|  |  |  |
| --- | --- | --- |
| C:\Users\ANDERM\Desktop\HCA-logo.png | CONTRACT forTax-Advantaged Account Administration Services | HCA Contract Number: K     Resulting from Solicitation Number: RFP 2020HCA2Vendor Contract Number:  |
| **THIS CONTRACT** is made by and between Washington State Health Care Authority, (HCA) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (Contractor). |
| CONTRACTOR NAME | CONTRACTOR doing business as (DBA) |
|       |       |
| CONTRACTOR ADDRESS | Street | City | State | Zip Code |
|       |       |       |       |
| CONTRACTOR CONTACT | CONTRACTOR TELEPHONE | CONTRACTOR E-MAIL ADDRESS |
|       |       |       |
| Is Contractor a Subrecipient under this Contract? | CFDA NUMBER(S): | FFATA Form Required |
|  [ ] YES [ ] NO |  |  [ ] YES [ ] NO |
|  |  |
| HCA PROGRAM  | HCA DIVISION/SECTION |
|       |       |
| HCA CONTACT NAME AND TITLE  | HCA CONTACT ADDRESS |
|      ,       | Health Care Authority626 8th Avenue SEPO Box \_\_\_\_ Olympia, WA 98504-\_\_\_\_ |
| HCA CONTACT TELEPHONE  | HCA CONTACT E-MAIL ADDRESS |
| (360) 725-      |       |
|  |  |  |
| CONTRACT START DATE | CONTRACT END DATE  | TOTAL MAXIMUM CONTRACT AMOUNT |
| Implementation Start Date: Date of ExecutionBenefit Start Date: January 1, 2022 | December 31, 2026 |       |
| PURPOSE OF CONTRACT: |  |  |
| Administration of Tax-Advantaged Accounts (Flexible Spending Arrangements, DCAP Accounts, Health Benefit Accounts and Heath Saving Accounts) |
|  |  |  |
| The parties signing below warrant that they have read and understand this Contract, and have authority to execute this Contract. This Contract will be binding on HCA only upon signature by both parties. |
| CONTRACTOR SIGNATURE | PRINTED NAME AND TITLE | DATE SIGNED |
|  |       |  |
| HCA SIGNATURE | PRINTED NAME AND TITLE | DATE SIGNED |
|  |       |  |

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Note: Exhibits B and C are not attached but are available upon request from the HCA Contracts Contractor.

Contract #K      for Tax-Advantaged Account Administration Services

# RECITALS

The state of Washington, acting by and through the Health Care Authority (HCA), issued a Request for Proposals (RFP) dated September 21, 2020, (Exhibit B) for the purpose of securing a vendor for tax-advantaged account services in accordance with its authority under chapters 39.26 and 41.05 RCW.

[Contractor Name] submitted a timely Response to HCA’s RFP 2020HCA2 (Exhibit C).

HCA evaluated all properly submitted Responses to the above-referenced RFP and has identified [Contractor Name] as the Apparent Successful Bidder.

HCA has determined that entering into a Contract with [Contractor Name] will meet HCA’s needs and will be in the State’s best interest.

NOW THEREFORE, HCA awards to [Contractor Name] this Contract, the terms and conditions of which will govern Contractor’s providing to HCA Tax-Advantaged account services.

IN CONSIDERATION of the mutual promises as set forth in this Contract, the parties agree as follows:

# STATEMENT OF WORK (SOW)

The Contractor will provide the services and staff as described in Schedule A: *Statement of Work*.

# DEFINITIONS

**Authorized Representative** – A person to whom signature authority has been delegated in writing acting within the limits of his/her authority.

**Benefits Start Date –** The day the Contractor will begin providing benefit coverage under the Contract. This date is currently scheduled for January 1, 2022.

**Blended Rate –** The weighted average of the administrative fee per account type (FSA, DCAP, HBA, and HSA if applicable).

**Breach** – The unauthorized acquisition, access, use, or disclosure of Confidential Information that compromises the security, confidentiality, or integrity of the Confidential Information.

**Business Associate** – A Business Associate as defined in 45 CFR 160.103, who performs or assists in the performance of an activity for or on behalf of HCA, a Covered Entity, that involves the use or disclosure of protected health information (PHI). Any reference to Business Associate includes Business Associate’s employees, agents, officers, Subcontractors, third party contractors, volunteers, or directors.

**Business Day** – Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the State of Washington, unless otherwise specified within the RFP.

**Claim** – A request by the Participant for payment or reimbursement for Qualified Medical Expenses, Out-of-Pocket costs, or dependent care expenses. Claims may be made using a benefits card to pay the provider directly, or by submitting a claim form with documentation after an expense has been incurred.

**Code of Federal Regulations** **(CFR)** – All references in this Contract to CFR chapters or sections include any successor, amended, or replacement regulation. The CFR may be accessed at <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>.

**COFA Islander –** A person who originates from the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau but currently resides in Washington State.

**COFA Islander Health Care** – An HCA-administered program that pays the premium and Qualified Medical Expenses for a silver level qualified health plan for eligible COFA Islanders.

**Compact of Free Association (COFA)** – A legal agreement between the government of the United States and the governments of the Federated States of Micronesia (U.S. Pub. L. 108-188); the Republic of the Marshall Islands (U.S. Pub. L. 108-188); and the Republic of Palau (U.S. Pub. L. 99-658).

**Confidential Information** – Information that may be exempt from disclosure to the public or other unauthorized persons under chapter 42.56 RCW or 70.02 RCW or any other state or federal statues or regulations. Confidential Information includes, but is not limited to, any information identifiable to an individual that relates to a person’s health (also see Protected Health Information), 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, or law enforcement records, as well as HCA source code or object code, or HCA or State security information.

**Contract** –This Contract document and all schedules, exhibits, attachments, incorporated documents and amendments.

**Contractor** – [Contractor Name], its employees and agents. Contractor includes any firm, provider, organization, individual or other entity performing services under this Contract. It also includes any Subcontractor retained by Contractor as permitted under the terms of this Contract.

**Data** – Information produced, furnished, acquired, or used by Contractor in meeting requirements under this Contract.

**Dependent Care Assistance Program (DCAP)** – Employer-sponsored benefit that allows the Participant to set aside a pretax portion of their gross earnings to use for eligible child or elder care expenses.

**Effective Date** – 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.

**Flexible Spending Arrangement (FSA)** – Employer-sponsored benefitthat allows the Participant to set aside a pretax portion of their gross earnings to use for Qualified Medical Expenses.

**HCA Account** **Manager** – An employee of HCA designated to represent HCA in matters relating to the Contract.

**Health Benefit Account (HBA)** – An account funded by HCA to be used by Participants in COFA Island Health Care to pay for Out-of-Pocket Costs.

**Health Care Authority (HCA)** – TheWashington 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.

**Health Savings Account (HSA)** – A tax-advantaged savings account in which Participants, the employer, and others may deposit funds, which may be used to pay or reimburse Qualified Medical Expenses under a High Deductible Health Plan.

