFFORDING COVERAGE</b> INSURER A: Phoenix Insurance Company INSURER B: Travelers Indemnity Co INSURER C: N/A INSURER D: INSURER E: INSURER F:	<b>NAIC #</b> 25623 25668 N/A
<b>INSURED</b> Keystone Peer Review Organization Holdings, Inc. Attention: Barb Shearer 777 E Park Dr. Harrisburg, PA 17111		

**COVERAGES**      **CERTIFICATE NUMBER:** CLE-006223785-02      **REVISION NUMBER:** 8

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GENL AGGREGATE LIMIT APPLIES PER <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		P-630-6G63143A-PHX-17	01/01/2017	01/01/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/PO AGG \$ 2,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY		BA-6G622721-17-CAG	01/01/2017	01/01/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTIONS					EACH OCCURRENCE \$ AGGREGATE \$ \$
	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/> N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Evidence of Coverage

**CERTIFICATE HOLDER**

Whatcom County  
311 Grand Avenue, Suite 107  
Bellingham, WA 98225

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE  
of Marsh USA Inc.

Manashi Mukherjee

*Manashi Mukherjee*

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ACORD 25 (2016/03)

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AGENCY CUSTOMER ID: 102336748

LOC #: Pittsburgh



## ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

AGENCY Marsh USA Inc.		NAMED INSURED Keystone Peer Review Organization Holdings, Inc. Attention: Barb Shearer 777 E Park Dr. Harrisburg, PA 17111
POLICY NUMBER		
CARRIER	NAIC CODE	
EFFECTIVE DATE:		

### ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

Additional Named Insureds under these programs are: Kingsman Buyer, Inc., Keystone Peer Review Organization, Inc., Ohio KePRO, Inc., KePRO Acquisitions, Inc., APS Healthcare Quality Review, Inc., APS Healthcare Bethesda, Inc., Keystone Acquisition Corp. (Ultimate Parent), Keystone Intermediate LLC, Quality Solutions of South Carolina, Inc. (dormant), Quality Solutions of North Carolina, Inc. (dormant), HQ Advantage Inc. (dormant), Innovative Resource Group, LLC, and KePro Engage Health, LLC (dormant).



## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/09/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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<b>PRODUCER</b> Marsh USA Inc. Six PPG Place, Suite 300 Pittsburgh, PA 15222 Attn: Pittsburgh.certrequest@marsh.com  102336748--CasPr-17-18	<b>CONTACT</b> NAME: PHONE (A/C, No., Ext): FAX (A/C, No.): E-MAIL: ADDRESS:  <b>INSURER(S) AFFORDING COVERAGE</b>  INSURER A : N/A INSURER B : N/A INSURER C : N/A INSURER D : Travelers Casualty And Surety Company Of America INSURER E : INSURER F :	<b>NAIC #</b> N/A N/A N/A 31194
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**COVERAGES****CERTIFICATE NUMBER:**

CLE-006223319-01

**REVISION NUMBER:** 1

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y <input checked="" type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
D	E&O MANAGED CARE			108296684	06/01/2017	06/01/2018	LIMIT 10,000,000 SIR 100,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER****CANCELLATION**

Whatcom County 311 Grand Avenue, Suite 107 Bellingham, WA 98225	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Manashi Mukherjee <i>Manashi Mukherjee</i>
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AGENCY CUSTOMER ID: 102336748

LOC #: Pittsburgh



## ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

AGENCY Marsh USA Inc		NAMED INSURED Keystone Peer Review Organization Holdings, Inc. Attention: Barb Shearer 777 E Park Dr. Harrisburg, PA 17111	
POLICY NUMBER		EFFECTIVE DATE:	
CARRIER	NAIC CODE		

### ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

Additional Named Insureds under these programs are: Kingsman Buyer, Inc., Keystone Peer Review Organization, Inc., Ohio KePRO, Inc., KePRO Acquisitions, Inc., APS Healthcare Quality Review, Inc. APS Healthcare Bethesda, Inc. Keystone Acquisition Corp. (Ultimate Parent), Keystone Intermediate LLC, Quality Solutions of South Carolina, Inc. (dormant), Quality Solutions of North Carolina, Inc. (dormant), HQ Advantage Inc. (dormant), Innovative Resource Group, LLC, and KePro Engage Health, LLC (dormant)

ACORD 101 (2008/01)

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**EXHIBIT "D"**  
(BUSINESS ASSOCIATE AGREEMENT)

