

	INTERAGENCY AGREEMENT Medicaid Administrative Claiming (MAC) Public School Districts	HCA AGREEMENT NUMBER SOLICITATION NUMBER (If Applicable) RFP #:
This Agreement is made 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 AGREEMENT NUMBER
CONTRACTOR NAME		CONTRACTOR doing business as (DBA)
CONTRACTOR ADDRESS		WASHINGTON UNIFORM BUSINESS IDENTIFIER (UBI)
CONTRACTOR CONTACT	CONTRACTOR TELEPHONE NUMBER	CONTRACTOR EMAIL ADDRESS
HCA PROGRAM TITLE Medicaid Administrative Claiming (MAC)		HCA DIVISION/SECTION Health Care Services / Medicaid Outreach
HCA CONTACT NAME AND TITLE Jonathan Rush Program Manager		HCA CONTACT OFFICE ADDRESS 626 8 th Ave SE PO Box 45530 Olympia WA 98504-5530
HCA CONTACTS OFFICE TELEPHONE (360) 725-1842		HCA CONTACT EMAIL ADDRESS jonathan.rush@hca.wa.gov
IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS AGREEMENT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		CFDA NUMBER(S) 93.778 FFATA FORM REQUIRED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
AGREEMENT START DATE	AGREEMENT END DATE	TOTAL MAXIMUM AGREEMENT AMOUNT
The terms and conditions of this CONTRACTOR Agreement 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 Agreement. The parties signing below warrant that they have read and understand this Agreement and have authority to execute this Agreement. This Agreement is binding on HCA only upon signature by HCA.		
CONTRACTOR SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED
HCA SIGNATURE	PRINTED NAME AND TITLE	DATE SIGNED

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Special Terms and Conditions

1 Definitions Specific to this Agreement

The words and phrases listed below, as used in this Agreement, will each have the following definitions:

- 1.1 **A19-1A Invoice Voucher (A19)** means the state of Washington Invoice Voucher used by Contractor and vendors to submit claims for payment in return for goods or services or both provided to Health Care Authority (HCA) or its clients.
- 1.2 **Activity** means job duties and responsibilities performed by a time study participant.
- 1.3 **Administrative Fee** means the dollar amount charged to a contractor by HCA based on a percentage of each Contractor’s billing for Federal Financial Participation (FFP) claimed at the federally approved match rate. The fee is used to offset HCA’s costs incurred in administering the MAC program. Administrative fees charged to Contractor are used to provide the state share of match required to operate the program.
- 1.4 **Apple Health** means the Washington State Medicaid program funded by the federal and state government, which pays for medical coverage for children and adults who meet specific income criteria.
- 1.5 **Apple Health Application Assistance** means to assist Apple Health clients in completing the application process.
- 1.6 **Audit** means an investigation of a contractor’s MAC program and financial information to ensure compliance with state, federal, and local laws. The State Auditor’s Office completes an annual OMB Circular A-133 audit for all school contractors required to report.
- 1.7 **Billing Quarter** means a consecutive three (3) calendar month period during the contractor fiscal year. Most MAC contractors utilize the State Fiscal year, July – June, with billing quarters beginning on the first day of month one (1) and ending on the last day of month three (3).

STATE FISCAL YEAR BILLING QUARTERS	
Quarter(s)	Months
Qtr. 1	July – September
Qtr. 2	October – December
Qtr. 3	January – March
Qtr. 4	April - June

- 1.8 **Centers for Medicare and Medicaid Services (CMS)** means the federal agency with oversight responsibility for the Medicare and Medicaid programs within the Department of Health and Human Services (DHHS)
- 1.9 **Certified Public Expenditure (CPE)** means the sources of funds certified as actual expenditures by a local or public governmental entity and used as the State share in order to receive federal matching Medicaid funds, or Federal Financial Participation (FFP).

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- 1.10 **Code of Federal Regulation (CFR)** means the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government.
- 1.11 **Cognizant Agency** means the federal agency responsible for reviewing, negotiating, and approving Indirect Cost Rates.
- 1.12 **Confidential Information** means information that is exempt from disclosure to the public or other unauthorized persons under Chapter 42.56, Revised Code of Washington (RCW) or other federal or state laws.
- 1.13 **Consultant or Billing Agent** means any subcontractor to include any individual or organization hired by the Contractor to provide support with the System. The Contractor is responsible for all work done by the subcontracted consultants or billing agents or both.
- 1.14 **Contractor or MAC contractor** means the individual, entity, or claiming unit performing MAC services pursuant to this agreement and includes the contractor's owners, members, officers, directors, partners, employees, or agents, or all, unless otherwise stated in this agreement. For purposes of any permitted subcontract, "contractor" includes any subcontractor and its owners, members, officers, directors, partners, employees, or agents, or all.
- 1.15 **Corrective Action** means a plan developed after completion of an audit, evaluation, or review where a finding(s) of deficiency are identified. The plan specifies actions the facility or contractor must take to correct the finding of deficiency; the person responsible for developing the plan; the date when the correction will be completed, and the person responsible for correcting the deficiency.
- 1.16 **Direct Cost** means costs in direct support of MAC as reported on the quarterly A19 which are not already included in the indirect cost rate.
- 1.17 **Effective Date** means the first date this agreement is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this agreement.
- 1.18 **Eligible participants** means contractor staff, subcontracted individuals or subcontractor individuals that are in compliance with regulations, meeting guidelines, and the Manual criteria, to participate in the school Medicaid Administrative Claiming (MAC) Random Moment Time Study (RMTS).
- 1.19 **Federal Financial Participation (FFP)** means the level of federal funding to which the federal government will participate to reimburse government agencies for certain Medicaid administrative activities.
- 1.20 **HCA MAC RMTS Coordinator Manual (Manual)** means the HCA MAC Coordinator Manual or its successor(s), including any updates that describe how to manage the MAC program including the time study and claiming.
- 1.21 **Health Care Authority (HCA)** means the single state Medicaid agency that has complete authority and responsibility for administration of the State Medicaid Plan and Medicaid Administrative Claiming.
- 1.22 **Indirect Cost(s)** means an operating expense that is allocated across more than one program.

