



**CLIENT SERVICE
CONTRACT
Kidney Disease Program**

HCA Contract Number:

THIS AGREEMENT made by and between Washington State Health Care Authority, hereinafter referred to as "HCA," and the party whose name appears below, hereinafter referred to as the "Contractor."

CONTRACTOR NAME		CONTRACTOR doing business as (DBA)	
CONTRACTOR ADDRESS		WASHINGTON UNIFORM BUSINESS IDENTIFIER (UBI)	
CONTRACTOR CONTACT	CONTRACTOR TELEPHONE	CONTRACTOR E-MAIL ADDRESS	

HCA PROGRAM Kidney Disease Program	HCA DIVISION/SECTION Financial Services
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HCA CONTACT NAME AND TITLE Stefanie Slakey	HCA CONTACT ADDRESS 626 8 th Avenue Olympia, WA 98501
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HCA CONTACT TELEPHONE (360) 725-1243	HCA CONTACT E-MAIL ADDRESS stefanie.slakey@hca.wa.gov
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IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	CFDA NUMBER(S) N/A	FFATA Form Required <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
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CONTRACT START DATE 07/01/2017	CONTRACT END DATE 06/30/2019	TOTAL MAXIMUM CONTRACT AMOUNT
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PURPOSE OF CONTRACT:
To assist persons who meet the Kidney Disease Program (KDP) Eligibility Requirements to gain access to End Stage Renal Disease (ESRD) treatment services within the fiscal limits of each State fiscal year's KDP allocation.

ATTACHMENTS/EXHIBITS. When the box below is marked with an X, the following Exhibits/Attachments are attached and are incorporated into this Contract Amendment by reference:

- Exhibit(s) (specify):
- Attachment(s) (specify):
- Schedule(s) (specify):
- No Exhibits/Attachment

This terms and conditions of this Contract are an integration and representation of the final, entire and exclusive understanding between the parties superseding and merging all previous agreements, writings, and communications, oral or otherwise, regarding the subject matter of this Contract. The parties signing below warrant that they have read and understand this Contract, and have authority to execute this Contract. This Contract shall be binding on HCA only upon signature by HCA.

CONTRACTOR SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED
HCA SIGNATURE	PRINTED NAME AND TITLE Melanie Anderson, Contracts Administrator Division of Legal Services	DATE SIGNED

HCA Special Terms and Conditions

1. **Definitions Specific to Special Terms.** The words and phrases listed below, as used in this Contract, shall each have the following definitions:
- a. "A19-1A" means the State of Washington invoice voucher on which the Contractor shall report their Contract Quarterly Costs. The Health Care Authority (HCA) shall email this Form to the Contractor after execution of this Contract.
 - b. "Clients" means an applicant, recipient, or former applicant or recipient of any service of program administered by HCA.
 - c. "Client and Billing Summary" means the documentation that contains the reimbursable expenditures for each quarter, which is submitted to the KDP Manager by the contractor.
 - d. "Contract Quarter" means one (1) of the three (3) month periods of July through September, October through December, January through March, and April through June, of each calendar year or part thereof that occurs during the term of this Contract.
 - e. "Costs" means the maximum allowable fee published on HCA fee schedule maximum allowable at <https://www.hca.wa.gov/billers-providers/claims-and-billing/professional-rates-and-billing-guides> or the Contractor's usual and customary fee, whichever is less, for approved services provided to KDP clients, plus monies spent for approved transportation, and minus any monies received from other payers for those services.
 - f. "Dialysis services" means all things necessary for or incidental to the performance of hemodialysis and/or peritoneal dialysis:
 - (1) "Hemodialysis" means the process of removal of certain elements from the client's blood by virtue of the difference in the elements' rates of their diffusion through a semi-permeable membrane.
 - (2) "Peritoneal dialysis" means the process of removal of certain elements from the person through the peritoneum, the dialyzing solution being introduced into and removed from the person's peritoneal cavity as either a continuous or an intermittent procedure.
 - g. "End-Stage Renal Disease" or "ESRD" means the stage of renal impairment that is virtually irreversible and permanent requiring dialysis or kidney transplantation to ameliorate uremic symptoms and maintain life as defined in WAC 182-540-030, or its successor.
 - h. "HCA Medicaid Access Program" means the medically necessary non-emergent transportation and interpreter services program of HCA that facilitates Clients' access to medical services for those who have no other means of transportation and/or interpreter services.
 - i. "Home dialysis" means dialysis services performed on a KDP client in his or her home.
 - j. "Kidney Center" means a facility as defined and certified by the federal government to:
 - (1) Provide ESRD services; and
 - (2) Promote and encourage home dialysis for a client when medically indicated.
 - k. "Kidney Disease Program" or "KDP" means HCA's state-funded program that provides specific medical care to KDP clients through contracts with kidney centers.

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- l. “KDP Application for Eligibility” or “Application” means HCA’s form 13-566 (or its successor, including revisions and instructions, used to verify KDP eligibility criteria as referred to in WAC 182-540-015, or any successor rule.
- m. “KDP client” means a person who meets the KDP Eligibility Requirements as listed under WAC 182-540-015, or its successor, as determined by a contracted kidney center.
- n. “KDP Eligibility Requirements” means the criteria identified in WAC 182-540-015, or its successor that must be met for a person to be eligible for benefits under the KDP.
- o. “KDP Manager” means HCA’s Contact or successor listed on page one (1) of this Contract.
- p. “KDP Manual” means the guidebook produced and provided by HCA, and any subsequent revisions incorporated into this Contract by reference. The KDP Manual provides instructions to the Contractor, describes approved services, and provides pertinent information regarding program policies, client eligibility, and reimbursement for services. The KDP Manual may be viewed or downloaded from the KDP web site found at the following link: <https://www.hca.wa.gov/billers-providers/programs-and-services/kidney-disease-program-kdp>.
- q. “Limited English Proficiency” or “LEP” means being limited in ability or unable to speak, read and/or write the English language well enough to understand and be understood without the aid of an interpreter. LEP also includes being deaf, deaf-blind, or hard-of-hearing.
- r. “Room and Board” means sleeping accommodations and meals.
- s. “Third-Party” means any entity that is or may be liable to pay all or part of the medical cost of care of medical program client. [WAC 182-500-0005, or its successor]
- t. “Usual and Customary Fees” means the fees that may be billed to HCA for certain services, supplies, or equipment. These Fees may not exceed:
 - (1) The Usual and Customary Fees bill to the general public for the same service, or
 - (2) If the general public is not served, the Fee normally billed to other contractors for the same service.