**THIS BUSINESS ASSOCIATE AGREEMENT** ("Agreement"), effective January 1, 2018 ("Effective Date"), is made by and between Whatcom County (hereinafter referred to as "Plan Sponsor" or "Employer") on behalf of the **EAP Services Plan** (hereinafter referred to as "the Plan") and **KEPRO Acquisitions, Inc.** (hereinafter referred to as "Business Associate") (collectively the "Parties"). in order to comply with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended and its implementing privacy, security and breach notification regulations ("HIPAA"), including as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act in Public Law 111-5, 42 U.S.C. § 17921-54 and its implementing regulations, each as amended (collectively, the "HITECH Act"), and any other applicable state and federal confidentiality laws, as they may be amended from time to time.

**WHEREAS**, the parties to this Agreement desire to establish the terms under which Business Associate may use or disclose Protected Health Information (as defined herein) such that the Plan may comply with applicable requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-164) ("HIPAA Privacy Regulation" and/or "HIPAA Security Regulation") and the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the "HITECH Act"), that are applicable to business associates, along with any guidance and/or regulations issued by the U.S. Department of Health and Human Services.

**WHEREAS**, Employer has established and maintains a EAP service plan of health care benefits which is an employee welfare benefit plan as defined by Section 3(1) of the Employee Retirement Income Security Act of 1974 ("ERISA"), and, therefore, a health plan under HIPAA;

**WHEREAS**, Employer has contracted with Business Associate to provide certain EAP services with respect to the Plan which are described and set forth in the Employee Assistance Program Agreement ("EAP Agreement"), as amended from time to time;

**WHEREAS**, Employer is authorized to enter into this agreement on behalf of Plan;

**ARTICLE 1**  
**DEFINITIONS**

Terms used herein, but not otherwise defined, shall have meaning ascribed by Title 45, Parts 160 and 164, of the United States Code of Federal Regulations, as amended from time to time. Should any term set forth in 45 CFR Parts 160 or 164 conflict with any defined term herein, the definition found in 45 CFR Parts 160 or 164 shall prevail.

1.1 Breach. "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted which compromises the security or privacy of such information as defined and subject to the exceptions set forth in 45 CFR § 164.402.

1.2 Breach Notification Rule. "Breach Notification Rule" means the HIPAA Regulations pertaining to breaches of unsecured PHI as codified in 45 CFR Parts 160 and 164.

1.3 Designated Record Set. "Designated Record Set" means a group of records maintained by or for a covered entity, as defined by the HITECH Act, that is: (i) the medical records and billing records about Individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the covered entity to make decisions about Individuals. For purposes of this definition, the term "record" means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.

1.4 Electronic PHI. "Electronic PHI" or "EPHI" means PHI that is transmitted by or maintained in electronic media as defined by the Security Rule.

1.5 Individual. "Individual" means the same as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502 (g).

1.6 Law. "Law" means all applicable federal and state statutes and all relevant regulations.

1.7 Privacy Rule. "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR parts 160 and 164, subparts A and E.

1.8 Protected Health Information ("PHI"). "Protected Health Information" or PHI has the same meaning as the term "Protected Health Information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of the Plan.

1.9 Secretary. "Secretary" means the Secretary of the Department of Health and Human Services or his or her designee.

1.10 Security Incident. "Security Incident" shall have the meaning set out in the Security Rule. Generally, a "Security Incident" shall mean any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or systems operations in an electronic information system.

1.11 Security Rule. "Security Rule" means the Security Standards and Implementation Specifications at 45 CFR parts 160 and 164, subparts A and C, as they may be amended from time to time.

1.12 Unsecured PHI. "Unsecured PHI" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of either the encryption method or the destruction method, as defined in Department of Health and Human Services ("HHS") guidance published on April 27, 2009 (74 FR 19006) and modified by guidance published on August 24, 2009 (74 FR 42740), as amended. Unsecured PHI can include information in any form or medium, including electronic, paper or oral.

