

		CONTRACT		HCA Contract Number: Resulting from Solicitation Number: Contractor/Vendor 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			HCA DIVISION/SECTION		
HCA CONTACT NAME AND TITLE			HCA CONTACT ADDRESS		
HCA CONTACT TELEPHONE ()			HCA CONTACT E-MAIL ADDRESS		
IS THE CONTRACTOR A SUBRECIPIENT FOR PURPOSES OF THIS CONTRACT? <input type="checkbox"/> YES <input type="checkbox"/> NO		CFDA NUMBER(S) ; ; ; ;		FFATA Form Required <input type="checkbox"/> YES <input type="checkbox"/> NO	
CONTRACT START DATE [Start Date]		CONTRACT END DATE [End Date]		TOTAL MAXIMUM CONTRACT AMOUNT	
PURPOSE OF CONTRACT:					
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: <input type="checkbox"/> Exhibit(s) (specify): <input type="checkbox"/> Attachment(s) (specify): <input type="checkbox"/> Schedule(s) (specify): <input type="checkbox"/> No Exhibits/Attachment					
The 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		DATE SIGNED	

TABLE OF CONTENTS

1	OVERVIEW.....	5
1.1	PURPOSE.....	5
1.2	STATEMENT OF WORK (SOW)	5
2	SPECIAL TERMS AND CONDITIONS	5
2.1	TERM	5
2.2	DELIVERABLE ACCEPTANCE	5
2.3	COMPENSATION AND PAYMENT	6
2.4	BILLING AND INVOICE	6
2.5	CONTRACT MANAGER CONTACT INFORMATION.....	7
2.6	NOTICES	8
2.7	ORDER OF PRECEDENCE	8
3	GENERAL TERMS AND CONDITIONS	9
3.1	DEFINITIONS.....	9
3.2	ACCESS TO DATA	11
3.3	ADVANCE PAYMENT PROHIBITED.....	11
3.4	AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the “ADA” 28 CFR Part 35	11
3.5	ASSIGNMENT.....	12
3.6	ATTORNEYS’ FEES	12
3.7	CHANGE IN STATUS	12
3.8	CONFIDENTIAL INFORMATION PROTECTION	12
3.9	CONFIDENTIALITY BREACH – REQUIRED NOTIFICATION	13
3.10	CONFLICT OF INTEREST.....	13
3.11	CONFORMANCE	14
3.12	COVENANT AGAINST CONTINGENT FEES	14
3.13	DEBARMENT	14