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- 1.23 **Indirect Cost Rate** means the ratio, expressed as a percentage, of the indirect costs to a direct cost base as approved by the Contractor's Cognizant Agency.
- 1.24 **Job Title** means a short description of a job position.
- 1.25 **Job Description** means a summary of specific duties and responsibilities of a job position.
- 1.26 **Linkage** means connecting clients to services.
- 1.27 **Local Matching Funds** means the contractor's non-federal tax dollars that are not otherwise obligated and are designated or certified to match the FFP rate of reimbursement. This revenue must be in the contractor's budget and under the contractor's control. These funds cannot be contributed by healthcare providers as local matching funds and subcontractor cannot certify local match funding. All local match funds must meet CPE requirements.
- 1.28 **Medicaid** means the federal aid Title XIX program of the Social Security Act under which medical care is provided to eligible persons.
- 1.29 **Medicaid Administrative Claiming Program (MAC)** means the source of funding for reimbursements provided in this agreement is shared between the contractor and the Federal Financial Participation (FFP).
- 1.30 **MAC Coordinator** means an employee of the contractor assigned MAC RMTS oversight responsibilities and to act as liaison between HCA and the contractor for purposes of a MAC agreement.
- 1.31 **Medicaid Client** means a person who is eligible to receive Medicaid Covered Services.
- 1.32 **Medicaid Covered Services** means the array of federally required and Washington State legislatively appropriated medical and social services available to Medicaid Clients.
- 1.33 **Medicaid School-Based Administrative Claiming Guide** means the CMS MAC manual issued May 2003 produced by CMS, and any supplements, amendments, or successor, incorporated here by reference into this agreement.
- 1.34 **Monitoring** means review of a contractor's MAC program to ensure program integrity.
- 1.35 **Office of Management and Budget (OMB)** means a division under the Executive Office of the President of the United States.
- 1.36 **Outreach** means activities undertaken by the contractor to inform families within its jurisdiction about services available and encourage access to these services.
- 1.37 **Potential Medicaid Client** means a Washington State resident who may be determined by HCA to meet the eligibility criteria for enrollment in Medicaid.
- 1.38 **Random Moment Time Study (RMTS)** means a statistically valid time study system that asks each participant to report the activity he or she was performing during a specific moment.
- 1.39 **Referral** means providing information and support to clients that will assist them in accessing medical, social, education, or other services.

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- 1.40 **Statement of Work** means a statement of the work to be accomplished by Contractor under the terms and conditions of this agreement.
- 1.41 **State Fiscal Year (SFY)** means a twelve (12) month period beginning on July 1st of one calendar year and ending on June 30th of the following calendar year. The SFY is broken into four (4) billing quarters.
- 1.42 **State Medicaid Plan** means the comprehensive written commitment by HCA, submitted under 1902(a) of the Social Security Act and approved by CMS, to administer the Washington State Medicaid program in accordance with federal and state requirements.
- 1.43 **University of Massachusetts Medical School (UMMS)** means the HCA contracted vendor who oversees the RMTS.

2 Purpose

The purpose of this contractor agreement is to support Medicaid related outreach, application assistance, and linkage activities to residents of Washington. These activities assist residents who do not have adequate medical coverage. This assistance includes explaining the benefits of the Apple Health program, assisting them with the Apple Health Application and linking them to Medicaid covered services. This contractor agreement also provides a process for reimbursing the Contractor for time staff spend conducting Medicaid Administrative Claiming (MAC) activities.

3 Statement of Work

The Contractor must provide staff and perform all activities necessary to do the work outlined in this Agreement. These activities include but are not limited to:

- 3.1 Participation in Medicaid Administrative Claiming (MAC):
- 3.1.1 Identify potential Apple Health/Medicaid clients;
 - 3.1.2 Inform potential Medicaid clients about Medicaid and provide Apple Health applications for the Medicaid program;
 - 3.1.3 Assist potential Medicaid clients in completing and submitting the Apple Health application for eligibility determination;
 - 3.1.4 Coordinate efforts to arrange transportation to Medicaid covered services;
 - 3.1.5 Coordinate efforts to arrange translation/interpretation for Medicaid covered services;
 - 3.1.6 Participate in interagency efforts to develop procedures, protocols, and/or strategies to assess or improve Medicaid covered services;
 - 3.1.7 Participate in training to enhance referral of individuals and families to Medicaid covered services;

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- 3.1.8 Refer, arrange for, or coordinate medical, vision, dental health, mental health, substance abuse treatment, and/or family planning evaluations;
- 3.1.9 Ensure only eligible participants participate in the RMTS;
- 3.1.10 Ensure that no costs are claimed as Direct Costs/Expenses if those costs are already included in an Indirect Rate;
- 3.1.11 Maintain all documentation related to staff participation in the RMTS according to section 1902(a) (4) of the Act and 42 CFR 431.17. See also 45 CFR 74.53 and 42 CFR 433.32(a), requiring source documentation to support accounting records, and 45 CFR 74.20 and 42 CFR 433.32(b) and (c), retention period for records, and as described in the [Medicaid School-Based Administrative Claiming Guide](#);
- 3.1.12 Maintain all documentation related to MAC claiming according to section 1902(a) (4) of the Act and 42 CFR 431.17. See also 45 CFR 74.53 and 42 CFR 433.32(a), requiring source documentation to support accounting records, and 45 CFR 74.20 and 42 CFR 433.32(b) and (c), retention period for records, and as described in the [Medicaid School-Based Administrative Claiming Guide](#);
- 3.1.13 Provide any and all information and documentation as requested by HCA, state and/or federal auditors and reviewers in a readable and usable format;
- 3.1.14 Designate a MAC Coordinator and MAC Coordinator Backup;
 - 3.1.14.1 Provide and keep updated the name, telephone number, fax number, and email address of the MAC Coordinator and the MAC Coordinator Backup;
 - 3.1.14.2 The MAC Coordinator and MAC Coordinator Backup are responsible for tasks detailed in the Manual. These individuals provide oversight for the operation and maintenance of the RMTS; and
 - 3.1.14.3 The MAC Coordinator and MAC Coordinator Backup must ensure HCA MAC policies are implemented;
- 3.1.15 Comply with all applicable laws, regulations and guidelines specific to MAC and perform work under this agreement in accordance with the following to include all updates, revisions, or replacements:
 - 3.1.15.1 Code of Federal Regulation (CFR) Title 42 and Title 45;
 - 3.1.15.2 1903(w)(6)(A) of the Social Security Act;
 - 3.1.15.3 Medicaid School Based Administrative Claiming Guide May 2003;
 - 3.1.15.4 Revised Code of Washington (WAC);
 - 3.1.15.5 The Coordinator Manual;