**High Deductible Health Plan (HDHP)** – HDHPs offer lower premiums, a higher medical deductible, and a higher medical out-of-pocket limit than most traditional health plans. The PEBB program uses the term Consumer-Directed Health Plan (CDHP). The SEBB program uses the term High Deductible Health Plan (HDHP).

**Open Enrollment** – A period of time during which an eligible Participant may enroll in or change their election of tax-advantaged accounts.

**Out-of-Pocket Costs** – Copayments, coinsurance, deductibles, and other cost-sharing requirements imposed under a qualified health plan for services, pharmaceuticals, devices, and other health benefits covered by the plan and rendered as in-network. Excludes premiums, balance billing amounts for out-of-network providers, and spending for noncovered services.

**Overpayment** – Any payment or benefit to the Contractor in excess of that to which the Contractor is entitled by law, rule, or this Contract, including amounts in dispute.

**Participant** – Individual who is eligible for and enrolled in a PEBB or SEBB tax-advantaged account, or COFA Islander Health Care.

**Plan Year** – The annual benefit period, which coincides with the then-current calendar year.

**Proprietary Information** – Information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

**Protected Health Information (PHI)** – Individually identifiable information that relates to the provision of health care to an individual; the past, present, or future physical or mental health or condition of an individual; or past, present, or future payment for provision of health care to an individual, as defined in 45 CFR 160.103. Individually identifiable information is information that identifies the individual or about which there is a reasonable basis to believe it can be used to identify the individual, and includes demographic information. PHI is information transmitted, maintained, or stored in any form or medium. 45 CFR 164.501. PHI does not include education records covered by the Family Educational Rights and Privacy Act, as amended, 20 USC 1232g(a)(4)(b)(iv).

**Public Employees Benefits Board (PEB Board)** – An authorized board of individuals that design benefits and determine the terms and conditions for participation in health insurance benefits for eligible public employees and retirees under chapter RCW 41.05.

**Public Employees Benefits Board (PEBB) Program** – The program administered by HCA that purchases and coordinates benefits for eligible public employees as defined in RCW 41.05.011.

**Qualified Medical Expenses** – Expenses specified in the plan that generally would qualify for the medical and dental expenses deduction. Also, non-prescription medicines (other than insulin) aren’t considered qualified medical expenses for FSA purposes. A medicine or drug will be a qualified medical expense for FSA purposes only if the medicine or drug: requires a prescription, is available without a prescription (an over-the-counter medicine or drug) and you get a prescription for it, or is insulin.

**Request for Proposals (RFP)** – Formal procurement document in which a service or need is identified but no specific method to achieve it has been chosen. Used as the solicitation document to establish this Contract, including all its amendments and modifications and is Exhibit B hereto.

**Response** – Contractor’s Response to HCA’s RFP 2020HC2 for Tax-Advantaged account Services and is Exhibit C hereto.

**Revised Code of Washington (RCW)** – Any references to specific titles, chapters, or sections of the RCW, including any substitute, successor, or replacement title, chapter, or section.

**School Employees Benefits Board (SEB Board)** – A board made up of individuals appointed by the Governor that is authorized to design and approve insurance benefit plans for school employees and to establish eligibility criteria for participation in benefit plans under RCW 41.05.

**School Employees Benefits Board (SEBB) Program** –The program administered by HCA that purchases and coordinates benefits for eligible school employees as defined in RCW 41.05.011.

**Statement of Work (SOW)** – Adetailed description of the work activities the Contractor is required to perform under the terms and conditions of this Contract, including the deliverables and timeline, and is Schedule A hereto.

**Subcontractor** – A person, partnership, or entity not in the employ of or owned by the Contractor, who is performing all or part of those services under a separate contract with or on behalf of the Bidder. The terms “Subcontractor” mean Subcontractors in any tier.

**Tax-advantaged accounts** – Pre-tax or tax-exempt accounts used to pay for qualified medical and dependent care expenses. For purposes of this Contract, HBAs are tax-advantaged accounts.

**United States Code (USC)** – All references in this Contract to USC chapters or sections will include any successor, amended, or replacement statute. The USC may be accessed at <http://uscode.house.gov/>

**Washington Administrative Code (WAC)** – Any references to specific titles, chapters, or sections of the WAC includes any substitute, successor, or replacement title, chapter, or section.

# SPECIAL TERMS AND CONDITIONS

## PERFORMANCE EXPECTATIONS

Expected performance under this Contract includes, but is not limited to, the following:

### Knowledge of applicable state and federal laws and regulations pertaining to subject of contract;

### Use of professional judgment;

### Collaboration with HCA staff in Contractor’s conduct of the services;

### Conformance with HCA directions regarding the delivery of the services;

### Timely, accurate and informed communications;

### Regular completion and updating of project plans, reports, documentation and communications;

### Regular, punctual attendance at all meetings; and

### Provision of high-quality services.

Prior to payment of invoices, HCA will review and evaluate the performance of Contractor in accordance with Contract and these performance expectations and may withhold payment if expectations are not met or Contractor’s performance is unsatisfactory.

## TERM

### The initial term of the Contract will commence on date of last signature and continue through December 31, 2026, unless terminated sooner as provided herein.

### HCA reserves the right, in its sole discretion, to extend this Contract for six (6) periods of up to one (1) year each. No change in terms and conditions will be permitted during these extensions unless specifically agreed to in writing.

### Work performed without a contract or amendment signed by the authorized representatives of both parties will be at the sole risk of the Contractor. HCA will not pay any costs incurred before a contract or any subsequent amendment(s) is fully executed.

## COMPENSATION

### HCA shall pay to Contractor as compensation for the performance of all services necessary and incidental to meet the Contractor’s obligations under this Contract a Blended Rate for Flexible Spending Arrangement (FSA), Dependent Care Assistance Program (DCAP) Account, Health Benefit Account (HBA) and Health Savings Account (HSA). Final rate to be negotiated.

## INVOICE AND PAYMENT

### Contractor must submit accurate invoices to the following address for all amounts to be paid by HCA via e-mail to: Acctspay@hca.wa.gov. Include the HCA Contract number in the subject line of the email.

### Contractor will invoice HCA for the administrative fee monthly after the previous month of service has ended.

### Contractor must submit the monthly administrative fee invoice to include the following information:

1. HCA Contract number K     ;
2. Contractor name, address, phone number;
3. Description of Services;
4. Date(s) of service;
5. The number of Participants by payroll agency code;
6. Associated fee by agency;
7. Subtotal by agency;
8. Total invoice price; and
9. 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.

### In order to receive payment for services or products provided to a state agency, Contractor must register with the Statewide Payee Desk at <https://ofm.wa.gov/it-systems/statewide-vendorpayee-services/receiving-payment-state>. Payment will be considered timely if made by HCA within thirty (30) calendar days of receipt of properly completed invoices. Payment will be directly deposited in the bank account or sent to the address Contractor designated in its registration.

### 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) calendar days after the Contract expiration date. HCA is under no obligation to pay any claims that are submitted sixty-one (61) or more calendar days after the Contract expiration date (“Belated Claims”). HCA will pay Belated Claims at its sole discretion, and any such potential payment is contingent upon the availability of funds.