3.14 DISPUTES14

3.15 FORCE MAJEURE.....15

3.16 GOVERNING LAW.....15

3.17 INDEMNIFICATION15

3.18 INDEPENDENT CAPACITY OF THE CONTRACTOR15

3.19 INDUSTRIAL INSURANCE COVERAGE15

3.20 INSURANCE16

3.21 LEGAL AND REGULATORY COMPLIANCE.....16

3.22 LICENSING, ACCREDITATION AND REGISTRATION16

3.23 LIMITATION OF AUTHORITY17

3.24 NO THIRD-PARTY BENEFICIARIES17

3.25 NONDISCRIMINATION.....17

3.26 OVERPAYMENT AND ASSERTION OF LIEN17

3.27 PUBLICITY17

3.28 RECORDS, DOCUMENTS, AND REPORTS17

3.29 REGISTRATION WITH DEPARTMENT OF REVENUE18

3.30 REMEDIES NON-EXCLUSIVE18

3.31 RIGHT OF INSPECTION18

3.32 RIGHTS IN DATA/COPYRIGHT18

3.33 SAFEGUARDING OF INFORMATION18

3.34 SEVERABILITY.....19

3.35 SITE SECURITY19

3.36 SUBCONTRACTING.....19

3.37 SURVIVABILITY.....19

3.38 SYSTEM SECURITY20

3.39 TAXES.....20

3.40 TERMINATION.....20

3.41 WAIVER23

EXHIBIT 1 HEALTH CARE AUTHORITY RFP NO. 15-023 24

EXHIBIT 2 CONTRACTOR’S RESPONSE TO RFP NO. 15-023..... 25

CONTRACT NUMBER KXXXX

for

**ACCOUNTABLE CARE PROGRAM MARKETING AND COMMUNICATION
CONSULTING SERVICES**

between the

WASHINGTON STATE HEALTH CARE AUTHORITY

and

CONTRACTOR

1 OVERVIEW

1.1 PURPOSE

The purpose of this Contract is to provide a Total Joint (Knees and Hips) Replacement (TKR/THR) Bundled Episode of Care for Uniform Medical Plan (UMP) Classic and Consumer-Directed Health Plan (CDHP) Members, based on Dr. Robert Bree Collaborative (Bree Collaborative) recommendations.

1.2 STATEMENT OF WORK (SOW)

The Contractor shall provide the goods and/or services and staff as described in Schedule A, Statement of Work.

2 SPECIAL TERMS AND CONDITIONS

2.1 TERM

Subject to its other provisions, the Term under this Contract shall be from January 1, 2017 or through December 31, 2020 unless terminated sooner as provided herein.

HCA, at its sole discretion, may extend this Contract for one (1) additional year unless terminated sooner as provided herein.

Work performed without a contract or amendment, signed by authorized representative of both parties, shall be at the sole risk of the Contractor. HCA shall not pay any costs incurred before a contract or any subsequent amendment is fully executed.

2.2 DELIVERABLE ACCEPTANCE

Upon receipt of a deliverable submitted by Contractor, HCA will have an initial period of ten (10) Business Days to review and evaluate the Deliverable for deficiencies. The HCA will provide written acceptance of the deliverable if it has no deficiencies.

If a deficiency is found, the HCA will notify the Contractor of any deficiencies in writing. Contractor will have five (5) Business Days to correct any deficiencies, unless a longer timeframe is mutually agreed to by the parties, and submit the corrected deliverable to HCA. Upon receipt of the corrected deliverable, HCA will have five (5) Business Days to review and evaluate the deliverable for deficiencies. This process will be repeated until the HCA provides written acceptance of the deliverable.

Once a deliverable has been accepted by HCA, the obligations described in the deliverable will be enforceable subject to HCA's rights and remedies contained in this Contract for Contractor's failure to perform.

2.3 COMPENSATION AND PAYMENT

The Maximum Not-to-Exceed Compensation, which includes any allowable expenses, payable to Contractor for the performance of all things necessary for or incidental to the performance of work as set forth in Schedule A, Statement of Work is [Enter Amount]. Contractor's compensation for services rendered shall be based on the following rates or in accordance with the following terms, but in no event shall the cost or payment exceed the Maximum Not-to-Exceed Compensation associated with this Contract.

Unless otherwise indicated in this Contract, any state funds which are unexpended as of June 30th will not be available to carry over into the next state fiscal year (June-July).

Source of Funds	Amount
Federal	[Enter \$xxx.xx]
State	[Enter \$xxx.xx]
Other	[Enter \$xxx.xx]
Total	[Enter \$xxx.xx]

2.4 BILLING AND INVOICE

Contractor shall submit correct invoices to the HCA Contract Manager for all amounts to be paid by the HCA hereunder.

All invoices submitted must meet with the approval of the Contract Manager or his/her designee prior to payment, which approval shall not be unreasonably withheld.

Contractor shall only submit invoices for Services or Deliverables as permitted by this section of the Contract. The Contractor shall not bill the HCA for services performed under this Contract, and the HCA shall not pay the Contractor if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for such services/deliverables.

Contractor shall submit properly itemized invoices to include the following information, as applicable:

- 2.4.1 HCA Contract number [Enter HCA Contract #];
- 2.4.2 Contractor name, address, phone number;
- 2.4.3 Description of Services;

- 2.4.4 Date(s) of delivery;
- 2.4.5 Net invoice price for each item;
- 2.4.6 Applicable taxes;
- 2.4.7 Total invoice price; and
- 2.4.8 Payment terms and any available prompt payment discount.