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- 3.1.15.6 Uniform Administrative Requirements Cost Principles and Audit Requirements for Federal Awards (SuperCircular);
- 3.1.15.7 OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations; and
- 3.1.15.8 Washington State Medicaid Plan;
- 3.1.16 Abide by all limitations, restrictions, and documentation requirements of MAC related activities specified in the Manual and this agreement;
- 3.1.17 Submit a current list of RMTS Participants, their job titles, and job descriptions before each quarter to the UMMS RMTS/claiming system;
- 3.1.18 Submit all audit reports within thirty (30) calendar days of issuance to HCA including, but not limited to State Auditor Office (SAO) Audits, OMB Circular A-133 Single Audits, Federal Reviews, or Federal Audits;
- 3.1.19 Submit to HCA any corrective action related to MAC findings and questioned costs within thirty (30) calendar days of submission.
- 3.1.20 Positions eligible to participate in Random Moment Time Study (RMTS) must be for participants:
 - 3.1.20.1 Who are not already participating in another HCA MAC time study;
 - 3.1.20.2 Who are directly employed or contracted by the Contractor;
 - 3.1.20.3 Who are reasonably expected to perform MAC related activities;
 - 3.1.20.4 Whose positions are not funded with federal dollars or have been appropriately off-set according to CMS guidelines; and
 - 3.1.20.5 Whose positions are not included in an approved Indirect Rate;
 - 3.1.20.6 Whose eligible position or job titles are found in the program codes and activities codes combinations listed in the Manual.

3.1.21 Training

Participants are required to complete initial online training in the System prior to answering their first moment and then every 365 days thereafter.

The Contractor must:

- 3.1.21.1 Ensure all MAC Coordinator(s) are trained by HCA or UMMS;
- 3.1.21.2 Ensure all eligible participants complete the initial and annual UMMS online training before participating in the RMTS;

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3.1.22 Random Moment Time Study

The Contractor must:

- 3.1.22.1 Ensure the MAC Coordinator(s) accurately performs all their responsibilities listed in the Manual;
- 3.1.22.2 Ensure all information loaded into the System is accurate and timely;
- 3.1.22.3 Ensure participants understand how to answer moments according to what activity they are doing exactly at the moment, complete the narrative description, and maintain documentation of the activities recorded;
- 3.1.22.4 Perform all necessary RMTS/claiming system updates and monitoring as detailed in the Manual; and
- 3.1.22.5 Comply with all HCA revisions to the Manual and RMTS claiming requirements.

3.1.23 Documentation and Forms

The Contractor must:

- 3.1.23.1 Use all forms and documentation outlined in the Manual;
- 3.1.23.2 Create and maintain quarterly documents reconciling all costs claimed.
- 3.1.23.3 Provide, maintain, and have available all supporting documentation referenced in the Manual.

3.1.24 MAC Subcontractors;

- 3.1.24.1 Neither the contractor, nor any subcontractors, shall enter into subcontracts for any of the work contemplated under this contract without prior written approval of HCA. In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to HCA for any breach in the performance of the contractor's duties.
- 3.1.24.2 Additionally, the contractor is responsible for ensuring that all terms, conditions, assurances, and certifications set forth in this contract are included in any subcontracts. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell, or otherwise make known to unauthorized persons confidential information without the express written consent of HCA or as provided by law.
- 3.1.24.3 If, at any time during the progress of the work, the HCA determines in its sole judgment that any subcontractor is incompetent or undesirable, the HCA shall notify the contractor, and the contractor shall take immediate steps to terminate the subcontractor's involvement in the work.

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- 3.1.24.4 The rejection or approval by the HCA of any subcontractor or the termination of a subcontractor shall not relieve the contractor of any of its responsibilities under the contract, nor be the basis for additional charges to the HCA.
- 3.1.24.5 The HCA 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.

3.1.25 Contractor responsibilities related to subcontracts. The contractor:

- 3.1.25.1 May subcontract for specific MAC related data entry functions. These functions must be reviewed and approved by HCA. For this review and approval the contractor must submit:
 - 3.1.25.1.1 A copy of the proposed subcontract terms and conditions;
 - 3.1.25.1.2 A current list of all sources of funding the proposed subcontractor receives;
 - 3.1.25.1.3 Complete the HCA Subcontract Review form found in the Manual; and
 - 3.1.25.1.4 Submit a signed copy of the subcontract within ten (10) working days of execution;
- 3.1.25.2 Assumes all responsibility for MAC related work performed by any of its MAC subcontractors, including subcontractor eligible participants participating in the RMTS, consultants, and billing agents;
- 3.1.25.3 Ensures any of its MAC subcontractors abide by all limitations, restrictions, and documentation requirements of MAC activities as specified in the Manual and this agreement;
- 3.1.25.4 Monitors all its MAC subcontractors to ensure program integrity and maintain an annual monitoring report for each subcontractor in the contractor's monitoring documentation;
- 3.1.25.5 May not charge the subcontractor an administrative fee; and
- 3.1.25.6 Assumes all administrative costs of subcontracts.

3.2 Monitoring and Oversight

The Contractor is required to comply with the HCA RMTS Monitoring Plan as approved by CMS and detailed in the Manual.

3.3 Claiming

The Contractor is required to comply with the HCA RMTS claiming process as approved by CMS and detailed in the Manual.

Special Terms and Conditions

4 Billing and Payment

- 4.1 The contractor must submit the initial claim in the RMTS/claiming system within one hundred and twenty (120) calendar days after the end of the quarter in which the services were performed. HCA will not seek reimbursement for claims submitted after the 23rd month of the two-year federal filing deadline. HCA must receive a signed and dated A19 invoice voucher from the contractor no more than thirty (30) calendar days after HCA has approved the claim submission in the RMTS/claiming system.
- 4.2 Payment is considered timely if made by HCA within thirty (30) calendar days after HCA's receipt and approval of properly completed A19s;
- 4.3 HCA will send payment to the address designated by the contractor. 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 or condition of this agreement; and
- 4.4 There is no maximum consideration payable to the Contractor under this Agreement.