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2. **Purpose.** The purpose of this Contract is for the Contractor to assist persons who meet the Kidney Disease Program (KDP) Eligibility Requirements to gain access to End Stage Renal Disease (ESRD) treatment services within the fiscal limits of each State fiscal year's KDP allocation.
3. **Contractor Qualifications.** During the term of this Contract, the Contractor shall meet the requirements of a KDP provider as stated under [WAC 182-540-045](#), or its successor.
4. **Statement of Work.** The Contractor shall provide the services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below: The Contractor shall:
 - a. Provide outreach educational assistance to persons with a diagnosis of ESRD or who have received a kidney transplant as follows:
 - (1) Inform potentially qualifying ESRD/kidney transplant patients of the KDP Eligibility Requirements;
 - (2) Educate KDP clients on when and why KDP funding applies, as well as, how the KDP is funded and administered; and
 - (3) Assist each potentially KDP eligible ESRD patient to complete an application(s), as appropriate, for:
 - (a) Kidney Disease Program,
 - (b) Medicaid, and/or
 - (c) Medicare.
 - b. Evaluate each completed application for the KDP against the KDP Eligibility Requirements to determine whether each applicant meets the KDP Eligibility Requirements;
 - c. Retain each original completed application for review by the Health Care Authority (HCA) upon request;
 - d. Provide all persons at application and reapplication with a copy of the [Rights and Responsibilities and the KDP Reference Guide](#) forms provided by HCA. If services are closed for an existing KDP client, the KDP client must be provided with a termination notice. The KDP client must be given ten (10) days' notice before services can be terminated. If services provided are changed, the Contractor must provide the client with a letter notifying them of the change, and why the change is occurring;
 - e. Once the application process has been completed by the potential KDP client and the Contractor has made an eligibility determination, the Contractor must provide the potential KDP client with the approval or denial letter;
 - f. Provide, without necessity of prior HCA staff's approval, the following ESRD services as described in [WAC 182-540-045](#) and [WAC 182-540-055](#), or successor WAC(s) to KDP clients, including:
 - (1) Covered services: the Contractor shall provide services (funding permitting) as described in WAC 182-540-055(1), including:
 - (a) Dialysis services; and

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- (b) Prescription and non-prescription medications (drugs) directly related to the KDP client's ESRD treatment. The Contractor shall:
 - i. Provide KDP clients with prescription medications listed as approved drugs in the KDP Manual;
 - ii. Use generic prescription and non-prescription drug products rather than brand name medications whenever possible; and
 - iii. Purchase prescription and non-prescription drugs at a discount via contracts.
- (c) Third-Party payers:
 - i. Bill Third-Party payers, and
 - ii. Deduct Third-Party receivables from total Costs reported on prior A19-1As.
- (2) Transportation assistance: The Contractor may refer KDP clients in need of non-emergent medically necessary transportation for kidney dialysis to the HCA Medicaid Access Program contracted broker for the HCA Region in which the KDP client resides or use other available transportation. Costs for transportation shall be paid by the Contractor directly to the provider of transportation.
- g. Obtain and maintain the Contractor's copy of the KDP Manual as defined by Subsection p. of Section 1, Definitions Specific to Special Terms, of this Contract and all subsequent updates. The KDP Manual and updates are posted on the KDP web site: <https://www.hca.wa.gov/billers-providers/programs-and-services/kidney-disease-program-kdp>;
- h. Acknowledge, by signing this Contract, that the Contractor received a copy of the KDP Manual;
- i. Complete and submit quarterly A19-1A and documentation that explains and justifies the expenses being reported. The Contractor shall:
 - (1) Use the A19-1A provided by the KDP Manager, and example of which can be found in the KDP Manual, at the following link: <https://www.hca.wa.gov/billers-providers/programs-and-services/kidney-disease-program-kdp>.
 - (2) Report actual Costs as defined by the KDP Manual;
 - (3) Submit an A19-1A for each Contract Quarter covered by this Contract, and documentation, when Costs are being reported, that explains and justifies any expenses being reported for that Contract Quarter. Contractors are not required to submit an A-19 invoice when the Contractor has no costs to report for the quarter. Please note that contractors are permitted to fax or email A19-1As; these do not have to be originals to receive payment; and

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(4) Mail each A19-1A to the KDP Manager so that it is **received by the last business day of the second (2nd) month following the close of each Contract Quarter:**

KDP A19-1A for:	Initial billing for items paid during or for the quarter must be received no later than the last business day of:	Initial billing for items paid after the quarter ends is due no later than the last business day of:
First Quarter (July-Sept)	November	December
Second Quarter (Oct-Dec)	February	March
Third Quarter (Jan-March)	May	June
Fourth Quarter (Apr-June)	August	September

For details on what items are billed for the schedule, please refer to the KDP Manual at the following link: <https://www.hca.wa.gov/billers-providers/programs-and-services/kidney-disease-program-kdp>.

5. Consideration.

- a. Maximum Contract Amount. Subject to the Consideration Adjustment Subsection below, total consideration payable to Contractor for satisfactory performance of the work under this Contract is up to a maximum of \$____, including any and all expenses.
- b. Source of Funds:

Source of Funds	Amount
Federal	\$0.00
State	\$
Other	\$0.00
Total	\$

- c. Consideration Adjustment.