HCA will return incorrect or incomplete invoices, to the Contractor for correction and reissue. The Contract Number must appear on all invoices, bills of lading, packages, and correspondence relating to this Contract.

Invoices shall describe and document to the HCA's satisfaction, a description of the work performed; the progress of the project; and fees. If expenses are invoiced, provide a detailed breakdown of each type. Any single expenses in the amount of \$50.00 or more must be accompanied by a receipt in order to receive reimbursement.

Payment shall be considered timely if made by the HCA within thirty (30) days of receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor. (Note: Failure to submit a properly completed IRS form W-9 may result in delayed payments.)

Upon expiration of the Contract, any claims for payment for costs due and payable under this Contract that are incurred prior to the expiration date must be submitted by the Contractor to HCA within sixty (60) days after the Contract expiration date. Belated claims shall be paid at the discretion of the HCA and are contingent upon the availability of funds.

The HCA may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract. HCA will not make advance payments or payments in anticipation of services or supplies to be provided under this Contract.

Electronic Payment: The State of Washington prefers to utilize electronic payment in its transactions. Contractor will be expected to register as a statewide vendor. This allows Contractors to receive payments from all participating state agencies by direct deposit, which is the State's preferred method of payment. Forms necessary for registration can be obtained at <http://des.wa.gov/services/ContractingPurchasing/Business/VendorPay/Pages/default.aspx>.

2.5 CONTRACT MANAGER CONTACT INFORMATION

The individuals listed below, or their successors shall be the main points of contact for services provided under this Contract. HCA's Contract Manager or his/her successor is responsible for monitoring the Contractor's performance and shall be the contact person for all communications regarding contract performance, deliverables, and invoices. The Contract Manager has the authority to accept or reject the services provided and if satisfactory, certify acceptance of each invoice submitted for payment. Notifications regarding changes to this section must be in writing (e-mail) and maintained in the project file, but will not require a formal contract amendment.

The Contract Manager for HCA is:

Contractor Contract Manager	HCA Contract Manager
[First and Last Name] [Job Title] Company [Street Address] [City], [State] [Zip Code] Phone: [telephone #] Email: [email address]	[First and Last Name] [Job Title] Company [Street Address] [City], [State] [Zip Code] Phone: [telephone #] Email: [email address]

2.6 NOTICES

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

2.6.1 In the case of notice to the Contractor, notice will be sent to:

Attention: [Name of Contractor contact]
 [Organization Name]
 [Street Address]
 [City], [State] [Zip Code]

2.6.2 In the case of notice to HCA, send notice to:

Attention: Contract Administrator
 Health Care Authority
 Division of Legal and Administrative Services
 Contract Services
 Post Office Box 42702
 Olympia, WA 98504-2702

2.6.3 Notices shall be effective on the date delivered, as evidenced by the return receipt or the date returned to the sender for non-delivery other than for insufficient postage.

2.6.4 Either party may change its address for notification purposes at any time by mailing a notice in accord with this Section, stating the change and setting for the new address, which shall be effective on the tenth (10th) day following the effective date of such notice unless a later date is specified.

2.7 ORDER OF PRECEDENCE

Each of the items listed below is incorporated by reference into this Contract. In the event of an inconsistency, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and State of Washington statutes and regulations;
- Special Terms and Conditions;

- General Terms and Conditions;
- Schedule A – Statement of Work;
- Exhibit A – HCA’s RFP Dated November 9, 2015
- Exhibit B – Contractor’s Response to RFP; and
- Any other provision, term or material incorporated herein by reference or otherwise incorporated.