5 Administrative Fee

HCA charges MAC contractors an administrative fee to offset HCA's costs for the administration of the MAC program. The rate is based on the costs associated with the staff effort spent on MAC related work for an entire State Fiscal Year (SFY) and is billed as a line item on the quarterly claim form A-19-1A submitted by the district. This cost is divided by the dollar amount of administrative claims submitted by the participating contractors in the MAC program for the same SFY. The calculated rate is used on the claims for the subsequent SFY. At the end of the period, the rate used will be validated using the actual claimed expenditures for that period and any variances will be settled with the contractor during the second quarter of the new SFY. All remaining subsections are subsequently renumbered and internal references updated.

6 Consideration

Total consideration payable to the MAC contractor under this agreement is not a pre-set amount;

6.1 Source(s) of Funds for Administrative Claiming:

- 6.1.1 Fifty Percent (50%) of funds is received from the United States Department of Health and Human Services under Medical Assistance Program CFDA 93.778;
- 6.1.2 No funds will come from General Fund – State funds; and
- 6.1.3 Fifty Percent (50%) is received from the contractor's Local Matching funds.

7 Overpayment

The Contractor is fully responsible for the repayment of any disallowances or penalties or both identified by HCA or any audit of the contractor or any of its subcontractors and must fully cooperate in a timely manner with the recovery of funds.

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8 Notices

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

8.1 In case of notice to the Contractor, notice must be sent to the point of contact identified on page one (1) of this agreement;

8.2 In the case of notice to HCA, notice must be sent to:

Health Care Authority
Contracts Administrator
Division of Legal Services
Post Office Box 42702
Olympia, Washington 98504-2702

8.3 Notice is 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 providing the new address, which is effective on the tenth (10th) day following the effective date of such notice unless a later day is specified in the notice.

9 Subrecipient Status

The MAC contractor is a subrecipient for purposes of this agreement and as such, must comply with the terms and conditions listed in Section 50, Subrecipients, of the General Terms and Conditions of this agreement.

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10 Insurance

10.1 HCA certifies that it is self-insured under the State's self-insurance liability program, as provided by RCW 4.92.130, and shall pay for losses for which it is found liable.

10.2 The contractor certifies by signing this contract that either:

10.2.1 The contractor is self-insured or insured through a risk pool and shall pay for losses for which it is found liable; or

10.2.2 The contractor maintains the types and amounts of insurance identified below and shall, if requested by HCA, provide certificates of insurance to that effect to the HCA contact on page one of this contract.

10.2.2.1 Commercial General Liability (CGL) Insurance – to include 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 agreement. The state of Washington, HCA, its elected and appointed officials, agents, and employees shall be named as additional insureds.

10.2.2.2 Professional Liability (PL) Insurance. 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.

11 Definitions

The words and phrases listed below, as used in this Agreement, will each have the following definitions:

11.1 **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:

11.1.1 Necessary and reasonable;

11.1.2 Allocable;

11.1.3 Authorized or not prohibited under Washington State or local laws and regulations; and

11.1.4 Adequately documented.

11.2 **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.

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- 11.3 **Contract or Agreement or Interagency Agreement** means the entire written agreement between HCA and the contractor, including any exhibits, documents, or materials incorporated by reference. The parties may execute this agreement in multiple counterparts, each of which is deemed an original and all of which constitute only one agreement. Electronic mail (Email) or facsimile (fax) transmission of a signed copy of this agreement is the same as delivery of an original.
- 11.4 **Contractor Law** means the resolutions, law, codes, and/or ordinances enacted by the contractor executing this agreement, and any of the contractor's contractor court decisions interpreting the same. All references in this agreement to contractor law must include any successor, amended, or replacement law, as of the effective date of such successor, amended, or replacement law.
- 11.5 **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.
- 11.6 **Director** means the Washington State Health Care Authority Director or the Director's delegate authorized in writing to act on behalf of the director.
- 11.7 **Health Care Authority (HCA)** means the Washington State Health Care Authority, any division, section, office, unit, or other entity of HCA, or any of the offices or other officials lawfully representing HCA.
- 11.8 **HCA Contract Services** means the Washington State Health Care Authority central headquarters contracting office, or successor section or office.
- 11.9 **OMB** means the Office of Management and Budget of the Executive Office of the President of the United States.
- 11.10 **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's license numbers, other identifying numbers, and any financial identifiers.
- 11.11 **Revised Code of Washington (RCW)** means a compilation of all permanent laws now in force in Washington State. It is a collection of Session Laws, enacted by the Legislature and signed by the Governor or enacted via the initiative process, and arranged by topic. The RCW includes amendments and laws repealed. It does not include temporary laws such as appropriations acts. The RCW is published by the Statute Law Committee and is the official version of the code. The RCWs are located on the <http://apps.leg.wa.gov/rcw/default.aspx> page of the Washington State Legislature's Web site.
- 11.12 **Regulation** means any federal, state, local regulation, rule, or ordinance.
- 11.13 **Subcontract** means any separate contract or agreement 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 agreement.
- 11.14 **Successor** means any entity which, through amalgamation, consolidation, or other legal succession becomes invested with rights and assumes burdens of the original Contractor.

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- 11.15 **Subrecipient** 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 subrecipient may also be a recipient of other federal awards directly from a federal awarding agency. Federal agencies shall apply the provisions of the sections of this circular to non-federal entities, whether they are recipients expending federal awards received from pass-through entity (a recipient or another subrecipient). See [OMB Circular A-133](#) for additional details.
- 11.16 **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.
- 11.17 **Washington Administrative Code (WAC)** means regulations, a primary source of law, of the executive branch agencies that are issued by authority of statutes. The WAC codifies the regulations and arranges them by subject or agency. All references in this agreement to WAC chapters or sections include any successor, amended, or replacement regulation. Pertinent WAC chapters or section can be accessed at <http://app.leg.wa.gov/wac/>.

12 Access to Data

In compliance with RCW 39.26.180, the MAC contractor must provide access to data generated under this agreement to HCA, 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 MAC contractor's reports, including models and methodology for those models.

13 Advance Payment Prohibited

No advance payment will be made for services furnished by the MAC contractor pursuant to this agreement.