## CONTRACTOR and HCA CONTRACT MANAGERS

### Contractor’s Contract Manager will have prime responsibility and final authority for the services provided under this Contract and be the principal point of contact for the HCA Contract Manager for all business matters, performance matters, and administrative activities.

### HCA’s Contract Manager is responsible for monitoring the Contractor’s performance and will be the contact person for all communications regarding contract performance and deliverables. The HCA Contract Manager has the authority to accept or reject the services provided and must approve Contractor’s invoices prior to payment.

### The contact information provided below may be changed by written notice of the change (email acceptable) to the other party.

|  |  |
| --- | --- |
| CONTRACTORContract Manager Information | Health Care AuthorityContract Manager Information |
| Name: |       | Name: |       |
| Title: |       | Title: |       |
| Address: |       | Address: |       |
| Phone:  |       | Phone:  |       |
| Email:  |       | Email:  |       |

## LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law is effective only if it is in writing and signed by the applicable party, properly addressed, and delivered in person, via email, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, to the parties at the addresses provided in this section.

### In the case of notice to the Contractor:

[Contractor Contact Information]

### In the case of notice to HCA:

**Attention:** Contracts Contractor

Health Care Authority

Division of Legal Services

Post Office Box 42702

Olympia, WA 98504-2702

### Notices are effective upon receipt or four (4) Business Days after mailing, whichever is earlier.

### The notice address and information provided above may be changed by written notice of the change given as provided above.

## INCORPORATION OF DOCUMENTS AND ORDER OF PRECEDENCE

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

### Applicable Federal and State of Washington statutes and regulations;

### Contract K\*\*\*\* Terms and Conditions;

### Exhibit A: Data Use, Security, and Confidentiality;

### Attachment 1: Confidential Information Security Requirements;

### Schedule A: Statement of Work;

### Exhibit B: HCA RFP 2020HCA2 for *Administration of Tax-Advantaged Accounts (Flexible Spending Arrangements, DCAPs, Health Benefit Accounts and Heath Saving*s *Accounts)*, dated September 21, 2020;

### Exhibit C: *Contractor’s Response* dated      ;

### Any other provision, term or material incorporated herein by reference or otherwise incorporated.

## INSURANCE

Contractor must 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 Contractor or Subcontractor, or agents of either, while performing under the terms of this Contract.

Upon request, Contractor must 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 must submit renewal certificates as appropriate during the term of the contract. Contractor must provide insurance coverage that is maintained in full force and effect during the term of this Contract, as follows:

### 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 million per occurrence/$2 million general aggregate. Additionally, Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

### 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 is 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.

### Professional Liability Errors and Omissions – Provide a policy with coverage of not less than $1 million per claim/$2 million general aggregate.

### The insurance required must be issued by an insurance company/ies authorized to do business within the state of Washington, and must name HCA and the state of Washington, their agents and employees as additional insureds. All policies must be primary to any other valid and collectable insurance. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this Contract, Contractor must provide written notice of such to HCA within one (1) Business Day of Contractor’s receipt of such notice. Failure to buy and maintain the required insurance may, at HCA’s sole option, result in this Contract’s termination.

### Privacy Breach Response Coverage. Contractor must maintain insurance to cover costs incurred in connection with a Breach, or potential Breach, including:

1. Computer forensics assistance to assess the impact of the Breach or potential Breach, determine root cause, and help determine whether and the extent to which notification must be provided to comply with Breach notification laws.
2. Notification and call center services for individuals affected by a Breach.
3. Breach resolution and mitigation services for individuals affected by a Breach, including fraud prevention, credit monitoring and identity theft assistance.
4. Regulatory defense, fines and penalties from any claim in the form of a regulatory proceeding resulting from a violation of any applicable privacy or security law(s) or regulation(s).

### The policy must be maintained for the term of this Agreement and three (3) years following its termination.

## IMPLEMENTATION

### Plan Year: The Plan Year is a calendar year. The intent is that all account types will be available on January 1, 2022.

### COFA Islander Health Care does not have an enrollment period. HCA will provide enrollment information to Contractor. Contractor will be responsible for setting up HBA accounts prior to January 1, 2022. Contractor must also have in place a process for replacing lost or damaged debit cards used by COFA Islander Health Care Participants. Replacement of cards will be handled by HCA, in collaboration with Contractor.

### PEBB and SEBB Open Enrollments: A separate annual Open Enrollment period Is conducted each year for PEBB and SEBB, usually in the fall. The Contractor will assume responsibility for the Open Enrollment campaign each year of the Contract at the Contractor’s cost. Employees will be encouraged to enroll electronically through the Contractor’s website, but the Contractor must have a plan in place to key and process hard copy enrollment forms from those employees who are unable or unwilling to submit electronic enrollment.

### The Contractor must interface and work with multiple and separate state and higher education payroll systems for transfer of employee information.

### Eligibility verification: HCA or other employers will provide eligibility information to Contractor. Contractor will be responsible for the data entry of enrollment information into its database or interface acceptance and the calculation of deduction amounts for the purpose of transmitting the payroll changes electronically to the state and higher education payroll offices. The Contractor must work closely with HCA to run test data approximately one month prior to the effective date of the FSA, DCAP and HBA plans implementation. The Contractor must ensure that eligibility is properly loaded in the contractor’s system prior to the January 1, 2022 Benefit Start date.

### Enrollee communications: Following the annual PEBB and SEBB Open Enrollment period, the Contractor is responsible for sending electronic or hard copy confirmation letters to Participants with start-up supply of reimbursement forms to all enrollees at least two weeks prior to the first payroll deduction of the new Plan Year. During the Plan Year, the Contractor will issue a confirmation packet, including a supply of reimbursement forms within five to seven Business Days of receipt of enrollment data or forms. The Contractor will be responsible to manage the distribution of employees’ communications and materials at the Contractor’s cost. The Contractor will be also responsible to provide the following documents:

1. Enrollment Guide (online);
2. Enrollment form (print only, or print and online);
3. Open Enrollment benefit fair materials;
4. PEBB and SEBB specific website information;
5. Claim form online;
6. Debit card and application (online);
7. Change Form (online);
8. Agency Transfer Form (online); and
9. Summary plan descriptions and other required plan documents and materials (on-line).

### Enrollment during Plan Year: Newly PEBB and SEBB benefits-eligible employees may enroll in the FSA and/or DCAP plan within 31 calendar days of the date the employee first becomes eligible to apply for coverage. For those employees who are employed after the first of any calendar year, deduction amounts and benefits will be prorated over the remainder of the calendar year. The HCA website will not have a link for online enrollment, except during Open Enrollment.

### Changes In family status: As changes in family status occur, enrollees will need to notify their benefits office in order for them to verify eligibility and update their records. The Contractor will work with the employee's benefits office to verify status of employee's eligibility. Mid-year changes: Mid-year changes to elections due to changes in family status and employment will only be permitted as allowed under 26 CFR § 1.125-4.