(1) HCA reserves the right to adjust, via unilateral amendment, the Contract Maximum Amount listed on page one (1) of this Contract in order to provide, within the limits of the State Fiscal Year budget allocation, an adjusted payment to the Contractor when:

- (a) The Contractor's reported Costs as defined by Section 1, Definitions Specific to Special Terms, Subsection c. have exceeded the Contract Maximum Amount, and the contractor is requesting additional funds of up to, but no more than three percent (3%) of their original Contract Maximum Amount; and
- (b) The Contractor has submitted timely and accurate A19-1As for the first three (3) Contract Quarters.

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6. Monitoring.

HCA, primarily through the KDP Manager, in monitoring the Contractor's performance under this Contract, shall at a minimum undertake the following:

- a. Review all documentation submitted by the Contractor:
 - (1) Submitted quarterly A19-1A Invoice Vouchers and supporting documentation;
 - (2) Other requests for cost documentation made by the KDP Manager.
- b. Review and follow-up on all KDP Client and provider complaints and/or requests; and
- c. Conduct on-site visits within existing resource limitations and when time permitting.

7. Billing and Payment.

a. Billing Procedures.

- (1) Invoice System. When claiming reimbursement for the Costs of providing goods and services provided to KDP clients under this Contract, the Contractor shall:
 - (a) Submit quarterly A19-1As listing actual costs incurred and documentation, such as copies of receipts, that:
 - i. Are completed to the satisfaction of the KDP Manager; and
 - ii. Information, such as KDP client applications, Medicaid applications, new A19-1As, etc. which have been requested by the KDP Manager in order to approve payment, are received within thirty (30) days of the request. If the requested items are not received within thirty (30) days, the KDP Manager reserves the right to refuse payment. If the Contractor needs more time, they are to request an extension to the thirty (30) days, prior to the thirty (30) day mark.
 - (b) Retain copies of all A19-1As submitted and supporting documentation for a term of six (6) years after the expiration or termination of this Contract.

b. Payment. HCA shall:

- (1) Pay the Contractor for Costs reported on each A19-1A, properly completed and submitted in accordance with the Schedule under Subsection 4, i, (4).
- (2) Send each payment to the address designated by the Contractor on page one (1) of this Contract, unless other arrangements have been made in writing; and
- (3) Consider payment timely if made by within thirty (30) days after the client and billing summary has been reviewed by the KDP Manager, and both the KDP Manager and the contractor agree to the amount approved for payment.

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NOTE: HCA's payments are only to offset costs incurred in providing goods and/or services to KDP clients prior to their receipt of the goods and/or services. The Contractor may provide goods and/or services to individuals who meet all of the eligibility requirements for KDP under WAC 182-540-015, or any successor WAC, but whose eligibility determination under Medicaid is still pending. The Contractor shall **not** use such payments to offset costs incurred in providing goods and/or services to individuals determined to be ineligible for KDP.

Reimbursable services under this program will only be reimbursed if provided on or between July 1, 2017 through June 30, 2018. Although the Contractor will only be reimbursed for approved services during those dates of service, the Contractor will have twelve (12) months from the month the service was provided to bill HCA, provided that the Contractor previously submitted the initial quarterly billings timely. The last date to bill services under this contract is June 30, 2019.

HCA may, at its sole discretion, withhold payment claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term(s) or condition(s) of this Contract.

The contractor may not bill the client for charges incurred that are not payable by the KDP due to the contractor's failure to bill HCA within the time limits specified in subsection 4 of the Statement of Work.

8. Background Checks.

This requirement applies to any employees, volunteers and subcontractors who may have unsupervised access to children or vulnerable adults served under this Contract.

Pursuant to RCW 43.43.832, 43.43.834, RCW 43.20A.710 and Chapter 388-06 WAC, or successor RCWs or WACs, the Contractor shall ensure a criminal history background check has been completed for all current employees, volunteers, and subcontractors. Further, the Contractor shall initiate a criminal history background check for all prospective employees, volunteers and subcontractors who would have unsupervised access to children or vulnerable adults served under this Contract.

The Contractor shall assist in obtaining additional state or national criminal history and/or child abuse/neglect history, if requested by HCA.

The Contractor shall ensure that no employee, volunteer or subcontractor, including those provisionally hired pursuant to RCW 43.43.832(7), has unsupervised access to children or vulnerable adults served under this Contract, until a full and satisfactory background check is completed and documentation, qualifying the individual for unsupervised access, is returned to the Contractor.

9. Disputes.

a. Requesting dispute resolution:

The request for contract dispute resolution by either party shall:

- (1) Be submitted to HCA in writing and include the Contractor's name, address and the HCA contract number;

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- (2) Be sent by certified mail or other method providing a signed receipt to the sender to prove delivery to and receipt by HCA, to the following address:

Contracts Administrator
Legal Services and Administration
Health Care Authority
PO Box 42702
Olympia, Washington 98504-2702

- (3) Be received by the Contracts Administrator no later than twenty-eight (28) calendar days after this Contract expiration or termination; and

- (4) Identify in writing the spokesperson for the Contractor, if other than the Contractor's signatory.

b. Content of the dispute request:

The party requesting a dispute resolution shall submit a statement that:

- (1) Identifies the issue(s) in dispute;
- (2) Identifies the relative positions of the parties; and
- (3) Requests resolution through the current HCA process.

c. Action on the request:

- (1) HCA shall notify the non-requesting party that the request has been made, notify both parties of the dispute resolution process to be followed, and manage the process to its conclusion.
- (2) The Contractor shall provide pertinent information as requested by the person assigned to resolve the dispute.

- d. Contractor and HCA agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

10. Insurance.

The Contractor shall at all times comply with the following insurance requirements.

a. General Liability Insurance.

The Contractor shall maintain Commercial General Liability Insurance, or Business Liability Insurance, including coverage for bodily injury, property damage, and contractual liability, with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The policy shall include liability arising out of premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. The State of Washington, Health Care Authority (HCA), and elected and appointed officials, agents, and employees of the state, shall be named as additional insureds.