14 Amendments

This contract may be amended by mutual agreement of the parties. Such amendments are not binding unless they are in writing and signed by personnel authorized to bind each of the parties.

15 Antitrust Assignment

The MAC 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 purchased under this agreement.

16 Assignment

The contractor must not assign this agreement or its rights or obligations without obtaining prior written consent of HCA. HCA will not recognize any assignment without such prior written consent. In the event that consent is given and this agreement is assigned, all terms and conditions of this agreement must be binding upon the contractor's successors and assignees.

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17 Attorneys' Fees

In the event of litigation or other action brought to enforce Agreement terms, each party agrees to bear its own attorney's fees and costs.

18 Billing Limitations

- 18.1 The HCA will pay the MAC contractor only for authorized services provided in accordance with this agreement.
- 18.2 HCA will not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were performed. HCA within the Special Terms and Conditions of this agreement may reduce length of time following the provision of services in which the MAC contractor may submit claims for payment.
- 18.3 The MAC contractor must not bill and HCA must not pay for services performed under this agreement if the MAC contractor has charged or will charge another agency of the state of Washington or any other party for the same service(s).

19 Change in Status

In the event of substantive change in the legal status, organization structure, or fiscal reporting responsibility of the MAC contractor, the MAC contractor agrees to notify HCA Contract Services of the change. The MAC contractor must provide notice as soon as practical, but no later than thirty (30) calendar days after such a change takes effect.

20 Compliance with Applicable Law

At all times during the term of this agreement, the parties must comply with all applicable federal, contractor, and state laws and regulations that apply to the respective party.

21 Confidentiality

- 21.1 Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this contract or its performance may consist of Confidential Information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this contract, to release it only to authorized employees or subcontractors requiring such information for the purposes of carrying out this contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without HCA's express written consent or as provided by law. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.
- 21.2 Immediately upon expiration or termination of this contract, Contractor shall, at HCA's option: (i) certify to HCA that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to HCA; or (iii) take whatever other steps HCA requires of Contractor to protect HCA's Confidential Information.
- 21.3 HCA reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this contract. Violation of this section by

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Contractor or its subcontractors may result in termination of this contract and demand for return of all Confidential Information, monetary damages, or penalties.

- 21.4 The obligations set forth in this section must survive completion, cancellation, expiration, or termination of this contract.
- 21.5 Upon a breach or suspected breach of confidentiality, the contractor shall immediately notify HCA Privacy Officer. For purposes of this contract, "immediately" means within one calendar day.
- 21.6 The contractor will take steps necessary to mitigate any known harmful effects of such unauthorized access including, but not limited to, sanctioning employees, notifying subjects, and taking steps necessary to stop further unauthorized access. The contractor agrees to indemnify and hold harmless HCA for any damages related to unauthorized use of disclosure of Confidential Information by the contractor, its officers, directors, employees, subcontractors, or agents.
- 21.7 Any breach of this clause may result in termination of the contract and the demand for return of all Confidential Information.
- 21.8 Contractor acknowledges the HCA is subject to Chapter 42.56 RCW and that this contract shall be a public record as defined in Chapter 42.56 RCW. Any specific information that is claimed by Contractor to be Proprietary Information must be clearly identified as such by Contractor. To the extent consistent with Chapter 42.56 RCW, HCA shall maintain the confidentiality of all such information marked Proprietary Information in their possession. If a public disclosure request is made to view Contractor's Proprietary Information, HCA will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, HCA will release the requested information on the date specified.
- 21.9 The parties must not use, publish, transfer, sell, or otherwise disclose any Confidential Information gained by reason of any agreement for any purpose that is not directly connected with the performance of the services contemplated hereunder, except:
 - 21.9.1 As provided by law; or
 - 21.9.2 In the case of Personal Information with prior written consent of the person or personal representative of the person who is subject of the Personal Information.
- 21.10 The parties must protect and maintain all Confidential Information gained by reason of any agreement against unauthorized use, access, disclosure, modification, or loss. This duty

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requires the parties to employ reasonable security measures, which include restricting access to the Confidential Information by:

- 21.10.1 Allowing access only to staff that have an authorized business requirement to view the Confidential Information; and
- 21.10.2 Physically securing any computers, documents, or other media containing the Confidential Information.
- 21.11 To the extent allowed by law, at the end of the agreement term, or when no longer needed, the parties must return Confidential Information or certify in writing the destruction of Confidential Information upon written request by the other party.
- 21.12 Paper documents with Confidential Information may be recycled through a contracted firm, provided the agreement 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, for example protected health information, must be destroyed onsite through shredding, pulping, or incineration.
- 21.13 The compromise or potential compromise of Confidential Information must be reported to HCA contract designated on the agreement within five (5) business days of discovery. The parties must also take actions to mitigate the risk of loss and comply with any notification or other requirements imposed by law.

22 Conflict of Interest

- 22.1 HCA may terminate this contract, by written notice to the contractor, if it is found, after due notice and examination, that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts.
- 22.2 In the event this contract is so terminated, HCA shall be entitled to pursue the same remedies against the contractor as it could pursue in the event of a breach of the contract by the contractor.
- 22.3 Notwithstanding any determination by the Executive Ethics Board or other tribunal, HCA may in its sole discretion, by written notice to the MAC contractor terminate this agreement if it is found after due notice and examination by the Agency that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any similar statute involving the MAC contractor in the procurement of, or services under this agreement.
- 22.4 In the event this agreement is terminated as provided above, HCA is entitled to pursue the same remedies against the MAC contractor as it could pursue in the event of a breach of the agreement by the MAC contractor. The rights and remedies of HCA provided for in this clause are not exclusive and are in addition to any other rights and remedies provided by the law. The

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existence of facts upon which the Director makes any determination under this clause must be an issue and may be reviewed as provided in the Disputes clause of this agreement.

23 Conformance

If any provision of this agreement 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.

24 Covenant against Contingent Fees

The MAC contractor warrants that no person or selling agent has been employed or retained to solicit or secure this agreement 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 MAC contractor for the purpose of securing business. HCA must have the right, in the event of breach of this clause by the MAC contractor, to annul this agreement without liability or, in its discretion, to deduct from the agreement price or consideration or recover by other means the full amount of such commission, percentage, brokerage, or contingent fee.