3 GENERAL TERMS AND CONDITIONS

3.1 DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

3.1.1 "Allowable Expense" means an expenditure which meets the test of the appropriate OMB Circular (see Section I. Federal Compliance of Attachment 1). The most significant factors affecting allowability of expenses are: 1) they must be necessary and reasonable, 2) they must be allocable, 3) they must be authorized or not prohibited under state or local laws and regulations, and 4) they must be documented.

3.1.2 "Authorized representative" means the person in HCA to whom signature authority has been delegated, in writing, acting within the limits of his/her authority.

3.1.3 "Business Associate" is as defined in 45 CFR, Part 160.103 and includes any entity that performs or assists in performing a function or activity involving the use/disclosure of Individually Identifiable Health Information or involving any other function or activity regulated by HIPAA; or provides legal, accounting, actuarial, consulting, data aggregation, management, accreditation, or financial service where the services involve Individually Identifiable Health Information.

3.1.4 "Business Days and Hours" means Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

3.1.5 "Calendar Year" means starting January" and ending December 31

3.1.6 "Centers of Excellence" means a health care provider that is identified as the most expert and cost efficient and produces the best outcomes.

3.1.7 "Confidential Information" means information that may be exempt from disclosure to the public or other unauthorized persons under chapter 42.56 RCW or chapter 70.02 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, any information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and any other identifying numbers, law enforcement records, HCA source code or object code, or HCA or State security information.

- 3.1.8 "Clinician and Group Consumer Assessment of Healthcare Providers and Systems" or "CGCAHPS"
- 3.1.9 "Contract" means this Contract document, all schedules, exhibits, attachments, and amendments.
- 3.1.10 "Contractor" means that firm, provider, organization, individual or other entity performing services under this Contract. It shall include any subcontractor retained by the prime contractor as permitted under the terms of this Contract.
- 3.1.11 "Dr. Bree Collaborative" or "Bree Collaborative" means the multi-stakeholder collaborative that was established in 2011 by the Washington State Legislature to provide a mechanism through which public and private health care stakeholders can work together to improve quality, health outcomes and cost effectiveness of care in Washington State.
- 3.1.12 "Effective Date" means the first date this Contract 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 Contract.
- 3.1.13 "Equipment" means an article of non-expendable, tangible property having a useful life of more than one year and an acquisition cost of \$5,000 or more.
- 3.1.14 "Health Technology Assessment Program" means the Washington State mandated program, overseen by the Health Care Authority, which uses evidence to make coverage determinations for participating state agencies that purchase health care (WAC 182-55).
- 3.1.15 "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 officers or other officials lawfully representing HCA.
- 3.1.16 "Hospital Consumer Assessment of Healthcare Providers and Systems" or "HCAHPS" means a survey instrument and data collection methodology for measuring patients' perceptions of their hospital experience.
- 3.1.17 "Member(s)" means a PEBB subscriber or dependent that is in PEBB's non-Medicare risk pool, and enrolled to receive Covered Services under either the UMP Classic or Consumer-Directed Health Plan (CDHP) at the time such services are rendered in which UMP is the primary payor.
- 3.1.18 "Public Employees Benefits Board Program" or "PEBB Program" means the program that purchases and coordinates health benefits for eligible public employees and retirees.
- 3.1.19 "Plan Year" means the twelve (12) month period beginning on January 1 of each year and ending December 31 of the same year.
- 3.1.20 "Protected Health Information" has the same meaning as in the HIPAA Rules except that in this Contract the term includes only information created by any of its contractors, or received from or on behalf of HCA, and relating to Clients. "PHI" means Protected Health Information.