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In lieu of general liability insurance mentioned above, if the Contractor is a sole proprietor with less than three contracts, the Contractor may choose one of the following three general liability policies but only if attached to a professional liability policy, and if selected the policy shall be maintained for the life of this Contract:

Supplemental Liability Insurance, including coverage for bodily injury and property damage that will cover the contractor wherever the service is performed with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The State of Washington, Health Care Authority (HCA) its elected and appointed officials, agents, and employees shall be named as additional insureds.

or

Workplace Liability Insurance, including coverage for bodily injury and property damage that provides coverage wherever the service is performed with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The State of Washington, Health Care Authority (HCA), and elected and appointed officials, agents, and employees of the state, shall be named as additional insureds.

or

Premises Liability Insurance and provide services only at their recognized place of business, including coverage for bodily injury, property damage with the following minimum limits: Each Occurrence - \$1,000,000; General Aggregate - \$2,000,000. The State of Washington, Health Care Authority (HCA), and elected and appointed officials, agents, and employees of the state, shall be named as Additional Insured.

b. Professional Liability Insurance (PL)

The Contractor shall maintain Professional Liability Insurance or Errors & Omissions insurance, including coverage for losses caused by errors and omissions, with the following minimum limits: Each Occurrence - \$1,000,000; Aggregate - \$2,000,000.

c. Worker's Compensation.

The Contractor shall comply with all applicable Worker's Compensation, occupational disease, and occupational health and safety laws and regulations. The State of Washington and HCA shall not be held responsible for claims filed for Worker's Compensation under Title 51 RCW by the Contractor or its employees under such laws and regulations.

d. Employees and Volunteers.

Insurance required of the Contractor under this Contract shall include coverage for the acts and omissions of the Contractor's employees and volunteers. In addition, the Contractor shall ensure that all employees and volunteers who use vehicles to transport clients or deliver services have personal automobile insurance and current driver's licenses.

e. Subcontractors.

The Contractor shall ensure that all subcontractors have and maintain insurance with the same types and limits of coverage as required of the Contractor under this Contract.

f. Separation of Insureds.

All insurance policies shall include coverage for cross liability and contain a "Separation of Insureds" provision.

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g. Insurers.

The Contractor shall obtain insurance from insurance companies identified as an admitted insurer/carrier in the State of Washington, with a Best's Reports' rating of B++, Class VII, or better. Surplus Lines insurance companies will have a rating of A-, Class VII, or better.

h. Evidence of Coverage

The Contractor, upon request by HCA staff, shall submit a copy of the Certificate of Insurance, policy, and additional insured endorsement for each coverage required of the Contractor under this Contract. The Certificate of Insurance shall identify the Washington State Health Care Authority (HCA) as the Certificate Holder. A duly authorized representative of each insurer, showing compliance with the insurance requirements specified in this Contract, shall execute each Certificate of Insurance.

The Contractor is not required to submit to the HCA copies of Certificates of Insurance for personal automobile insurance required of the Contractor's employees and volunteers under this Contract.

The Contractor shall maintain copies of Certificates of Insurance for each subcontractor as evidence that each subcontractor maintains insurance as required by this Contract.

i. Material Changes.

The insurer shall give HCA 45 days advance written notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the insurer shall give HCA 10 days advance written notice of cancellation.

j. General.

By requiring insurance, the State of Washington and HCA do not represent that the coverage and limits specified will be adequate to protect the Contractor. Such coverage and limits shall not be construed to relieve the Contractor from liability in excess of the required coverage and limits and shall not limit the Contractor's liability under the indemnities and reimbursements granted to the State and HCA in this Contract. All insurance provided in compliance with this Contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.

11. Notices.

Whenever one (1) party is required to give notice to the other party under this Contract, it shall be deemed given if mailed by United States Postal Service, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

- a. In the case of notice to the Contractor, notice shall be sent to the point of contact identified on page one (1) of this Contract;

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b. In the case of notice to HCA, notice shall be sent to:

Contract Services
Legal and Administrative Services
Washington State Health Care Authority
P.O. Box 42702
Olympia, Washington 98504-2702
Contracts@hca.wa.gov

Said notice shall become effective on the date delivered as evidenced by the return receipt or the date returned to sender for non-delivery other than for insufficient postage. Either party may at any time change its address for notification purposes by mailing a notice in accordance with this Section, stating the change and setting forth the new address, which shall be effective on the tenth (10th) day following the effective date of such notice unless a later day is specified in the notice.

12. Professional Credentialing and Licensure.

If the Contractor, its employees, and/or subcontractors who shall be in contact with HCA clients while performing work under this Contract must be accredited, certified, licensed or registered according to Washington state laws and regulations, the Contractor shall ensure that all such individuals do not have, and shall remain without during the term of this Contract, restrictions or sanctions placed on such accreditation, certification, license and/or registration. The Contractor shall notify the HCA Contact listed on page one of this Contract within three business days of receipt of information relating to disciplinary action against the accreditation, certification, license and/or registration of the Contractor, an employee, or subcontractor.

HCA General Terms and Conditions

1. **Definitions.** The words and phrases listed below, as used in this Contract, shall each have the following definitions:
- a. "Agent" shall mean the Washington State Health Care Authority Director and/or the Director's delegate authorized in writing to act on behalf of the Director.
 - b. "Allowable Cost" means an expenditure which meets the test of the appropriate Executive Office of the President of the United States' Office of Management and Budget Circular. The most significant factors which determine whether a cost is allowable are the extent to which the cost is:
 - (1) Necessary and reasonable;
 - (2) Allocable;
 - (3) Authorized or not prohibited under Washington state or local laws and regulations;
 - (4) Adequately documented.
 - c. "Authority" shall mean the Washington State Health Care Authority, any division, section, office, unit or other entity of the Authority, or any of the officers or other officials lawfully representing the Authority.
 - d. "Confidential Information" means information that is exempt from disclosure to the public or other unauthorized persons under Chapter 42.56 RCW or other federal or state laws. Confidential Information includes, but is not limited to, Personal Information.
 - e. "Contract" or "Agreement" or "Interagency Agreement" means the entire written agreement between the Authority and the Contractor, including any Exhibits, documents, or materials incorporated by reference. The parties may execute this Contract in multiple counterparts, each of which is deemed an original and all of which constitute only one agreement. E-mail (electronic mail) or fax (facsimile) transmission of a signed copy of this Contract shall be the same as delivery of an original.
 - f. "Contractor" means the individual or entity performing services pursuant to this Contract and includes the Contractor's owners, members, officers, directors, partners, employees, and/or agents, unless otherwise stated in this Contract. For purposes of any permitted Subcontract, "Contractor" includes any Subcontractor and its owners, members, officers, directors, partners, employees, and/or agents.
 - g. "Debarment" means an action taken by a Federal agency or official to exclude a person or business entity from participating in transactions involving certain federal funds.
 - h. "Encrypt" means to encode Confidential Information into a format that can only be read by those possessing a "key"; a password, digital certificate or other mechanism available only to authorized users. Encryption must use a key length of at least 128 bits.
 - i. "HCA Contract Services" means the Washington State Health Care Authority central headquarters contracting office, or successor section or office.
 - j. "OMB" means the Office of Management and Budget of the Executive Office of the President of the United States.