25 Culturally Relevant Services

In performing work pursuant to any agreement, the Contractor may develop and operate programs and deliver goods, services, and/or benefits in a manner that is culturally relevant and appropriate, and that is particularly suited to and/or particularly located for access by members of the contractor's contractor or other contractor, in accordance with Contractor laws and policies.

26 Debarment Certification

The contractor, by signing this contract, certifies that the contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded in any Washington State or federal department or agency from participating in transactions (debarred). The contractor agrees to include the above requirement in any and all subcontracts into which it enters, and also agrees that it will not employ debarred individuals. The contractor shall immediately notify HCA if, during the term of this contract, Contractor becomes debarred. HCA may immediately terminate this contract by providing Contractor written notice, if Contractor becomes debarred during the term hereof.

27 Disputes

Disputes must be referred to a Dispute Board. Each party to this agreement will appoint one (1) member to the Dispute Board. The members so appointed will jointly appoint an additional member to the Dispute Board. The Dispute Board will review the facts, agreement terms, applicable statutes, and regulations and make a determination regarding the dispute. Either of the parties may request intervention by the Governor at any time. These dispute resolution procedures will not modify or reduce the Contractor's rights to judicial proceedings in federal court.

28 Force Majeure

If the MAC 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 will not be grounds for termination for default. Immediately upon the occurrence of any such event, the MAC contractor must commence to use its best efforts to provide, directly or indirectly, alternate and, to the extent practical, comparable

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performance. Nothing in this Section shall be construed to prevent HCA from terminating this agreement 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.

29 Fraud and Abuse Requirements

The MAC contractor must report in writing all verified cases of fraud and abuse, including fraud and abuse by the MAC contractor's employees or subcontractor or both, within five (5) business days, to the HCA contact designated on page one of the agreement. The report shall include the following information:

- 29.1 Subject(s) of complaint by name and either provider/subcontractor type or employee position;
- 29.2 Source of complaint by name and provider/subcontractor type or employee position;
- 29.3 Nature of complaint;
- 29.4 Estimate of the amount of funds involved; and
- 29.5 Legal and administrative disposition of case.

30 Governing Law

This contract shall be governed, in all respects, by the law and statutes of the state of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the state of Washington and the venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

31 Indemnification

- 31.1 To the fullest extent permitted by law, the MAC contractor must indemnify, defend, and hold harmless the state of Washington, HCA, and all officials, agents, and employees of the state, from and against all claims for injuries or death arising out of or resulting from the performance of the agreement. The MAC contractor's obligation to indemnify, defend, and hold harmless includes any claim by the MAC contractor's agents, employees, representatives, or any subcontractor or its employees.
- 31.2 The MAC contractor expressly agrees to indemnify, defend, and hold harmless the state for any claim arising out of or incident to the contractor's or any subcontractor's performance or failure to perform the agreement. The MAC contractor is required to indemnify, defend, and hold harmless the state only to the extent claim is caused in whole or in part by negligent acts or omissions of the MAC contractor.
- 31.3 The MAC contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold harmless state and its agencies, officials, agents, or employees.

32 Independent Status

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 HCA. The contractor will not hold himself/herself out as or claim to be an officer or employee

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of HCA or the state of Washington by reason hereof, nor will the contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the contractor.

33 Industrial Insurance Coverage

Prior to performing work under this agreement, the MAC contractor must provide or purchase industrial insurance coverage for the MAC contractor's employees, as may be required of an employer as defined in Title 51 RCW, and must maintain full compliance with Title 51 RCW during the course of this agreement. Should the MAC contractor fail to secure industrial insurance coverage or fail to pay premiums and any penalties owing from the amount payable to the MAC contractor under the agreement and transmit the same to the Department of Labor and Industries, Division of Insurance Services. This provision does not waive any right under RCW 42.12.050 to collect from the MAC contractor amounts paid by HCA.

34 Inspection

During the term of this agreement and for one (1) year following termination or expiration of this agreement, the Contractor must provide reasonable access to the contractor's place of business, relevant contractor records, and client records, to HCA and to any authorized agent of the state of Washington and the federal government in order to monitor, audit, and evaluate the Contractor's performance and compliance with applicable laws, and regulations that pertain solely to this agreement.

35 Maintenance of Records

During the term of any agreement and for six (6) years following termination or expiration of the agreement, the parties must maintain records sufficient to:

- 35.1 Document performance of all acts required by any agreement and applicable statutes, regulations, and rules;
- 35.2 Substantiate the contractor's statement of its organization's structure, tax status, administrative capabilities, and performance; and
- 35.3 Demonstrate accounting procedures, practices, and records, which sufficiently and properly document all invoices, expenditures, and payments.

36 Nondiscrimination

During the performance of this agreement, the MAC contractor must comply with all federal and state nondiscrimination laws, regulations, and policies.

In the event of the MAC contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy this agreement may be rescinded, canceled, or terminated in whole or in part, and the MAC contractor may be declared ineligible for further agreements with HCA. The MAC contractor must, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the Disputes procedure set forth in this Agreement.

37 Notice of Overpayment

- 37.1 If the MAC 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 MAC contractor's request for an adjudicative proceeding must:
- 37.1.1 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;
 - 37.1.2 Be sent by certified mail, return receipt, or other manner that proves OFR received the request;
 - 37.1.3 Include a statement as to why the MAC contractor thinks the notice is incorrect; and
 - 37.1.4 Include a copy of the overpayment notice.
- 37.2 Timely and complete requests will be scheduled for a formal hearing by the Washington State Office of Administrative Hearing. The MAC contractor may be offered a pre-hearing or alternative dispute resolution conference in an attempt to resolve the overpayment dispute prior to the hearing.
- 37.3 Failure to provide OFR with a written request for a hearing within twenty-eight (28) calendar days of service of a vendor overpayment notice or other overpayment letter will result in an overpayment debt against the MAC contractor. HCA may charge the MAC 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 MAC contractor's real or personal property; order to withhold and deliver; or any other collection action available to HCA to satisfy the overpayment debt.

38 Notification of Funding

If funding is retracted by CMS or the Washington State Legislature, contracts may be terminated due to lack of available funding.