## **ARTICLE 2 BUSINESS ASSOCIATE OBLIGATIONS**

Business Associate agrees to comply with applicable federal and state confidentiality and security laws, specifically the provisions of the HITECH Act applicable to business associates (as defined by the HITECH Act), including:

2.1 Use and Disclosure of PHI. Except as otherwise permitted by this Agreement or applicable law, Business Associate shall not use, maintain, transmit or disclose PHI except as necessary to provide services to or on behalf of the Plan and except as required by Law. Business Associate may use and disclose PHI as necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities. Business Associate shall in such cases:

2.1.1 Provide information to members of its workforce using or disclosing PHI regarding the confidentiality requirements in the HITECH Act and this Agreement;

2.1.2 obtain reasonable assurances from the person or entity to whom the PHI is disclosed that: (i) the PHI will be held confidential and further used and disclosed only as required by Law or for the purpose for which it was disclosed to the person or entity; and (ii) the person or entity will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI has been breached;

2.1.3 agree to notify the Plan of any instances of which it is aware in which the PHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the HITECH Act.

2.2 Disclosure to Business Associate's Agents and Subcontractors. If Business Associate discloses PHI to agents, including a subcontractor, Business Associate shall require the agent or subcontractor to agree to the same restrictions and conditions as apply to Business Associate under this Agreement and to comply with the applicable requirements of the Privacy Rule, Security Rule, HITECH Act, Breach Notification Rule and other Law with respect to such information. Business Associate shall ensure that any agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the EPHI that it creates, receives, maintains, stores, uses or transmits on behalf of the Plan in accordance with Law. Business Associate shall be liable to the Plan for any acts, failures or omissions of the agent or

subcontractor in providing the services as if they were Business Associate's own acts, failures or omissions, to the extent permitted by law. Business Associate further expressly warrants that its agents or subcontractors will be specifically advised of, and will comply in all respects with, the terms of this Agreement.

2.3 Disclosure to Plan and Employer (and their Subcontractors). Other than disclosures permitted by Section 2.1 above, Business Associate will not disclose Individuals' Protected Health Information to the Plan, its Plan Sponsor or Employer, or any business associate or subcontractor of such parties except as set forth in Section 2.11.

2.4 Data Aggregation. In the event that Business Associate works for more than one covered entity, Business Associate is permitted to use and disclose PHI for data aggregation purposes, subject to the requirements of HIPAA and the HITECH Act.

2.5 Withdrawal of Authorization. If the use or disclosure of PHI in this Agreement is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate shall, if it has notice of such revocation, expiration or invalidity, cease the use and disclosure of the Individual's PHI except to the extent it has relied on such use or disclosure, or if an exception under the HITECH Act expressly applies.

2.6 Safeguards. Business Associate agrees to maintain appropriate safeguards as required by Law, including without limitation, a written security program that contains the necessary administrative, physical and technical safeguards to ensure that PHI or EPHI is not used, maintained, transmitted or disclosed other than as provided by this Agreement or as required by Law. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any EPHI it creates, receives, maintains, stores, uses, transmits or discloses on behalf of the Plan in accordance with Law.

Business Associate shall ensure, at a minimum, that:

2.6.1 PHI or EPHI will be maintained in locked and secured areas when PHI or EPHI is not in use;

2.6.2 Facsimile machines receiving EPHI shall not be located in a public area;

2.6.3 EPHI stored electronically shall be password protected;

2.6.4 PHI and EPHI will not be shared with outside organizations; and

2.6.5 PHI and EPHI will be used internally on a need to know basis only.

## 2.7 Individual Rights

2.7.1 Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for the Plan to respond to a request by an Individual for an accounting of disclosures of PHI as required by and in accordance with 45 CFR § 164.528 as amended by the HITECH Act and its implementing regulations. Business Associate, in accordance with 45 CFR § 164.528, does not need to document disclosures of PHI that are for treatment, payment or healthcare operations or disclosures that are incidental to another permissible disclosure. If Business Associate or its agents or subcontractors uses or maintains PHI in an electronic record of health-related information created, gathered or maintained or consulted by authorized health care clinicians and staff, then Business Associate and its agents and subcontractors shall document and make available to the Plan the information required to provide an accounting of disclosures to enable the Plan to fulfill its obligations under the HITECH Act as of the date compliance is required under the HITECH Act or its implementing regulations, including disclosures and uses relating to treatment, payment and health care operations.