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- k. "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, Social Security Numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- l. "Public Information" means information that can be released to the public. It does not need protection from unauthorized disclosure, but does need protection from unauthorized change that may mislead the public or embarrass HCA.
- m. "Physically Secure" means that access is restricted through physical means to authorized individuals only.
- n. "RCW" means the Revised Code of Washington. All references in this Contract to RCW chapters or sections shall include any successor, amended, or replacement statute. Pertinent RCW chapters can be accessed at: <http://apps.leg.wa.gov/rcw/>.
- o. "Regulation" means any federal, state, or local regulation, rule, or ordinance.
- p. "Secured Area" means an area to which only authorized representatives of the entity possessing the Confidential Information have access. Secured Areas may include buildings, rooms or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.
- q. "Sensitive Information" means information that is not specifically protected by law, but should be limited to official use only, and protected against unauthorized access.
- r. "Subcontract" means any separate agreement or contract between the Contractor and an individual or entity ("Subcontractor") to perform all or a portion of the duties and obligations that the Contractor is obligated to perform pursuant to this Contract.
- s. "Successor" means any entity which, through amalgamation, consolidation, or other legal succession becomes invested with rights and assumes burdens of the original Contractor.
- t. "Sub-recipient" means a non-Federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a recipient of other Federal awards directly from a federal awarding agency. See OMB Circular A-133 for additional details.
- u. "Tracking" means a record keeping system that identifies when the sender begins delivery of Confidential Information to the authorized and intended recipient, and when the sender receives confirmation of delivery from the authorized and intended recipient of Confidential Information.
- v. "Trusted Systems" include only the following methods of physical delivery:
 - (1) Hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt;
 - (2) United States Postal Service (USPS) first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail;
 - (3) Commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and

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(4) The Washington State Campus mail system.

For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.

- w. "Vendor" means a dealer, distributor, merchant, or other seller providing goods or services that are required for the conduct of a federal program. These goods or services may be for an organization's own use or for the use of beneficiaries of the federal program. See OMB Circular A-133 for additional details.
- x. "WAC" means the Washington Administrative Code. All references in this Contract to WAC chapters or sections shall include any successor, amended, or replacement regulation. Pertinent WAC chapters or sections can be accessed at: <http://apps.leg.wa.gov/wac/>.

2. **Access to Data.** The Contractor shall provide access to Data generated under this Contract to the Authority, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.
3. **Advance Payment.** HCA shall not make any payments in advance or anticipation of the delivery of services to be provided pursuant to this Contract.
4. **Amendment.** Unless otherwise provided, this Contract may only be modified by a written amendment signed by both parties. Only personnel authorized to bind each of the parties may sign an amendment.
5. **Antitrust Assignment.** The Contractor hereby assigns to the State of Washington any and all of its claims for price fixing or overcharges which arise under the antitrust laws of the United States, or the antitrust laws of the State of Washington, relating to the goods, products or services obtained under this Contract.
6. **Assignment.** The work to be provided under this Contract, and any claims arising there under, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.
7. **Assurances.** The Authority and the Contractor agree that all activity pursuant to this Contract will be in accordance with all applicable federal, state and local laws, rules, and regulations.
8. **Attorneys' Fees.** In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney's fees and costs.
9. **Billing Limitations.**
 - a. The Authority shall pay the Contractor only for authorized services provided in accordance with this Contract.
 - b. The Authority shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were performed. The Authority within the Special Terms and Conditions of this Contract may reduce length of time following the provision of services in which the Contractor may submit claims for payment.

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- c. The Contractor shall not bill and HCA shall not pay for services performed under this Contract, if the Contractor has charged or will charge another agency of the state of Washington or any other party for the same services.
- 10. Change in Status.** In the event of substantive change in the legal status, organization structure, or fiscal reporting responsibility of the Contractor, the Contractor agrees to notify the HCA Contract Services of the change. The Contractor shall provide notice as soon as practicable, but no later than thirty (30) days after such a change takes effect.
- 11. Compliance with Applicable Law.** At all times during the term of this Contract, the Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to, nondiscrimination laws and regulations.
- 12. Confidentiality.**
- a. The Contractor shall not use, publish, transfer, sell or otherwise disclose any Confidential Information gained by reason of this Contract for any purpose that is not directly connected with Contractor's performance of the services contemplated hereunder, except:
- (1) as provided by law; or,
 - (2) in the case of Personal Information, with the prior written consent of the person or personal representative of the person who is the subject of the Personal Information.
- b. The Contractor shall protect and maintain all Confidential Information gained by reason of this Contract against unauthorized use, access, disclosure, modification or loss. This duty requires the Contractor to employ reasonable security measures, which include restricting access to the Confidential Information by:
- (1) Allowing access only to staff that have an authorized business requirement to view the Confidential Information.
 - (2) Physically Securing any computers, documents, or other media containing the Confidential Information.
 - (3) Ensure the security of Confidential Information transmitted via fax (facsimile) by:
 - (a) Verifying the recipient phone number to prevent accidental transmittal of Confidential Information to unauthorized persons.
 - (b) Communicating with the intended recipient before transmission to ensure that the fax will be received only by an authorized person.
 - (c) Verifying after transmittal that the fax was received by the intended recipient.
 - (4) When transporting six (6) or more records containing Confidential Information, outside a Secured Area, do one or more of the following as appropriate:
 - (a) Use a Trusted System.