39 Order of Precedence

In the event of any inconsistency in this agreement, the inconsistency will be resolved by giving precedence in the following order:

- 39.1 All applicable federal, contractor, and state laws and regulations as they apply to the respective party;
- 39.2 Special Terms and Conditions;
- 39.3 Exhibits and attachments; and
- 39.4 Any other provision, term, or material incorporated herein by reference or otherwise incorporated.

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40 Publicity

The contractor agrees to submit to HCA all advertising and publicity matters relating to this agreement wherein HCA's name is mentioned or, in HCA's judgment, the language used may infer or imply a connection with HCA's name. The contractor agrees not to publish or use such advertising and publicity matters without the prior written consent of HCA.

41 Privacy

41.1 Personal information collected, used, or acquired in connection with this agreement must be used solely for the purposes of this agreement. The MAC contractor and its subcontractor agree not to release, divulge, publish, transfer, sell, or otherwise make known to unauthorized persons personal information without the express written consent of HCA or as provided by law. The MAC contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to personal information.

41.2 HCA reserves the right to monitor, audit, or investigate the use of personal information collected, used, or acquired by the MAC contractor through this agreement. The monitoring, auditing, or investigating may include, but is not limited to "salting" by HCA. The MAC contractor must certify return or destruction of all personal information upon expiration of this agreement. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

41.3 Any breach of this provision may result in termination of the agreement and the demand for return of all personal information. The MAC contractor agrees to indemnify and hold harmless HCA for any damages related to the MAC contractor's unauthorized use of personal information.

41.4 For purposes of this provision, personal information includes, but is not limited to information identifiable to an individual that relates to a person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver's license numbers, financial profiles, credit card numbers, financial identifiers, and other identifying numbers.

42 Records, Documents, and Reports

42.1 The MAC contractor must maintain complete financial records relating to this agreement and the services rendered including all books, records, documents, magnetic media, receipts, invoices, and other evidence relating to this agreement and performance of the services described herein including, but not limited to accounting procedures and practices which sufficiently and properly reflect all direct costs, expenses, and indirect costs of any nature expended in the performance of this agreement. At no additional cost, these records including materials generated under this agreement are subject at all reasonable times to inspection, review, or audit by HCA, the Office of the State Auditor, and state and federal officials so authorized by law, rule, regulation, or agreement. The MAC contractor must retain such records for a period of six (6) years after the date of final payment.

42.2 If any litigation, claim, or audit is started before the expiration of the six (6) year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved.

43 Registration with Department of Revenue

The MAC contractor must complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this agreement.

44 Remedies Non-Exclusive

The remedies provided in this agreement are not exclusive, but are in addition to all other remedies available under law.

45 Responsibility

The contractor is responsible for the acts or omissions of the contractor and its agents, employees, and officers.

HCA is responsible for the acts or omissions of HCA and its officers, employees, and agents.

46 Right of Inspection

The MAC contractor must provide HCA, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government right of access to its facilities at all reasonable times in order to monitor and evaluate performance, compliance, and/or quality assurance under this agreement.

47 Safeguarding of Information

The use or disclosure by any party, of any information concerning HCA, for any purpose not directly connected with the administration of HCA's or the MAC contractor's responsibilities with respect to services provided under this agreement is prohibited except by written consent of HCA.

48 Severability

If any provision of this agreement or any provision of any documents incorporated by reference is held invalid, such invalidity will not affect the other provisions of this agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are declared severable.

49 Subcontracting

The contractor may only subcontract services to be provided under this agreement with prior written permission from HCA. In any event, the contractor will remain ultimately responsible to HCA and HCA will remain ultimately responsible to the contractor for performance of all duties and obligations. Each party will be responsible for the acts and omissions of its subcontractor.

50 Subrecipients

50.1 If the MAC contractor is a subrecipient of federal awards as defined by the Office of Management and Budget (OMB) Circular A-133 and this agreement, the MAC contractor must:

50.1.1 Maintain records that identify in its accounts all federal awards received and expended and the federal programs under which they were received, by Catalog

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of Federal Domestic Assistance (CFDA) title and number, award number and year, name of the federal agency, and name of the pass-through entity;

- 50.1.2 Maintain internal controls that provide reasonable assurance that the MAC contractor is managing federal awards in compliance with laws, regulations, and provisions of agreements or grant agreements that could have a material effect on each of its federal programs;
- 50.1.3 Prepare appropriate financial statements, including a schedule of expenditures of federal awards;
- 50.1.4 Incorporate OMB Circular A-133 audit requirements into all agreements between the MAC contractor and its subcontractors who are sub-recipients;
- 50.1.5 Comply with any future amendments to OMB Circular A-133 and any successor or replacement Circular or regulation;
- 50.1.6 Comply with the applicable requirements of either 2 CFR, Part 225 (OMB Circular A-87), and any successor or replacement Circular or regulation; and
- 50.1.7 Comply with 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 CFR Part 52, Subparts C., D., E., and G and 28 CFR Part 35 and 39. Go to <http://ojp.gov/about/offices/ocr.htm> for additional information and access to the aforementioned federal laws and regulations.

50.2 Single Audit Act Compliance

If the MAC contractor is a sub-recipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Contractor must procure and pay for a single audit or program-specific audit for that fiscal year. Upon completion of each audit, the Contractor must:

- 50.2.1 Submit to the HCA 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; and
- 50.2.2 Follow-up and develop corrective action for all audit findings and in accordance with OMB Circular A-133, prepare a Summary Schedule of Prior Audit Findings.
- 50.2.3 Claim any and all MAC reimbursement in accordance with filing State Expenditures of Federal Awards (SEFA) paperwork.

50.3 Overpayments

- 50.3.1 If it is determined by HCA or during the course of a required audit that the MAC contractor has been paid unallowable costs under this Interagency Agreement, HCA

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may require the contractor to reimburse HCA in accordance with either 2 CFR, Part 225 (OMB Circular A-87) and any successor or replacement Circular or regulation.

51 Survivability

The terms and conditions contained in this agreement which, by their sense and context, are intended to survive the expiration, or termination of the agreement must survive. Surviving terms include, but are not limited to: Billing Limitations; Confidentiality; Disputes; Indemnification; Inspection; Maintenance of Records; Notice of Overpayment; Ownership of Material; Termination for Default; Termination Procedure; and Treatment of Property.