### When coverage begins: Coverage will begin on the first of the month following the date the application is received by the Contractor. State employees are paid on the 10th and 25th of each month for a 24-pay period total. However, several employees of higher education may work variable work hours including on a quarter to quarter basis or as seasonal employees. As a result, their pay periods, may vary in numbers throughout the year.

### Renewal election: Participants must re-elect participation for the next Plan Year on an affirmative election basis during the PEBB or SEBB Open Enrollment period. Failure to re-elect enrollment in the FSA and/or DCAP plans will result in cancellation of plan participation. The Contractor will be responsible for emailing the re-enrollment materials to the then-current Participants during this period as a reminder, at the Contractor’s cost.

### HCA FSA/DCAP website: The Contractor will provide information about these plans, and HCA will revise it as appropriate for its membership and post it on the HCA website.

### The Contractor must be able to accept transfer of Claims and data files from the current account Contractor.

# PERFORMANCE GUARANTEES

## PERFORMANCE GUARANTEE DETAILS

### Claims Adjudication Turnaround Time (TAT)

Guarantee: Contractor guarantees 90% of Claims will be processed within ten (10) working days and 95% within 15 working days.

Definitions: TAT calculation considers the total number of working days from the processing date to the date the Claim is processed.

Tracking: Account type specific

Reported: Via monthly Claims Log Report e-mailed to HCA.

Measured: Quarterly, with an average Turnaround Time exceed the guarantees, Contractor will refund four percent (4%) of the monthly administration fee for *each month* the performance standard was not met.

### Claims Adjudication Financial Accuracy

Guarantee: Contractor guarantees 99% of dollars will be paid accurately.

Definitions: Payment accuracy is defined as total dollars paid correctly over total dollars that should have been paid. The gross variance (counting negative payments as positive payments when calculating the total) will be used to sum the total dollars paid in error.

Tracking: Account type specific

Measured: Annually, with a post-payment audit of statistically significant number of Claims processed during the time period produced by the Contractor and reviewed with HCA.

Refund: Seven percent (7%) of *annual* administration fee, payable after the close of the Contract year accounting period through a refund of annual administration fee.

### Telephone Response

Guarantee: Contractor guarantees a telephone response time of 99% in 30 seconds or less, with an abandonment rate not to exceed 3%.

Definitions: Answer time is measured from the time the call begins to ring in the Contractor’s office.

Tracking: Number of calls received

Reported: Quarterly, with an average produced by the Contractor and reviewed with HCA.

Measured: Quarterly, with an average produced by the Contractor and reviewed with HCA.

Refund: If the quarterly average Telephone Response time exceeds the performance guarantee, Contractor will refund one percent (1%) of the monthly administration fee for *each month* that the performance guarantee was not met.

### Web Availability

Guarantee: Contractor guarantees that the web site will be available 98% during scheduled hours.

Definitions: Web is operative and available 98% of the time during scheduled hours.

Tracking: General Availability

Report: Quarterly

Measured: Quarterly

Refund: If the quarterly average web availability does not meet the performance guarantee, Contractor will refund one percent (1%) of the monthly administration fee for *each month* that the performance guarantee was not met.

### Call Center Customer Service Satisfaction

Guarantee: Contractor guarantees that 80% of responses on Participant surveys are "Satisfied" or better.

Definitions: A statistically significant number of annual Participant surveys, conducted by Contractor, indicating a "Satisfactory" rating or better.

Tracking: Account Type Specific

Report: Annually

Measured: Annually

Refund: If the Participant surveys do not meet the performance guarantee, Contractor will refund one percent (2%) of the *annual* administration fee.

## PERFORMANCE GUARANTEE MEASURES

|  |  |  |  |
| --- | --- | --- | --- |
| **Guarantee** | **% at Risk (Admin Fee)** | **Target** | **Frequency** |
| Claims Adjudication Turnaround Time (TAT) | 4% per month | 90% within 10 days; 95% within 15 days | Quarterly |
| Claims Adjudication Financial Accuracy | 7% per annum | 99% of dollars will be paid accurately | Annually |
| Telephone Response | 1% per month | 99% in < 30 seconds; abandonment < 3% | Quarterly |
| Web Availability | 1% per month | 98% during schedule hours | Quarterly |
| Customer Service Satisfaction | 2% per annum | 80% "Satisfactory" or better | Annually |

# GENERAL TERMS AND CONDITIONS

## ACCESS TO DATA

In compliance with RCW 39.26.180 (2) and federal rules, the Contractor must provide access to any data generated under this Contract to HCA, the Joint Legislative Audit and Review Committee, the State Auditor, and any other state or federal officials so authorized by law, rule, regulation, or agreement 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.

## ADVANCE PAYMENT PROHIBITED

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

## AMENDMENTS

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

## ASSIGNMENT

### Contractor may not assign or transfer all or any portion of this Contract or any of its rights hereunder, or delegate any of its duties hereunder, except delegations as set forth in Section 5.33, *Subcontracting*, without the prior written consent of HCA. Any permitted assignment will not operate to relieve Contractor of any of its duties and obligations hereunder, nor will such assignment affect any remedies available to HCA that may arise from any breach of the provisions of this Contract or warranties made herein, including but not limited to, rights of setoff. Any attempted assignment, transfer or delegation in contravention of this Subsection 5.4.1 of the Contract will be null and void.

### HCA may assign this Contract to any public agency, commission, board, or the like, within the political boundaries of the State of Washington, with written notice of thirty (30) calendar days to Contractor.

### This Contract will inure to the benefit of and be binding on the parties hereto and their permitted successors and assigns.

## ATTORNEYS’ FEES

In the event of litigation or other action brought to enforce the terms of this Contract, each party agrees to bear its own attorneys’ fees and costs.

## CHANGE IN STATUS

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

## 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 (See Attachment 1: *Confidential Information Security Requirements*).

### Contractors that come into contact with Protected Health Information may be required to enter into a Business Associate Agreement with HCA in compliance with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, as modified by the American Recovery and Reinvestment Act of 2009 (“ARRA”), Sec. 13400 – 13424, H.R. 1 (2009) (HITECH Act) (HIPAA).

### 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 will survive completion, cancellation, expiration, or termination of this Contract.

## CONFIDENTIAL INFORMATION SECURITY

The federal government, including the Centers for Medicare and Medicaid Services (CMS), and the State of Washington all maintain security requirements regarding privacy, data access, and other areas. Contractor is required to comply with the Data Use, Security, and Confidential Information Requirements set out in Exhibit A to this Contract and appropriate portions of the Washington OCIO Security Standard, 141.10 (<https://ocio.wa.gov/policies/141-securing-information-technology-assets/14110-securing-information-technology-assets>).

## CONFIDENTIAL INFORMATION BREACH – REQUIRED NOTIFICATION

### Contractor must notify the HCA Privacy Officer (PrivacyOfficer@hca.wa.gov) within five Business Days of discovery of any Breach or suspected Breach of Confidential Information.

### Contractor will take steps necessary to mitigate any known harmful effects of such unauthorized access including, but not limited to, sanctioning employees and taking steps necessary to stop further unauthorized access. Contractor agrees to indemnify and hold HCA harmless for any damages related to unauthorized use or disclosure of Confidential Information by Contractor, its officers, directors, employees, Subcontractors or agents.