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(b) Encrypt the Confidential Information, including:

- i. Encrypting email and/or email attachments which contain the Confidential Information.
- ii. Encrypting Confidential Information when it is stored on portable devices or media, including but not limited to laptop computers and flash memory devices.

(c) Note: If the HCA Data Security Requirements Exhibit is attached to this Contract, this item, 12.b.(4), is superseded by the language contained in the Exhibit.

(5) Send paper documents containing Confidential Information via a Trusted System.

(6) Following the requirements of the HCA Data Security Requirements Exhibit, if attached to this Contract.

- c. Upon request by HCA program staff, at the end of the Contract term, or when no longer needed, the Contractor shall return the Data to HCA information technology staff or the Contractor shall certify in writing that they employed a HCA approved method to destroy the information. The Contractor may obtain information regarding approved destruction methods from the HCA contact identified on the cover page of this Contract.
- d. Paper documents with Confidential Information may be recycled through a contracted firm, provided the contract with the recycler specifies that the confidentiality of information will be protected, and the information destroyed through the recycling process. Paper documents containing Confidential Information requiring special handling (e.g. protected health information) must be destroyed on-site through shredding, pulping, or incineration.
- e. Notification of Compromise or Potential Compromise. The compromise or potential compromise of Confidential Information must be reported to the HCA Contact designated on the cover page of this Contract within one (1) business day of discovery. The Contractor must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law or the Authority.
- f. Subsequent Disclosure. The Contractor shall not release, divulge, publish, transfer, sell, disclose, or otherwise make the Confidential Information or Sensitive Data known to any other entity or person without the express prior written consent of the Authority's Public Disclosure Office, or as required by law.

If responding to public record disclosure requests under Chapter 42.56 RCW, the Contractor agrees to notify and discuss with the Authority's Public Disclosure Officer requests for all information that are part of this Contract, prior to disclosing the information. The Authority upon request shall provide the Contractor with the name and contact information for the Authority Public Disclosure Officer. The Contractor further agrees to provide the Authority with a minimum of two calendar weeks to initiate legal action to secure a protective order under RCW 42.56.540.

- 13. Conflict of Interest.** Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Authority may, in its sole discretion, by written notice to the Contractor terminate this Contract if it is found after due notice and examination by the Agent that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or services under this Contract.

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In the event this Contract is terminated as provided above, the Authority shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of this Contract by the Contractor. The rights and remedies of the Authority provided for in this Section shall not be exclusive and are in addition to any other rights and remedies provided by the law. The existence of facts upon which the Agent makes any determination under this section shall be an issue and may be reviewed as provided in the "Disputes" Section of this Contract.

14. **Conformance.** If any provision of this Contract violates any statute or rule of law of the State of Washington, it is considered modified to conform to that statute or rule of law.
15. **Contractor Certification Regarding Ethics.** The Contractor certifies that the Contractor is now, and shall remain, in compliance with Chapter 42.52 RCW, Ethics in Public Service, throughout the term of this Contract.
16. **Covenant against Contingent Fees.** The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. The Authority shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.
17. **Debarment Certification.** The Contractor, by signature to this Contract, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency from participating in transactions (Debarred). The Contractor also agrees to include the above requirement in any and all Subcontracts into which it enters. The Contractor shall immediately notify the HCA Contact designated on the cover page of this Contract if, during the term of this Contract, the Contractor becomes Debarred. HCA may immediately terminate this Contract by providing Contractor written notice if Contractor becomes Debarred during the term of this Contract.
18. **Force Majeure.** If the Contractor is prevented from performing any of its obligations hereunder in whole or in part as a result of a major epidemic, act of God, war, terrorist acts, civil disturbance, court order, or any other cause beyond its control, such nonperformance shall not be grounds for termination for default. Immediately upon the occurrence of any such event, the Contractor shall commence to use its best efforts to provide, directly or indirectly, alternate and, to the extent practicable, comparable performance. Nothing in this Section shall be construed to prevent HCA from terminating this Contract for reasons other than for default during the period of event set forth above, or for default, if such default occurred prior to such event.
19. **Fraud and Abuse Requirements.** The Contractor shall report in writing all verified cases of fraud and abuse, including fraud and abuse by the Contractor's employees and/or subcontractors, within five (5) business days, to the HCA Contact designated on page one of this Contract. The report shall include the following information:
 - a. Subject(s) of complaint by name and either provider/subcontractor type or employee position;
 - b. Source of complaint by name and provider/subcontractor type or employee position;
 - c. Nature of complaint;

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- d. Estimate of the amount of funds involved; and
- e. Legal and administrative disposition of case.

20. Governing Law and Venue. This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.

21. Health and Safety. Contractor shall perform any and all of its obligations under this Contract in a manner that does not compromise the health and safety of any HCA client with whom the Contractor has contact.

22. Hold Harmless and Indemnification.

a. The Contractor shall be responsible for and shall indemnify, defend, and hold HCA harmless from all claims, loss, liability, damages, or fines arising out of or relating to:

(1) The Contractor's or any Subcontractor's performance or failure to perform this Contract, or

(2) The acts or omissions of the Contractor or any Subcontractor.

b. The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees.

c. Nothing in this Section shall be construed as a modification or limitation on the Contractor's obligation to procure insurance in accordance with this Contract or the scope of said insurance.

23. Independent Contractor. The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and his or her employees or agents performing under this Contract are not employees or agents of the Authority. The Contractor, his or her employees, or agents performing under this Contract will not hold himself/herself out as, nor claim to be, an officer or employee of the Authority by reason hereof, nor will the Contractor, his or her employees, or agent make any claim of right, privilege or benefit that would accrue to such officer or employee.