- 3.1.21 “Statement of Work” or “SOW” means a detailed description that captures and defines the work activities, deliverables, and timeline the Contractor is required to perform under this Contract. SOW is usually incorporated in a contract, indirectly by reference or directly as an attachment.
- 3.1.22 “Subrecipient” means a contractor operating a federal or state assistance program receiving federal funds and having the authority to determine both the services rendered and disposition of program. See OMB Circular A-133 for additional detail.
- 3.1.23 “Successor” means any entity or individual which, through amalgamation, consolidation, or other legal succession becomes invested with rights and assumes burdens of the first contractor/vendor or any person who succeeds to the office, rights, responsibilities or place of another.
- 3.1.24 “Total Joint Replacement Bundled Episode of Care” means the evidence-based clinical components and quality standards identified by the [Bree Collaborative](#)
- 3.1.25 “Total Knee and Total Hip Replacement Warranty” means the Awarded Contractor’s guarantee that they have full financial accountability for any complications attributed to the TKR/THR procedures. The full Warranty can be found in the [Bree Collaborative](#)¹, “Warranty for Elective Total Knee & Total Hip Replacement Surgery.”
- 3.1.26 “TPA” means third party administrator.
- 3.1.27 “Uniform Medical Plan” and “UMP” means the state of Washington’s self-insured Uniform Medical Plan Classic and CDHP.
- 3.1.28 “Washington In-State Provider” means the Awarded Contractor whose physical place of business is in Washington State.

3.2 ACCESS TO DATA

In compliance with Chapter 39.26 RCW, the Contractor shall provide access to data generated under this Contract 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 Contractor’s reports, including computer models and methodology for those models.

3.3 ADVANCE PAYMENT PROHIBITED

No advance payment shall be made for services furnished by the Contractor pursuant to this Contract.

3.4 AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the “ADA” 28 CFR Part 35

¹ http://www.breecollaborative.org/wp-content/uploads/bree_warranty_tkr_thr.pdf

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

3.5 ASSIGNMENT

With the prior written consent of HCA, which consent shall not be unreasonably withheld, Contractor may assign this Contract including the proceeds hereof, provided that such assignment shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to HCA that may arise from any breach of the sections of this Contract, Statements of Work, or warranties made herein including but not limited to, rights of setoff.

HCA may assign this Contract or Statements of Work to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve HCA of any of its duties and obligations hereunder.

3.6 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.

3.7 CHANGE IN STATUS

In the event of substantive change in the legal status, organizational structure, or fiscal reporting responsibility of the Contractor, Contractor agrees to notify the HCA of the change. Contractor shall provide notice as soon as practicable, but no later than thirty (30) days after such a change takes effect.

3.8 CONFIDENTIAL INFORMATION PROTECTION

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.

Contractors that may come into contact with Protected Health Information will be required to complete a Business Associate agreement, as required by federal or state laws, including HIPAA, prior to the commencement of any work.

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.

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

The obligations set forth in this Section shall survive completion, cancellation, expiration, or termination of this Contract.

3.9 CONFIDENTIALITY BREACH – REQUIRED NOTIFICATION

Upon a breach or suspected breach of confidentiality, the Contractor shall immediately notify the HCA Privacy Officer. For the purposes of this Contract, “immediately” shall mean within one calendar day.

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 or disclosure of Confidential Information by the Contractor, its officers, directors, employees, Subcontractors or agents.

Any breach of this clause may result in termination of the Contract and the demand for return of all Confidential Information.

Contractor acknowledges the HCA is subject to chapter 42.56 RCW and that this Contract and any Work Orders 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

3.10 CONFLICT OF INTEREST

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.

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.

3.11 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.

3.12 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.

HCA 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.

3.13 DEBARMENT

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.

3.14 DISPUTES

The parties shall use their best, good faith efforts to cooperatively resolve disputes and problems that arise in connection with this Contract. Both parties will continue, without delay, to carry out their respective responsibilities under this Contract while attempting to resolve the dispute under this section. When a genuine dispute arises between HCA and the Contractor regarding the terms of this Contract or the responsibilities imposed herein that cannot be resolved at the project management level, either party may submit a request for a dispute resolution to the HCA Contract Administrator who shall oversee the following Dispute Resolution Process: HCA shall appoint a representative to a dispute panel; the Contractor shall appoint a representative to the dispute panel; HCA's and Contractor's representatives shall mutually agree on a third person to chair the dispute panel. The dispute panel shall thereafter decide the dispute with the majority prevailing.