### If notification of the Breach or possible Breach must (in the judgment of HCA) be made under the HIPAA Breach Notification Rule, or RCW 42.56.590 or RCW 19.255.010, or other law or rule, then:

#### HCA may choose to make any required notifications to the individuals, to the U.S. Department of Health and Human Services Secretary (DHHS) Secretary, and to the media, or direct Contractor to make them or any of them.

#### In any case, Contractor will pay the reasonable costs of notification to individuals, media, and governmental agencies and of other actions HCA reasonably considers appropriate to protect HCA clients (such as paying for regular credit watches in some cases).

#### Contractor will compensate HCA clients for harms caused to them by any Breach or possible Breach.

### Any breach of this clause may result in termination of the Contract and the demand for return or disposition (Attachment 1, Section 6) of all Confidential Information.

### Contractor’s obligations regarding Breach notification survive the termination of this Contract and continue for as long as Contractor maintains the Confidential Information and for any Breach or possible Breach at any time.

## CONTRACTOR’S PROPRIETARY INFORMATION

Contractor acknowledges that HCA is subject to chapter 42.56 RCW, the Public Records Act, and that this Contract will 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 will maintain the confidentiality of Contractor’s information in its possession that is marked Proprietary. 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.

## COVENANT AGAINST CONTINGENT FEES

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 will 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.

## DEBARMENT

By signing this Contract, Contractor certifies that it 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). 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. Contractor must 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.

## DISPUTES

The parties will 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 any dispute. When a genuine dispute arises between HCA and the Contractor regarding the terms of this Contract or the responsibilities imposed herein and it cannot be resolved between the parties’ Contract Managers, either party may initiate the following dispute resolution process.

### The initiating party will reduce its description of the dispute to writing and deliver it to the responding party (email acceptable). The responding party will respond in writing within five (5) Business Days (email acceptable). If the initiating party is not satisfied with the response of the responding party, then the initiating party may request that the HCA Director or designee review the dispute. Any such request from the initiating party must be submitted in writing to the HCA Director or designee within five (5) Business Days after receiving the response of the responding party. The HCA Director or designee will have sole discretion in determining the procedural manner in which he or she will review the dispute. The HCA Director or designee will inform the parties in writing within five (5) Business Days of the procedural manner in which he or she will review the dispute, including a timeframe in which he or she will issue a written decision.

### A party's request for a dispute resolution must:

#### Be in writing;

#### Include a written description of the dispute;

#### State the relative positions of the parties and the remedy sought;

#### State the Contract Number and the names and contact information for the parties;

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

## ENTIRE AGREEMENT

HCA and Contractor agree that the Contract is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Contract and supersedes all letters of intent or prior contracts, oral or written, between the parties relating to the subject matter of the Contract, except as provided in Section 5.39 *Warranties*.

## FORCE MAJEURE

A party will 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, embargoes, government orders or any other force majeure event.

## FUNDING WITHDRAWN, REDUCED OR LIMITED

If HCA determines in its sole discretion that the funds it relied upon to establish this Contract have been 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, then HCA, at its sole discretion, may:

### Terminate this Contract pursuant to Section 5.37.3, *Termination for Non-Allocation of Funds*;

### Renegotiate the Contract under the revised funding conditions; or

### Suspend Contractor’s performance under the Contract upon five (5) Business Days’ advance written notice to Contractor. HCA will use this option only 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.

#### 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.

#### When HCA determines in its sole discretion 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.

#### 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 will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the retroactive date of termination.

## GOVERNING LAW

This Contract is governed in all respects by the laws of the state of Washington, without reference to conflict of law principles. The jurisdiction for any action hereunder is exclusively in the Superior Court for the state of Washington, and the venue of any action hereunder is in the Superior Court for Thurston County, Washington. Nothing in this Contract will be construed as a waiver by HCA of the State’s immunity under the 11th Amendment to the United States Constitution.

## INDEMNIFICATION

Contractor must defend, indemnify, and save 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, or Breach of its confidentiality and notification obligations under Section 5.7 *Confidential Information Protection* and Section 5.9 *Confidentiality Breach-Required Notification*, arising from intentional 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.

## INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. Contractor and its employees or agents performing under this Contract are not employees or agents of HCA. Contractor will not hold itself out as or claim to be an officer or employee of HCA or of the State of Washington by reason hereof, nor will Contractor make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with Contractor.

## INDUSTRIAL INSURANCE COVERAGE

Prior to performing work under this Contract, Contractor must 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 must maintain full compliance with Title 51 RCW during the course of this Contract.

## LEGAL AND REGULATORY COMPLIANCE

### During the term of this Contract, Contractor must 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.

### While on the HCA premises, Contractor must comply with HCA operations and process standards and policies (e.g., ethics, Internet / email usage, data, network and building security, harassment, as applicable). HCA will make an electronic copy of all such policies available to Contractor.

### Failure to comply with any provisions of this section may result in Contract termination.

## LIMITATION OF AUTHORITY

Only the HCA Authorized Representative has 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 HCA Authorized Representative.

## NO THIRD-PARTY BENEFICIARIES

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

## NONDISCRIMINATION

During the performance of this Contract, the Contractor must comply with all federal and state nondiscrimination laws, regulations and policies, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. § 2000e et seq.; the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §12101 et seq., 28 CFR Part 35; and, the Washington Law Against Discrimination, Chapter 49.60 RCW. In the event of Contractor’s noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled, or terminated in whole or in part under the Termination for Default sections, and Contractor may be declared ineligible for further contracts with HCA.

## OVERPAYMENTS TO CONTRACTOR

In the event that Overpayments or erroneous payments have been made to the Contractor under this Contract, HCA will provide written notice to Contractor and Contractor will refund the full amount to HCA within thirty (30) calendar days of the notice. If Contractor fails to make timely refund, HCA may charge Contractor one percent (1%) per month on the amount due, until paid in full. If the Contractor disagrees with HCA’s actions under this section, then it may invoke the dispute resolution provisions of Section 5.13 *Disputes*.

## PAY EQUITY

### Contractor represents and warrants that, as required by Washington state law (Engrossed House Bill 1109, Sec. 211), during the term of this Contract, it agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if (i) the individuals work for Contractor, (ii) the performance of the job requires comparable skill, effort, and responsibility, and (iii) the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed.

### Contractor may allow differentials in compensation for its workers based in good faith on any of the following: (i) a seniority system; (ii) a merit system; (iii) a system that measures earnings by quantity or quality of production; (iv) bona fide job-related factor(s); or (v) a bona fide regional difference in compensation levels.

### Bona fide job-related factor(s)” may include, but not be limited to, education, training, or experience, that is: (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) accounts for the entire differential.

### A “bona fide regional difference in compensation level” must be (i) consistent with business necessity; (ii) not based on or derived from a gender-based differential; and (iii) account for the entire differential.

### Notwithstanding any provision to the contrary, upon breach of warranty and Contractor’s failure to provide satisfactory evidence of compliance within thirty (30) Days of HCA’s request for such evidence, HCA may suspend or terminate this Contract.