All payments accrued on account of payroll taxes, unemployment contributions, and other taxes, insurance or other expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

24. Industrial Insurance Coverage. The Contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, HCA may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. HCA may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by HCA under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

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- 25. Inspection.** The Contractor shall, at no cost, provide HCA and the Office of the State Auditor with reasonable access to Contractor's place of business, Contractor's records, and HCA client records, wherever located. These inspection rights are intended to allow HCA and the Office of the State Auditor to monitor, audit, and evaluate the Contractor's performance and compliance with applicable laws, regulations, and these Contract terms. These inspection rights shall survive for six (6) years following this Contract's termination or expiration.
- 26. Limitation of Authority.** Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver of any Section or condition of this Contract is not effective or binding unless made in writing and signed by the Agent or Agent's delegate.
- 27. Maintenance of Records.** The Contractor shall maintain records relating to this Contract and the performance of the services described herein. The records include, but are not limited to, accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. All records and other material relevant to this Contract shall be retained for six (6) years after expiration or termination of this Contract.

Without agreeing that litigation or claims are legally authorized, if any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

- 28. Notice of Overpayment.** If the Contractor receives a vendor overpayment notice or a letter communicating the existence of an overpayment from the Washington State Department of Social and Health Services, Office of Financial Recovery (OFR), the Contractor may protest the overpayment determination by requesting an adjudicative proceeding. The Contractor's request for an adjudicative proceeding must:
- a. Be received by the OFR at Post Office Box 9501, Olympia, Washington 98507-9501, within twenty-eight (28) calendar days of service of the notice;
 - b. Be sent by certified mail (return receipt) or other manner that proves OFR received the request;
 - c. Include a statement as to why the Contractor thinks the notice is incorrect; and
 - d. Include a copy of the overpayment notice.

Timely and complete requests will be scheduled for a formal hearing by the Washington State Office of Administrative Hearings. The Contractor may be offered a pre-hearing or alternative dispute resolution conference in an attempt to resolve the overpayment dispute prior to the hearing.

Failure to provide OFR with a written request for a hearing within twenty-eight (28) days of service of a vendor overpayment notice or other overpayment letter will result in an overpayment debt against the Contractor. HCA may charge the Contractor interest and any costs associated with the collection of this overpayment. HCA may collect an overpayment debt through lien, foreclosure, seizure and sale of the Contractor's real or personal property; order to withhold and deliver; or any other collection action available to HCA to satisfy the overpayment debt.

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- 29. Order of Precedence.** In the event of any inconsistency or conflict between the General Terms and Conditions and the Special Terms and Conditions of this Contract, the inconsistency or conflict shall be resolved by giving precedence to the Special Terms and Conditions. Terms or conditions that are more restrictive, specific, or particular than those contained in the General Terms and Conditions shall not be construed as being inconsistent or in conflict.
- 30. Ownership of Material.** Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Authority. The Authority shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, Contractor hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the Authority effective from the moment of creation of such Materials.
- Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.
- The Contractor shall exert all reasonable effort to advise the Authority, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Authority shall receive prompt written notice of each notice or claim of copyright infringement received by the Contractor with respect to any data delivered under this Contract. The Authority shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.
- 31. Publicity.** The Contractor agrees to submit to the Authority all advertising and publicity matters relating to this Contract wherein the Authority's name is mentioned or language used from which the connection of the Authority's name may, in the Authority's judgment, be inferred or implied. The Contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of the Authority.
- 32. Registration with State of Washington.** The Contractor shall be responsible for registering with Washington State agencies, including but not limited to, the Washington State Department of Revenue, the Washington Secretary of State's Corporations Division, and the Washington State Office of Financial Management, Division of Information Services' Statewide Vendors program.
- 33. Savings.** In the event funding from State, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to its completion or termination, the Authority may terminate this Contract under the "Termination Due to Change in Funding" Section, without the ten (10) day notice requirement, subject to renegotiation at the Authority's discretion under those new funding limitations and conditions.
- 34. Severability.** If any term or condition of this Contract is held invalid by any court, the remainder of this Contract remains valid and in full force and effect.

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- 35. Site Security.** While on the Authority's premises, the Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations. Failure to comply with these regulations and/or policies may be grounds for revoking or suspending security access to these facilities. The Authority reserves the right and authority to immediately revoke security access or the Contractor's agents, employees, and/or subcontractors for any real or threatened breach of this provision. Upon reassignment or termination of any Contractor staff, the Contractor agrees to promptly notify the HCA Contract Services.
- 36. Survivability.** The terms and conditions contained in this Contract which, by their sense and context, are intended to survive the expiration or termination of the particular agreement shall survive. Surviving terms include, but are not limited to: Billing Limitations; Confidentiality, Disputes; Indemnification and Hold Harmless, Inspection, Maintenance of Records, Notice of Overpayment, Ownership of Material, Termination for Default, Termination Procedure, and Treatment of Property.
- 37. Subcontracting.** Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the Authority. In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to the Authority for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

Additionally, the Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are carried forward to any subcontracts. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the Authority or as provided by law.

If at any time during the progress of the work, the Authority determines in its sole judgment that any subcontractor is incompetent or undesirable, the Authority shall notify the Contractor, and the Contractor shall take immediate steps to terminate the subcontractor's involvement in the work.

The rejection or approval by the Authority of any subcontractor or the termination of a subcontractor shall not relieve the Contractor of any of its responsibilities under this Contract, nor be the basis for additional charges to the Authority.

The Authority has no contractual obligations to any subcontractor or vendor under contract to the Contractor. The Contractor is fully responsible for all contractual obligations, financial or otherwise, to their subcontractors.