2.7.2 Business Associate agrees to provide to the Plan, within thirty days of the request, in a mutually agreed upon form, information collected in accordance with 2.7.1 above to the extent required to permit the Plan to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528, as amended by the HITECH Act. The Plan shall provide to Business Associate within 30 days of the effective date of this

Agreement, a written explanation of the Plan's requirements under this section (b) in sufficient detail to enable the Plan to comply with such requirements. The Plan agrees to respond promptly to requests from Business Associate for clarification of such requirements, and Business Associate may rely on such responses. The Parties agree to work together in good faith to resolve any disagreement over the requirements of 45 CFR § 164.528, as amended by the HITECH Act. The Plan will be responsible for the reasonable costs incurred by Business Associate to respond to a request for an accounting of disclosures. The Plan, rather than Business Associate, will directly handle all requests for accounting from an Individual. Business Associate shall promptly forward all requests for accounting it receives from Individuals to the Plan.

2.7.3 Business Associate shall, at the request of the Plan, provide PHI maintained in a Designated Record Set to the Plan or, as directed by the Plan, to an Individual in order to meet the requirements of an Individual's right of access and requests for access to his or her PHI. An Individual's right of access to PHI includes the right to access EPHI contained in an electronic health record. The Plan will be responsible for the reasonable costs incurred by Business Associate to respond to a request for access. The provision of access to the Individual's PHI or EPHI and any denials of access to PHI or EPHI shall be the sole responsibility of the Plan. If Business Associate or its agents or subcontractors maintains or uses PHI, then promptly after receipt of a request from the Plan, Business Associate shall make a copy of such PHI available to the Plan in an electronic format in order to enable the Plan to fulfill its obligations under the HITECH Act and the Privacy Rule.

2.8 De-identified Information. Business Associate may use and disclose de-identified health information if (i) the use is disclosed to the Plan and permitted by law and (ii) the de-identification is in compliance with 45 CFR §164.502(d) and (iii) the de-identified health information meets the standard and implementation specifications for de-identification under 45 CFR §164.514(a) and (b).

2.9 Minimum Necessary. Business Associate shall attempt to ensure that all uses and disclosures of PHI are subject to the principle of "minimum necessary use and disclosure," i.e., that only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure or request is used or disclosed.

2.10 Notice of Privacy Practices. Business Associate shall abide by the limitations of the Plan's notice of privacy practices ("Notice of Privacy Practices") of which it has knowledge. Any use or disclosure permitted by this Agreement may be amended by changes to the Plan's Notice of Privacy Practices; provided, however, that the amended Notice of Privacy Practices shall not affect permitted uses and disclosures on which Business Associate relied prior to receiving notice of such amended Notice of Privacy Practices.

2.11 Disclosures of Protected Health Information. The following provisions apply to disclosures of Protected Health Information to the Plan, Employer and other business associates of the Plan.

2.11.1 Disclosure to Plan. Unless otherwise provided by this Section 2.11, all communications of Protected Health Information by Business Associate shall be directed to the Plan.

2.11.2 Disclosure to Employer. Business Associate may provide Summary Health Information regarding the Individuals in the Plan to Employer upon Employer's written request for the purpose either (a) to obtain premium bids for providing health insurance coverage for the Plan, or (b) to modify, amend or terminate the Plan. Business Associate may provide information to Employer on whether an individual is participating in the Plan or is enrolled in or has disenrolled from any insurance coverage offered by the Plan.

2.11.3 Disclosure to Other Business Associates and Subcontractors. Business Associate may disclose Individuals' Protected Health Information to other entities or business associates of the Plan if the Plan authorizes Business Associate in writing to disclose Individuals' Protected Health Information to such entity or business associate. The Plan shall be solely responsible for ensuring that any contractual relationships with these entities or business associates and subcontractors comply with the requirements of 45 Code of Federal Regulations § 164.504(e) and § 164.504(f).

2.12 Security Incident / Unauthorized Disclosure of PHI.

2.12.1 Business Associate shall report to the Plan any instances, including Security Incidents, of which it is aware in which PHI or EPHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement. In the event that Business Associate knows of: (i) any suspected Breach of any individual PHI or EPHI; (ii) a Security Incident (i.e. PHI was inappropriately used, disclosed, released or obtained) or (iii) a Breach of Unsecured PHI, Business Associate shall notify the Plan in writing within five (5) calendar days of such Breach. Notification shall include detailed information about the Breach, including, but not limited to, the nature and circumstances of such Breach, the means by which PHI or EPHI was or may have been breached (e.g. stolen laptop; breach of security protocols; unauthorized access to computer systems, etc.), the names and contact information of all individuals affected or reasonably believed by the Business Associate to be affected, and such other information as the Plan may reasonably request. Any delay in notification must include evidence demonstrating the necessity of the delay. The notice shall also set forth the remedial action taken or proposed to be taken with respect to such prohibited use or disclosure. Business Associate and the Plan agree to act together in good faith to take reasonable steps to investigate and mitigate any harm caused by such unauthorized use or successful Security Incident. The Party responsible for the breach shall bear the cost of any required notifications and corrective actions (e.g. credit monitoring services). The Business Associate will provide the Plan with any reasonable information known by Business Associate that the Plan needs for the required notifications under the Breach Notification Rule. The Plan shall have responsibility for determining that an incident is a Breach, including the requirement to perform a risk assessment. However, the Business Associate is expected to perform a risk assessment and provide such assessment to the Plan. Further, Business Associate shall provide and pay for required notifications to Individuals, HHS and/or the media, as requested by the Plan.