## PUBLICITY

### The award of this Contract to Contractor is not in any way an endorsement of Contractor or Contractor’s Services by HCA and must not be so construed by Contractor in any advertising or other publicity materials.

### Contractor agrees to submit to HCA, all advertising, sales promotion, and other publicity materials relating to this Contract or any Service furnished by Contractor in which HCA’s name is mentioned, language is used, or Internet links are provided from which the connection of HCA’s name with Contractor’s Services may, in HCA’s judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, marketing, sales promotion materials, publicity or the like through print, voice, the Web, and other communication media in existence or hereinafter developed without the express written consent of HCA prior to such use.

## RECORDS AND DOCUMENTS REVIEW

### The Contractor must maintain books, records, documents, magnetic media, receipts, invoices or 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, 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 Contractor must retain such records for a period of six (6) years after the date of final payment under this Contract.

### 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.

## REMEDIES NON-EXCLUSIVE

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

## RIGHT OF INSPECTION

The Contractor must provide right of access to its facilities to HCA, or any of its 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.

## RIGHTS IN DATA/OWNERSHIP

### HCA and Contractor agree that all data and work products (collectively “Work Product”) produced pursuant to this Contract will be considered a *work for hire* under the U.S. Copyright Act, 17 U.S.C. §101 *et seq*, and will be owned by HCA. Contractor is hereby commissioned to create the Work Product. Work Product includes, but is not limited to, discoveries, formulae, ideas, improvements, inventions, methods, models, processes, techniques, findings, conclusions, recommendations, reports, designs, plans, diagrams, drawings, Software, databases, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions, to the extent provided by law. Ownership includes the right to copyright, patent, register and the ability to transfer these rights and all information used to formulate such Work Product.

### If for any reason the Work Product would not be considered a *work for hire* under applicable law, Contractor assigns and transfers to HCA, the entire right, title and interest in and to all rights in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof.

### Contractor will execute all documents and perform such other proper acts as HCA may deem necessary to secure for HCA the rights pursuant to this section.

### Contractor will not use or in any manner disseminate any Work Product to any third party, or represent in any way Contractor ownership of any Work Product, without the prior written permission of HCA. Contractor will take all reasonable steps necessary to ensure that its agents, employees, or Subcontractors will not copy or disclose, transmit or perform any Work Product or any portion thereof, in any form, to any third party.

### Material that is delivered under this Contract, but that does not originate therefrom (“Preexisting Material”), must be transferred to HCA with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. HCA will have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.

### Contractor must identify all Preexisting Material when it is delivered under this Contract and must advise HCA of any and all known or potential infringements of publicity, privacy or of intellectual property affecting any Preexisting Material at the time of delivery of such Preexisting Material. Contractor must provide HCA with prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract.

## SEVERABILITY

If any provision of this Contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity will 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.

## SUBCONTRACTING

### Neither Contractor, nor any Subcontractors, may enter into subcontracts for any of the work contemplated under this Contract without prior written approval of HCA. HCA has sole discretion to determine whether or not to approve any such subcontract. In no event will the existence of the subcontract operate to release or reduce the liability of Contractor to HCA for any breach in the performance of Contractor’s duties.

### Contractor is responsible for ensuring that all terms, conditions, assurances and certifications set forth in this Contract are included in any subcontracts.

### If at any time during the progress of the work HCA determines in its sole judgment that any Subcontractor is incompetent or undesirable, HCA will notify Contractor, and Contractor must 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 will not relieve Contractor of any of its responsibilities under the Contract, nor be the basis for additional charges to HCA.

### HCA has no contractual obligations to any Subcontractor or vendor under contract to the Contractor. Contractor is fully responsible for all contractual obligations, financial or otherwise, to its Subcontractors.

## SURVIVAL

The terms and conditions contained in this Contract that, by their sense and context, are intended to survive the completion, cancellation, termination, or expiration of the Contract will survive. In addition, the terms of the sections titled *Confidential Information Protection, Confidential Information Breach – Required Notification, Contractor’s Proprietary Information, Disputes, Overpayments to Contractor, Publicity, Records and Documents Review, Rights in Data/Ownership, and Rights of State and Federal Governments* will survive the termination of this Contract. The right of HCA to recover any overpayments will also survive the termination of this Contract.

## TAXES

HCA will pay sales or 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.

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 Contract.

## TERMINATION

### TERMINATION FOR DEFAULT

In the event HCA determines that Contractor has failed to comply with the terms and conditions of this Contract, HCA has the right to suspend or terminate this Contract. HCA will notify Contractor in writing of the need to take corrective action. If corrective action is not taken within five (5) Business Days, or other time period agreed to in writing by both parties, the Contract may be terminated. HCA reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by Contractor or a decision by HCA to terminate the Contract.

In the event of termination for default, Contractor will be liable for damages 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 Contractor: (i) was not in default, or (ii) its failure to perform was outside of its control, fault or negligence, the termination will be deemed a “Termination for Convenience.”

### 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) calendar days’ written notice. If this Contract is so terminated, HCA will 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 will accrue to HCA in the event the termination option in this section is exercised.

### TERMINATION FOR NONALLOCATION OF FUNDS

If funds are not allocated to continue this Contract in any future period, HCA may immediately terminate this Contract by providing written notice to the Contractor. The termination will be effective on the date specified in the termination notice. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. HCA agrees to notify Contractor of such nonallocation at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this section is exercised.

### 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 immediately terminate this Contract by providing written notice to the Contractor. The termination will be effective on the date specified in the termination notice. HCA will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination. HCA agrees to notify Contractor of such withdrawal of authority at the earliest possible time. No penalty will accrue to HCA in the event the termination option in this section is exercised.

### TERMINATION FOR CONFLICT OF INTEREST

HCA may terminate this Contract by written notice to the Contractor if HCA determines, 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 will be entitled to pursue the same remedies against the Contractor as it could pursue in the event Contractor breaches the contract.

## TERMINATION PROCEDURES

### Upon termination of this Contract, HCA, in addition to any other rights provided in this Contract, may require 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 will pay Contractor the agreed-upon price, if separately stated, for completed work and services 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 that are accepted by HCA; and (iv) the protection and preservation of property, unless the termination is for default, in which case HCA will determine the extent of the liability. Failure to agree with such determination will be a dispute within the meaning of Section 5.13 *Disputes*. 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.

### After receipt of notice of termination, and except as otherwise directed by HCA, Contractor must:

#### Stop work under the Contract on the date of, and to the extent specified in, the notice;

#### 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;

#### 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;

#### 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 will be final for all the purposes of this clause;

#### Transfer title to and deliver as directed by HCA any property required to be furnished to HCA;

#### Complete performance of any part of the work that was not terminated by HCA; and

#### Take such action as may be necessary, or as HCA may direct, for the protection and preservation of the records related to this Contract that are in the possession of the Contractor and in which HCA has or may acquire an interest.