A party's request for a dispute resolution must:

- 3.14.1 Be in writing,
- 3.14.2 State the disputed issues,
- 3.14.3 State the relative positions of the parties,
- 3.14.4 State the remedies sought,
- 3.14.5 State the Contractor's name, address, and his/her department Contract number,
- 3.14.6 Be mailed to HCA Contracts Office, PO Box 42702, Olympia, WA 98504-2702 within

thirty (30) calendar days after the party could reasonably be expected to have knowledge of the issue which he/she now disputes.

This dispute resolution process constitutes the sole administrative remedy available under this Contract. The parties agree that this resolution process shall precede any action in a judicial and quasi-judicial tribunal.

3.15 FORCE MAJEURE

A party shall not be liable for any failure of or delay in the performance of this Contract for the period that such failure or delay is due to causes beyond its reasonable control, including but not limited to: acts of God, war, strikes or labor disputes, embargoes, government orders or any other force majeure event.

3.16 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.

3.17 INDEMNIFICATION

Contractor shall defend, indemnify, and hold HCA harmless from and against all claims, including reasonable attorneys' fees resulting from such claims, for any or all injuries to persons or damage to property arising from intentional, willful or negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents, in the performance of this Contract. Contractor's obligation to defend, indemnify, and hold HCA harmless shall not be eliminated or reduced by any alleged concurrent HCA negligence.

3.18 INDEPENDENT CAPACITY OF THE 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 HCA. The Contractor will not hold himself/herself out as or claim to be an officer or employee of HCA or of 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.

3.19 INDUSTRIAL INSURANCE COVERAGE

Prior to performing work under this Contract, the Contractor shall provide or purchase industrial insurance coverage for the Contractor's employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. Should the Contractor fail to secure industrial insurance coverage or fail to pay premiums, as may be required under Title 51 RCW, HCA may deduct the amount of premiums and any penalties owing from the amount payable to the Contractor under the Contract and transmit the same to the Department of Labor and Industries, Division of Insurance Services. This provision does not waive any right under RCW 51.12.050 to collect from the Contractor amounts paid by HCA.

3.20 INSURANCE

The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the Contractor or subcontractor, or agents of either, while performing under the terms of this Contract.

The Contractor shall provide insurance coverage that shall be maintained in full force and effect during the term of this Contract, as follows:

3.20.1 Commercial General Liability Insurance Policy - Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence. Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

3.20.2 Business Automobile Liability. In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned, hired, or non-owned by the Contractor, automobile liability insurance shall be required covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability. The minimum limit for automobile liability is:

\$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

3.20.3 The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name HCA and The State of Washington, its agents and employees as additional insured's under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. Contractor shall instruct the insurers to give HCA 30 days advance notice of any insurance cancellation.

Upon request, Contractor shall submit to HCA, a certificate of insurance that outlines the coverage and limits defined in the *Insurance* section. If a certificate of insurance is requested, Contractor shall submit renewal certificates as appropriate during the term of the contract.

3.21 LEGAL AND REGULATORY COMPLIANCE

During the term of this Contract, Contractor shall comply with all local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Contract and all other applicable federal, state and local laws, rules, and regulations.

3.22 LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Contract.

3.23 LIMITATION OF AUTHORITY

Only the HCA Authorized Representative or his/her designee 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 or any clause or condition of this Contract is not effective or binding unless made in writing and signed by the Authorized Representative.

3.24 NO THIRD-PARTY BENEFICIARIES

The HCA and the Contractor are the only parties to this contract. Nothing in this Contract gives or is intended to give any benefit of this contract to third parties or third persons.