- 38. Sub-recipients.**
- a. General. If the Contractor is a sub-recipient of federal awards as defined by Office of Management and Budget (OMB) Circular A-133 and this Contract, the Contractor shall:
- (1) Maintain records that identify, in its accounts, all federal awards received and expended and the federal programs under which they were received, by Catalog of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;
 - (2) Maintain internal controls that provide reasonable assurance that the Contractor is managing federal awards in compliance with laws, regulations, and provisions of contracts or grant agreements that could have a material effect on each of its federal programs;

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- (3) Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
- (4) Incorporate OMB Circular A-133 audit requirements into all agreements between the Contractor and its Subcontractors who are sub-recipients;
- (5) Comply with any future amendments to OMB Circular A-133 and any successor or replacement Circular or regulation;
- (6) Comply with the applicable requirements of OMB Circular A-87 and any future amendments to OMB Circular A-87, and any successor or replacement Circular or regulation; and
- (7) Comply with the Omnibus Crime Control and Safe streets Act of 1968, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, The Age Discrimination Act of 1975, and The Department of Justice Non-Discrimination Regulations, 28 C.F.R. Part 42, Subparts C.D.E. and G, and 28 C.F.R. Part 35 and 39. (Go to www.ojp.usdoj.gov/ocr/statutes.htm for additional information and access to the aforementioned Federal laws and regulations.)

b. **Single Audit Act Compliance.** If the Contractor is a sub-recipient and expends \$500,000 or more in federal awards from any and/or all sources in any fiscal year, the Contractor shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Contractor shall:

- (1) Submit to the Authority contact person the data collection form and reporting package specified in OMB Circular A-133, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor;
- (2) Follow-up and develop corrective action for all audit findings; in accordance with OMB Circular A-133, prepare a "Summary Schedule of Prior Audit Findings."

c. **Overpayments.** If it is determined by the Authority, or during the course of a required audit, that the Contractor has been paid unallowable costs under this or any Program Agreement, the Authority may require the Contractor to reimburse the Authority in accordance with OMB Circular A-87.

39. System Security. Unless otherwise provided, the Contractor agrees not to attach any Contractor-supplied computers, peripherals or software to the Authority Network without prior written authorization from Authority's Security Administrator. Contractor-supplied computer equipment, including both hardware and software, must be reviewed by the Authority Security Administrator prior to being connected to any Authority network connection and that it must have up-to-date anti-virus software and personal firewall software installed and activated on it.

Unauthorized access to Authority networks and systems is a violation of Authority Policy 06-03, or successor, and constitutes computer trespass in the first degree pursuant to RCW 9A.52.110. Violation of any of these laws or policies could result in termination of this Contract and other penalties.

40. Termination for Convenience. Except as otherwise provided in this Contract, the Agent, or designee, may, by giving ten (10) calendar days written notice, beginning on the second day after the mailing, terminate this Contract in whole or in part when it is in the best interest of the Authority. If this Contract is so terminated, the Authority shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination.

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- 41. Termination for Default.** In the event the Authority determines the Contractor has failed to comply with the terms and conditions of this Contract, the Authority has the right to suspend or terminate this Contract. The Authority shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within ten (10) business days, this Contract may be terminated. The Authority reserves the right to suspend all or part of this Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by the Authority to terminate this Contract.

In the event of termination, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising, and staff time. The termination shall be deemed a "Termination for Convenience" if it is determined that the Contractor:

- a. Was not in default, or
- b. Failure to perform was outside of his or her control, fault or negligence.

- 42. Termination Due to Change in Funding.** If the funds HCA relied upon to establish this Contract are withdrawn, reduced or limited, or if additional or modified conditions are placed on such funding, HCA may immediately terminate or unilaterally amend this Contract by providing written notice to the Contractor. The termination shall be effective on the date specified in the termination notice.

- 43. Termination or Expiration Procedures.** The following terms and conditions apply upon Contract termination or expiration:

- a. The Authority, in addition to any other rights provided in this Contract, may require the Contractor to deliver to the Authority any property specifically produced or acquired for the performance of such part of this contract as has been terminated.
- b. The Authority shall pay to the Contractor the agreed upon price, if separately stated, for completed work and service accepted by the Authority's program staff and the amount agreed upon by the Contractor and the Authority for:
 - (1) Completed work and services for which no separate price is stated;
 - (2) Partially completed work and services;
 - (3) Other property or services which are accepted by the Authority's program staff; and
 - (4) The protection and preservation of property, unless the termination is for default, in which case the Agent or designee shall determine the extent of the liability. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" Section of this contract. The Authority may withhold from any amounts due the Contractor such sum as the Agent or designee determines to be necessary to protect the Authority against potential loss or liability.
- c. The rights and remedies of the Authority provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

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- d. After receipt of notice of termination, and except as otherwise directed by the Agent or designee, the Contractor shall:
- (1) Stop work under the contract on the date, and to the extent specified in the notice;
 - (2) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under this Contract that is not terminated;
 - (3) Assign to the Authority, in the manner, at the times, and to the extent directed by the agent or designee, all the rights, title, and interest of the Contractor under the orders and subcontracts so terminated; in which case the Authority has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
 - (4) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agent or designee to the extent the Agent or designee may require, which approval or ratification shall be final for all the purposes of this Section;
 - (5) Transfer title to the Authority and deliver in the manner, at the times, and to the extent directed by the agent or designee any property which, if this Contract has been completed, would have been required to be furnished to the Authority;
 - (6) Complete performance of such part of the work as shall not have been terminated by the Agent or designee; and
 - (7) Take such action as may be necessary, or as the Agent or designee may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Authority has or may acquire an interest.

44. Treatment of Property. All property purchased or furnished by HCA for use by the Contractor during this Contract term shall remain with HCA. Title to all property purchased or furnished by the Contractor for which the Contractor is entitled to reimbursement by HCA under this Contract shall pass to and vest in HCA. The Contractor shall protect, maintain, and insure all HCA property in its possession against loss or damage and shall return HCA property to HCA upon Contract termination or expiration.

45. Waiver. Waiver of any breach or default on any occasion shall not be deemed to be a waiver of any subsequent breach or default. Any waiver shall not be construed to be a modification of the terms and conditions of this Contract. Only the HCA Contracts Administrator or designee has the authority to waive any term or condition of this Contract on behalf of HCA.