## WAIVER

Waiver of any breach of any term or condition of this Contract will not be deemed a waiver of any prior or subsequent breach or default. No term or condition of this Contract will be held to be waived, modified, or deleted except by a written instrument signed by the parties. Only the HCA Authorized Representative has the authority to waive any term or condition of this Contract on behalf of HCA.

## WARRANTIES

### Contractor represents and warrants that it will perform all services pursuant to this Contract in a professional manner and with high quality and will immediately re-perform any services that are not in compliance with this representation and warranty at no cost to HCA.

### Contractor represents and warrants that it will comply with all applicable local, State, and federal licensing, accreditation and registration requirements and standards necessary in the performance of the Services.

### EXECUTIVE ORDER 18-03 – WORKERS’ RIGHTS (MANDATORY INDIVIDUAL ARBITRATION). Contractor represents and warrants, as previously certified in Contractor’s bid submission, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

### Any written commitment by Contractor within the scope of this Contract will be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and will render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor to HCA or contained in any Contractor publications, or descriptions of services in written or other communication medium, used to influence HCA to enter into this Contract.

Attachment 1

**Confidential Information Security Requirements**

1. Definitions

In addition to the definitions set out in Section 2 of this Contract K      for Tax-Advantaged Account Administration Services, the definitions below apply to this Attachment.

1. “Hardened Password” means a string of characters containing at least three of the following character classes: upper case letters; lower case letters; numerals; and special characters, such as an asterisk, ampersand or exclamation point.
	1. Passwords for external authentication must be a minimum of 10 characters long.
	2. Passwords for internal authentication must be a minimum of 8 characters long.
	3. Passwords used for system service or service accounts must be a minimum of 20 characters long.
2. “Portable/Removable Media” means any Data storage device that can be detached or removed from a computer and transported, including but not limited to: optical media (e.g. CDs, DVDs); USB drives; or flash media (e.g. CompactFlash, SD, MMC).
3. “Portable/Removable Devices” means any small computing device that can be transported, including but not limited to: handhelds/PDAs/Smartphones; Ultramobile PC’s, flash memory devices (e.g. USB flash drives, personal media players); and laptops/notebook/tablet computers. If used to store Confidential Information, devices should be Federal Information Processing Standards (FIPS) Level 2 compliant.
4. “Secured Area” means an area to which only Authorized Users have access. Secured Areas may include buildings, rooms, or locked storage containers (such as a filing cabinet) within a room, as long as access to the Confidential Information is not available to unauthorized personnel.
5. “Transmitting” means the transferring of data electronically, such as via email, SFTP, webservices, AWS Snowball, etc.
6. “Trusted System(s)” means the following methods of physical delivery: (1) hand-delivery by a person authorized to have access to the Confidential Information with written acknowledgement of receipt; (2) United States Postal Service (“USPS”) first class mail, or USPS delivery services that include Tracking, such as Certified Mail, Express Mail or Registered Mail; (3) commercial delivery services (e.g. FedEx, UPS, DHL) which offer tracking and receipt confirmation; and (4) the Washington State Campus mail system. For electronic transmission, the Washington State Governmental Network (SGN) is a Trusted System for communications within that Network.
7. “Unique User ID” means a string of characters that identifies a specific user and which, in conjunction with a password, passphrase, or other mechanism, authenticates a user to an information system.
8. Confidential Information Transmitting
9. When transmitting HCA’s Confidential Information electronically, including via email, the Data must be encrypted using NIST 800-series approved algorithms (<http://csrc.nist.gov/publications/PubsSPs.html>). This includes transmission over the public internet.
10. When transmitting HCA’s Confidential Information via paper documents, the Receiving Party must use a Trusted System.
11. Protection of Confidential Information

The Contractor agrees to store Confidential Information as described:

1. Data at Rest:
2. Data will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data. Access to the Data will be restricted to Authorized Users through the use of access control lists, a Unique User ID, and a Hardened Password, or other authentication mechanisms which provide equal or greater security, such as biometrics or smart cards. Systems which contain or provide access to Confidential Information must be located in an area that is accessible only to authorized personnel, with access controlled through use of a key, card key, combination lock, or comparable mechanism.
3. Data stored on Portable/Removable Media or Devices:
* Confidential Information provided by HCA on Removable Media will be encrypted with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the Data.
* HCA’s data must not be stored by the Receiving Party on Portable Devices or Media unless specifically authorized within the Data Share Agreement. If so authorized, the Receiving Party must protect the Data by:
1. Encrypting with NIST 800-series approved algorithms. Encryption keys will be stored and protected independently of the data;
2. Control access to the devices with a Unique User ID and Hardened Password or stronger authentication method such as a physical token or biometrics;
3. Keeping devices in locked storage when not in use;
4. Using check-in/check-out procedures when devices are shared;
5. Maintain an inventory of devices; and
6. Ensure that when being transported outside of a Secured Area, all devices with Data are under the physical control of an Authorized User.
7. Paper documents. Any paper records containing Confidential Information must be protected by storing the records in a Secured Area that is accessible only to authorized personnel. When not in use, such records must be stored in a locked container, such as a file cabinet, locking drawer, or safe, to which only authorized persons have access.
8. Confidential Information Segregation

HCA Confidential Information received under this Contract must be segregated or otherwise distinguishable from non-HCA data. This is to ensure that when no longer needed by the Contractor, all HCA Confidential Information can be identified for return or destruction. It also aids in determining whether HCA Confidential Information has or may have been compromised in the event of a security Breach.

* 1. The HCA Confidential Information must be kept in one of the following ways:
1. on media (e.g. hard disk, optical disc, tape, etc.) which will contain only HCA Data; or
2. in a logical container on electronic media, such as a partition or folder dedicated to HCA’s Data; or
3. in a database that will contain only HCA Data; or
4. within a database and will be distinguishable from non-HCA Data by the value of a specific field or fields within database records; or
5. when stored as physical paper documents, physically segregated from non-HCA Data in a drawer, folder, or other container.
	1. When it is not feasible or practical to segregate HCA Confidential Information from non-HCA data, then both the HCA Confidential Information and the non-HCA data with which it is commingled must be protected as described in this Attachment.
6. Confidential Information Shared with Subcontractors

If HCA Confidential Information provided under this Contract is to be shared with a Subcontractor, the contract with the Subcontractor must include all of the Confidential Information Security Requirements.

1. Confidential Information Disposition

When the Confidential Information is no longer needed, except as noted below, the Confidential Information must be returned to HCA or destroyed. Media are to be destroyed using a method documented within NIST 800-88 (<http://csrc.nist.gov/publications/PubsSPs.html>).

1. For HCA’s Confidential Information stored on network disks, deleting unneeded Confidential Information is sufficient as long as the disks remain in a Secured Area and otherwise meet the requirements listed in Section 3, above. Destruction of the Confidential Information as outlined in this section of this Attachment may be deferred until the disks are retired, replaced, or otherwise taken out of the Secured Area.