2.12.2 Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI or EPHI by Business Associate in violation of the requirements of this Agreement.

2.13 Prohibited Actions. With respect to PHI and EPHI, Business Associate agrees to:

2.13.1 not directly or indirectly receive remuneration in exchange for any PHI as prohibited by, and subject to the exceptions under the HITECH Act, Privacy Rule, and state law as of their respective compliance dates.

2.13.2 not make or cause to be made any communication about a product or service that encourages recipients of the communication to purchase or use the product or service as prohibited by, and subject to the exceptions under the HITECH Act and the Privacy Rule, as of their respective compliance dates. Business Associate agrees to comply with applicable federal and state Law regarding marketing communications involving the use of disclosure of PHI; and

2.12.3 not make or cause to be made any written fundraising communications that is a Health Care Operation without provision, in a clear and conspicuous manner, of an opportunity for the recipient to elect not to receive further fundraising communications in accordance with the HITECH Act and the Privacy Rule as of their respective compliance dates. Business Associate further agrees to comply with all applicable Law regarding the use of PHI for fundraising communications.

### **ARTICLE 3 THE PLAN'S OBLIGATIONS**

3.1 If applicable to the Plan under the Law, the Plan shall:

3.1.1 provide Business Associate a copy of its Notice of Privacy Practices produced by the Plan in accordance with 45 CFR 164.520 as well as any changes to such notice;

3.1.2 provide Business Associate with any changes in, or revocation of, authorizations by Individuals relating to the use and/or disclosure of PHI, if such changes affect Business Associate's permitted or required uses and/or disclosures;

3.1.3 notify Business Associate of any restriction to the use and/or disclosure of PHI to which the Plan has agreed in accordance with 45 CFR 164.522;

3.1.4 notify Business Associate of any amendment to PHI to which the Plan has agreed that affects a Designated Record Set maintained by Business Associate; and

3.1.5 If Business Associate maintains a Designated Record Set, provide Business Associate with a copy of its policies and procedures related to an Individual's right to: access PHI; request an amendment to PHI; request confidential communications of PHI; or request an accounting of disclosures of PHI.

## **ARTICLE 4 MUTUAL OBLIGATIONS**

4.1 Confidential Information. Both Parties acknowledge that in the course of performing under this Agreement, each Party may learn or receive confidential, trade secret or other proprietary information ("Confidential Business Information") concerning the other Party, or third parties to whom the other Party has an obligation of confidentiality. Each Party shall take all necessary steps to provide the maximum protection to the other Party's Confidential Business Information and records. Each Party agrees to take at least such precautions to protect the other Party's Confidential Business Information as it takes to protect its own Confidential Business Information, but shall in no instance less than a reasonable degree of care. Such information shall not be disclosed to third parties without the express written consent of the Party to whom the information belongs. The Parties shall not utilize any Confidential Business Information belonging to the other Party other than as expressly permitted by this Agreement or otherwise in writing. Each Party shall retain sole ownership of its own Confidential Business Information.

4.2 Electronic Transactions and Code Sets. Both Parties understand and agree that they are required to comply with the HIPAA Standards for Electronic Transactions, 45 CFR Parts 160 and 162 (HIPAA Electronic Transaction Law) as amended from time to time. The HIPAA Electronic Transaction Law requires Business Associate to conduct certain transactions as "standard transactions" using defined medical data code sets. Business Associate agrees that it will require its subcontractors, vendors, and independent contractors to comply with HIPAA Electronic Transaction Law as applicable. Business Associate agrees that it will not:

4.2.1 change the definition, data condition, or use of a data element or segment in a standard;

4.2.2 add any data elements or segments to the maximum defined data set;

4.2.3 use any code or data elements that are either marked "not used" or not included in the standard's implementation specification(s); or

4.2.4 change the meaning or intent of the standard's implementation specification(s).