52 System Security

The MAC contractor agrees not to attach any MAC contractor-supplied computers, peripherals, or software to the HCA Network without prior written authorization from HCA's Information Systems Manager. Contractor-supplied equipment, including both hardware and software, must be reviewed by the HCA Information Services prior to being connected to any HCA 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 HCA networks and systems is a violation of HCA Policy 06-03 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 the agreement and other penalties.

53 Taxes

All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for the MAC contractor or its staff is the sole responsibility of the MAC contractor.

54 Termination

54.1 Termination Due to Change in Funding

54.1.1 If the funds that HCA relied upon to establish any agreement are withdrawn, reduced, or limited, or if additional modified conditions are placed on such funding, and such changes materially affect the ability of HCA to provide funds or to perform under the agreement, HCA will notify and consult with the contractor as soon as practical and, as a last resort, may terminate this agreement by providing at least fifteen (15) calendar days written notice to the Contractor.

54.1.2 If funds are available, HCA will pay the Contractor for its reasonable costs that directly relate to termination of the agreement. The parties may identify and agree upon such costs. Such costs may include, but are not limited to, closeout costs, unemployment costs, severance pay, retirement benefits, reasonable profits, and termination costs associated with any approved subcontract.

54.2 Termination for Convenience

54.2.1 Either party may terminate the agreement for Convenience by giving the other party at least thirty (30) calendar days written notice.

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54.2.2 The contractor must address such notices to:

54.2.2.1 Health Care Authority
Contract Services
Post Office Box 42702
Olympia, Washington 98504-2702

54.2.3 HCA must direct such notices to the contractor contact named on the first page of the agreement.

54.2.4 If either party terminates the agreement for convenience, the terminating party may pay an amount agreed to by the parties for actual costs incurred by the non-terminating party in performance of or in reliance on the agreement.

54.3 Termination for Default

54.3.1 The Contracts Administrator may terminate the agreement for Default, in whole or in part, by written notice to the contractor if HCA has a reasonable basis to believe the Contractor has:

54.3.1.1 Failed to meet or maintain any requirement for contracting in this agreement with HCA;

54.3.1.2 Failed to perform under any provision of the agreement;

54.3.1.3 Negligently failed to ensure the health or safety of any client for whom services are being provided under the agreement;

54.3.1.4 Violated any applicable law, regulation, rule, or ordinance related to the agreement; and/or

54.3.1.5 Otherwise breached any provision or condition of the agreement.

54.3.2 The contracts administrator must give the contractor at least ten (10) business days' written notice of HCAs intent to terminate the agreement, along with a summary of the facts supporting such termination.

54.3.2.1 The Contractor must have at least ten (10) business days in which to cure the default provided that if it will reasonably take longer than ten (10) business days to cure the default, the cure period will be a reasonable period agreed by the parties.

54.3.2.2 In the event of a continuing pattern of default, the contracts administrator will not be required to provide a cure period.

54.3.2.3 The contracts administrator is not required to offer a cure period if a client's health or safety is at risk. This provision does not apply if the alleged default is an activity related to contractor law, custom, or practice.

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- 54.3.3 The contractor may terminate this agreement for default, in whole or in part, by written notice to HCA if the contractor has a reasonable basis to believe that HCA has:
- 54.3.3.1 Failed to meet or maintain any requirement for contracting with the contractor;
 - 54.3.3.2 Failed to perform under any provision of the agreement;
 - 54.3.3.3 Violated any law, regulation, rule, or ordinance applicable to work performed under the agreement; and/or
 - 54.3.3.4 Otherwise breached any provision or condition of the agreement.
- 54.3.4 Before the contractor may terminate the agreement for default, the contractor must provide HCA at least ten (10) business days written notice of the contractor's intent to terminate the agreement, along with a summary of the facts supporting such termination. HCA must have at least ten (10) business days in which to cure the default provided that it will reasonably take longer than ten (10) business days to cure the default, the cure period must be a reasonable period agreed by the parties.

54.4 Termination for Withdrawal of Authority

In the event the authority of HCA to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this contract and prior to normal completion, HCA may terminate this contract in whole or in part, under Section 46.2 of the General Terms and Conditions. No penalty will accrue to HCA in the event this section is exercised. This section must not so as to permit HCA to terminate this contract in order to acquire similar services from a third party.

54.5 Termination Procedure

The following provisions must survive and be binding on the parties in the event the Agreement is terminated:

- 54.5.1 The contractor must cease to perform any services required by the agreement as of the effective date of termination and must comply with all reasonable instructions contained in the notice of termination.
- 54.5.2 If requested by HCA within ten (10) business days of termination, the contractor must, within a period not to exceed thirty (30) business days, deliver to HCA all HCA assets or property in its possession. If the contractor does not return HCA property within thirty (30) business days of the agreement termination, the contractor will be charged with all reasonable costs of recovery, including transportation and attorney's fees. The contractor must protect and preserve any property of HCA that is in the possession of the contractor pending return to HCA.
- 54.5.3 HCA will be liable for and will pay for those services authorized and provided through the date of termination. HCA may pay an amount agreed to by the parties for partially completed work and services, if work products are useful to or usable by HCA.

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54.5.4 If the contracts administrator terminates the agreement for default, HCA may withhold a sum from the final payment to the contractor that is reasonable and necessary to protect HCA against reasonably anticipated loss or liability. HCA must provide the contractor with written notice of the amount withheld and the nature of the reasonably anticipated loss or liability. If it is later determined that the contractor was not in default, HCA must pay the amount withheld to the contractor within ten (10) business days of determining that the contractor was not in default.

55 Treatment of HCA Assets

Title to all assets and property purchased or furnished by HCA for use by the contractor during the term of the agreement must remain with HCA except as otherwise provided in the agreement. During the term of the agreement, the contractor must protect, maintain, and insure all HCA property in the contractor's possession against loss or damage.

56 Waiver

Waiver of any breach or default on any occasion will not be deemed to be a waiver of any subsequent breach or default. Any waiver will not be construed to be a modification of the terms and conditions of the Agreement. Only the contracts administrator or designee has the authority to waive any term or condition of the agreement on behalf of HCA. Only the contractor's official designee has authority to waive any term or condition of the agreement on behalf of the contractor.