3.25 NONDISCRIMINATION

During the performance of this Contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

3.26 OVERPAYMENT AND ASSERTION OF LIEN

In the event that overpayments or erroneous payments have been made to the Contractor under this Contract, HCA shall provide written notice to Contractor and Contractor shall refund the full amount to HCA within thirty (30) days of the notice. HCA may secure repayment, plus interest, if any, through the filing of a lien against the Contractor's real property, or by requiring the posting of a bond, assignment or deposit, or some other form of security acceptable to HCA.

3.27 PUBLICITY

The Contractor agrees to submit to HCA all advertising and publicity matters relating to this Contract 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.

3.28 RECORDS, DOCUMENTS, AND REPORTS

The Contractor shall maintain books, records, documents, magnetic media, receipts, invoices and other evidence relating to this Contract and the performance of the services rendered, along with accounting procedures and practices, all of which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. At no additional cost, these records including materials generated under this Contract, shall be 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 Contractor shall retain such records for a period of six (6) years after the date of final payment.

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.

3.29 REGISTRATION WITH DEPARTMENT OF REVENUE

The Contractor shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

3.30 REMEDIES NON-EXCLUSIVE

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

3.31 RIGHT OF INSPECTION

The Contractor shall provide access to its facilities to HCA, or any of HCA's officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

3.32 RIGHTS IN DATA/COPYRIGHT

Unless otherwise provided, all materials produced exclusively under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by HCA. HCA 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 HCA 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 that derive exclusively from the Contractor's work under this Contract. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, Contractor hereby grants to HCA a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to HCA.

The Contractor shall exert all reasonable effort to advise HCA, 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. HCA 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. HCA shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

3.33 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 Contractor's responsibilities with respect to services provided under this Contract, is prohibited except by written consent of HCA.

3.34 SEVERABILITY

If any provision of this Contract, or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect the other provisions or applications of this Contract that can be given effect without the invalid provision, and to this end the provisions or application of this Contract are declared severable.

3.35 SITE SECURITY

While on HCA premises, 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 may be grounds for revoking or suspending security access to these facilities. HCA reserves the right and authority to immediately revoke security access to Contractor staff for any real or threatened breach of this provision. Upon reassignment or termination of any Contractor staff, Contractor agrees to promptly notify HCA.

3.36 SUBCONTRACTING

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.

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.

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.

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.

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.

3.37 SURVIVABILITY

The terms and conditions contained in this Contract, which by their sense and context are intended to survive the completion, cancellation, termination, or expiration of the Contract, shall survive.

3.38 SYSTEM SECURITY

Contractor agrees not to attach any Contractor-supplied computers, peripherals or software to the HCA Network without prior written authorization from HCA's Information Systems Manager. Contractor-supplied computer 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 contract and other penalties.

3.39 TAXES

Unless otherwise indicated, HCA will pay sales and use taxes, if any, imposed on the services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property. HCA, as an agency of Washington State government, is exempt from property tax.

3.40 TERMINATION

3.40.1 TERMINATION FOR CAUSE

In the event the Contractor violates any material term or condition of this Contract or any Work Order, or fails to fulfill in a timely and proper manner its material obligations under this Contract or any Work Order, as applicable, then complies with the conditions of this Contract in a timely manner, HCA has the right to suspend or terminate this Contract. HCA shall notify the Contractor, in writing, of the need to take corrective action. If corrective action is not taken within three (3) days, or other time period agreed to in writing, the Contract may be terminated. HCA reserves the right to suspend all or part of the 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 HCA to terminate the 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. If it is determined that the Contractor: (i) was not in default, or (ii) failure to perform was outside of his or her control, fault or negligence, the termination shall be deemed a "Termination for Convenience" and the provisions of Subsection 3.43.3 will apply.

3.40.2 TERMINATION DUE TO CHANGE IN FUNDING, SUSPENSION OR CONTRACT RENEGOTIATION

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, after the effective date of this contract but prior to the normal completion of this Contract:

3.40.2.1 At HCA's discretion, the Contract may be renegotiated under the revised funding

conditions.