4.3 Upon the enactment after the date of this Agreement of any Law or regulation affecting the use or disclosure of PHI, or the publication after the date of this Agreement of any decision of a court of the United States relating to any such Law, or the publication after the date of this Agreement of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such Law or regulation, the Plan and Business Associate shall jointly agree to negotiate in good faith to amend this Agreement in such manner as necessary to comply with such Law or regulation. If the Plan and Business Associate cannot come to an agreement within thirty (30) calendar days following the initial amendment discussion between the Plan and Business Associate, this Agreement will terminate upon written notice to the other Party.

## **ARTICLE 5 TERM AND TERMINATION**

5.1 This Agreement will continue in full force and effect for as long as the EAP Agreement remains in full force and effect. This Agreement will terminate upon the cancellation, termination, expiration or other conclusion of the EAP Agreement.

5.2 Termination for Breach. Either Party may terminate this Agreement in the event of material breach by the other Party, upon thirty (30) days' prior written notice, unless the breach is cured during the notice period

5.3 Effect of Termination. Upon termination of this Agreement for any reason, Business Associate agrees to return or destroy all PHI maintained by Business Associate in any form. If Business Associate determines that the return or destruction of PHI is not feasible, Business Associate shall inform the Plan in writing of the reason thereof, and shall agree to extend the protections of this Agreement to such PHI and limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI not feasible for so long as Business Associate retains the PHI.

## **ARTICLE 6 MISCELLANEOUS**

6.1 Rights of Proprietary Information. The Plan retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate.

6.2 Survival. The respective rights and obligations of Business Associate with regard to the return of records to the Plan shall survive the termination of the Agreement.

6.3 Notices. Any notices pertaining to this Agreement shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party's authorized representative at the respective address indicated herein or sent by means of a reputable overnight carrier or certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt.

6.4 Amendments. This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. Amendments as determined by the Plan to be necessary to effect compliance with legislative, regulatory, or other legal authority do not require the consent of Business Associate and shall be effective immediately upon Business Associate's receipt from the Plan of notice of amendment.

6.5 Choice of Law. This Agreement and the rights and the obligations of the Parties hereunder shall be governed by and construed under the laws of the Commonwealth of Pennsylvania, without regard to applicable conflict of laws principles.

6.6 Assignment of Rights and Delegation of Duties. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding any provisions to the contrary, however, the Plan retains the right to assign or delegate any of its rights or obligations hereunder to any of its wholly owned subsidiaries, affiliates, or successor companies. Assignments made in violation of this provision are null and void.

6.7 Nature of Agreement. Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, (ii) any fiduciary duty owed by one Party to another Party or any of its affiliates, or (iii) a relationship of employer and employee between the Parties.

6.8 No Waiver. Failure or delay on the part of either Party to exercise any right, power, privilege, or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized officer of the Party making the waiver.

6.9 Severability. The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.

6.10 No Third Party Beneficiaries. Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not Party to this Agreement nor imposing any obligations on either Party hereto to persons not a Party to this Agreement.

6.11 Headings. The descriptive headings of the articles, sections, subsections, exhibits, and schedules of this Agreement are inserted for convenience only, do not constitute a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement. All pronouns and any variations thereof are deemed to refer to the masculine, feminine, neuter, singular, or plural as the identity of the person or persons may require.

6.12 Entire Agreement. This Agreement, together with all the exhibits, riders and amendments, if applicable, which are fully completed and signed by authorized persons on behalf of both Parties from time to time while this Agreement is in effect, constitutes the entire Agreement between the Parties hereto with respect to the subject matter hereof and supersedes all previous or contemporaneous written or oral understandings, agreements, negotiations, commitments, and any other writing and



communication by or between the Parties with respect to the subject matter hereof. In the event of any inconsistencies between any provisions of this Agreement in any provisions of the Exhibits or Riders, the provisions of this Agreement shall control.

6.13 Regulatory References. A citation in this Agreement to the Code of Federal Regulations means the cited section as that section may be amended from time to time.

6.14 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Plan to comply with the HITECH Act. The provisions of this Agreement shall prevail over the provisions of any other agreement that exists between the Parties that may conflict with, or appear inconsistent with, any provision of this Agreement or the HITECH Act.