- 3.40.2.2 At HCA's discretion, HCA may give notice to Contractor to suspend performance when HCA determines that there is reasonable likelihood that the funding insufficiency may be resolved in a timeframe that would allow Contractor's performance to be resumed prior to the normal completion date of this contract.
- 3.40.2.2.1 During the period of suspension of performance, each party will inform the other of any conditions that may reasonably affect the potential for resumption of performance.
- 3.40.2.2.2 When HCA determines that the funding insufficiency is resolved, it will give Contractor written notice to resume performance. Upon the receipt of this notice, Contractor will provide written notice to HCA informing HCA whether it can resume performance and, if so, the date of resumption. For purposes of this subsection, "written notice" may include email.
- 3.40.2.2.3 If the Contractor's proposed resumption date is not acceptable to HCA and an acceptable date cannot be negotiated, HCA may terminate the contract by giving written notice to Contractor. The parties agree that the Contract will be terminated retroactive to the date of the notice of suspension. HCA shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.
- 3.40.2.3 HCA may immediately terminate this Contract by providing written notice to the Contractor. The termination shall be effective on the date specified in the termination notice. HCA shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. No penalty shall accrue to HCA in the event the termination option in this section is exercised.

3.40.3 TERMINATION FOR CONVENIENCE

When, at HCA's sole discretion, it is in the best interest of the State, HCA may terminate this Contract in whole or in part by providing ten (10) Business Day's notice. If this Contract is so terminated, HCA shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination.

3.40.4 TERMINATION PROCEDURES

Upon termination of this Contract, HCA, in addition to any other rights provided in this Contract or available under law, may require the Contractor to deliver to HCA any property specifically produced or acquired for the performance of such part of this Contract as has been terminated.

HCA shall pay to the Contractor the agreed upon price, if separately stated, for completed work and service accepted by HCA and the amount agreed upon by the Contractor and HCA for (i) completed work and services for which no separate price is stated; (ii) partially completed work and services; (iii) other property or services which are accepted by HCA; and

(iv) the protection and preservation of property, unless the termination is for default, in which case the HCA shall determine the extent of the liability. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Contract. HCA may withhold from any amounts due the Contractor such sum as HCA determines to be necessary to protect HCA against potential loss or liability.

Upon receipt of notice of termination, and except as otherwise directed by the HCA, the Contractor shall:

- 3.40.4.1 Stop work under the Contract on the date, and to the extent specified in the notice;
- 3.40.4.2 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 the Contract that is not terminated;
- 3.40.4.3 Assign to HCA, in the manner, at the times, and to the extent directed by HCA, all the rights, title, and interest of the Contractor under the orders and subcontracts so terminated; in which case HCA has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- 3.40.4.4 Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of HCA to the extent HCA may require, which approval or ratification shall be final for all the purposes of this clause;
- 3.40.4.5 Transfer title to HCA and deliver in the manner, at the times, and to the extent directed by HCA any property which, if the Contract has been completed, would have been required to be furnished to HCA;
- 3.40.4.6 Complete performance of such part of the work as shall not have been terminated by HCA; and
- 3.40.4.7 Take such action as may be necessary, or as HCA 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 HCA has or may acquire an interest.

3.40.5 TERMINATION FOR WITHDRAWAL OF AUTHORITY

In the event that 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 3.43.3 of this Contract. No penalty will accrue to HCA in the event this section is exercised. This Section shall not be construed so as to permit HCA to terminate this Contract in order to acquire similar Services from a third party.

3.41 WAIVER

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing signed by HCA and attached to the original Contract.

EXHIBIT 1 HEALTH CARE AUTHORITY RFP NO. 15-023

Placeholder for HCA RFP HCA RFP No. 15-023

EXHIBIT 2 CONTRACTOR’S RESPONSE TO RFP NO. 15-023

Placeholder for Contractor’s response to HCA RFP No. 15-023