# SCHEDULE A – STATEMENT OF WORK

The Contractor will provide administrative and recordkeeping services, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

1. **Account Management**
2. Administrator must provide an account management team that is accessible, engaged, and fully responsive to HCA concerns and immediately reports to HCA any situation that could potentially impact the administration of any of the accounts.
3. Administrator should process reimbursement requests for appropriate expenses via the Administrator's website, through debit cards, phone application, or directly to the Administrator via e-mail, mail or fax.
4. Administrator will have a functional Claims processing system for each account type in effect prior to the Benefits Start Date.
5. Administrator will establish procedures to ensure no Participant exceeds their annual elected reduction amount (or other applicable account limitation).
6. Administrator must have the ability to refund Health Benefit Accounts when Participant inadvertently uses funds to pay for ineligible health plan premiums.
7. Administrator must process FSA and DCAP Claims incurred during the Grace Period, which is two months and 15 days following the end of the Plan Year (March 15 of the next year).
8. Administrator should verify reimbursement Claims within thirty (30) days of receipt.
9. Participants in all account types must be notified electronically of Claim rejections within fifteen (15) days and must be provided with specific and understandable reasons for rejection and clear follow-up instructions.
10. **Customer Services**
11. The Administrator must provide a fully operational customer service center with customer service staff that are knowledgeable, responsive, and deliver high quality service to all Participants and/or HCA and/or other employers.
12. The customer service center must provide support for culturally and linguistically diverse communities as well as reasonable accommodations for communications that are consistent with ADA requirements for all Participant-oriented tools.
13. **Online Services**
14. The Administrator must provide a secure, ADA compliant online self-service portal that will allow Participants and/or HCA and/or employers to submit enrollment forms as well as provide easy and accurate access to information regarding the status of their FSA and/or DCAP payroll deductions, reimbursements and outstanding claims through a website. This portal should be available 24-hours a day, seven (7) days a week.
15. Administrator must provide Participants with account balance summaries, available on Administrator's website, including the following data elements:
16. An ongoing summary of year-to-date total deposits;
17. Year-to-date total reimbursements;
18. Year to date totals of authorized Claims;
19. Balance of outstanding Claims; and
20. Pending verification transactions.
21. The Administrator’s online services must at all times meet or exceed the Washington State Office of the Chief Information Officer (OCIO) Technology Standards, or their replacements or successors, found in Attachment 1.
22. **Data and Reporting**

Administrator must provide reports on all account types with reporting elements and recipients as outlined below:

1. Certification that all information sharing is in full compliance with HIPAA and other applicable regulations, with information and reporting structured to meet the needs of Participants, providers, HCA, the community, and other identified stakeholders.
2. Responsiveness to customer services questions and complaints including count of incoming calls, time to answer, number of complaints of received, reason for complaints, number of complaints or questions resolved, and appeals which must include a description of the appeals.

Administrator must also provide specialized reports for each account type with specific requirements as outlined below:

*FSA Reporting Requirements*

1. Enrollment information report: Administrator must provide monthly standard and ad hoc customized reports to HCA pertaining to PEBB and SEBB enrollment and identifying all new Participants. The enrollment report(s) should be separated by PEBB and SEBB populations.
2. Administrator must complete a quarterly full eligibility file match with HCA (and HCA’s business partners, if applicable) and prompt reconciliation of any differences and reporting of any reconciled differences and any other discrepancies to HCA.

*Dependent Care Assistance Program Reporting Requirements*

1. Enrollment information report: Administrator must provide monthly standard and ad hoc customized reports to HCA pertaining to PEBB and SEBB enrollment and identifying all new Participants. The enrollment report(s) should be separated by PEBB and SEBB populations.
2. Completion of a quarterly full eligibility file match with HCA (and HCA’s business partners, if applicable) and prompt reconciliation of any differences and reporting of any reconciled differences and any other discrepancies to HCA.

*Health Benefit Accounts Reporting Requirements*

1. Enrollment information report: Administrator must provide quarterly ad hoc customized reports to HCA pertaining to HBA enrollment information identifying all new Participants and all terminations of Participants from the Plan. The enrollment report(s) should be separated by population type.
2. Replacement cards: Administrator must provide a monthly accounting of issued replacement cards.
3. Card usage report: Administrator must provide monthly standard and ad hoc customized reports to HCA itemizing purchases made by Participants.
4. Automated warning for low-balances: Administrator must generate an automatic notice to HCA indicating accounts with balance funds of $20 or less.

*Health Savings Accounts Reporting Requirements*

1. Enrollment information report: Administrator must provide monthly standard and ad hoc customized reports to HCA pertaining to PEBB and SEBB enrollment and identifying all new Participants. The enrollment report(s) should be separated by PEBB and SEBB populations.
2. Completion of a quarterly full eligibility file match with HCA (and HCA’s business partners, if applicable) and prompt reconciliation of any differences and reporting of any reconciled differences and any other discrepancies to HCA.

*Data File Transfer and Access*

1. Administrator must pick up and process electronic data files from Washington State’s secure file transfer service.
2. Administrator must accept and execute, or transfer electronic data files including Claims data extracts, to HCA or on behalf of HCA to Business Associates or external contracted vendors when requested by HCA at no additional cost. HCA Business Associates include but are not limited to HCA’s actuarial consultants. Data transfers may occur on a weekly or monthly basis, as specified by HCA.
3. Administrator must execute separate data sharing contracts with other HCA vendors, as needed, for purposes of sharing HCA data.

*Eligibility System Requirements*

1. Administrator must create an eligibility transaction file showing Participant SSN, numeric field, and benefit type (e.g. FSA, DCAP, HBA, HSA) to send weekly to HCA.
2. Administrator must conduct a reconciliation of the full eligibility file with HCA to send weekly to HCA.
3. **Communications**
4. The Administrator will be responsible for marketing, advertising, educating, or soliciting participation in their account offerings, with final approval of such efforts and materials from, and at the discretion of, HCA. Such materials must be submitted to HCA for review no later than September 1 of each year.
5. The Administrator must write, design, print and distribute the following customized materials for each of the contracted account types:
	1. Online enrollment instructions;
	2. Account(s) overview;
	3. Claim form (singular and recurring);
	4. Claim denial letters;
	5. Direct deposit and/or debit card order form;
	6. Termination forms;
	7. Medical necessity letter;
	8. HIPAA authorization form; and
	9. Account holder statement.

*Open Enrollment Requirements*

1. The Administrator will support the PEBB and SEBB annual Open Enrollment activities in the summer and fall of 2021 for the 2022 Plan Year.
2. The Administrator must provide support as specified and approved by HCA to eligible PEBB and SEBB Participants during the annual Open Enrollment period; this may include but is not limited to:
3. Customer service-based support to assist eligible Participants to complete their enrollment;
4. Communications to explain Administrator’s offerings; and
5. Webinar and video support as requested.
6. Administrator must provide requested video materials or representatives to attend the annual live and/or virtual Open Enrollment benefit fairs for the PEBB and SEBB population. Benefit fairs will occur throughout the state in the fall of each contracted year and could be held either in-person, exclusively virtually-based, or a combination of in-person and virtual. The representatives or materials must be able to cover topics such as:
7. An overview of account offerings;
8. Complaint and appeal procedures; and
9. How Participants can access information, tools and resources related to their account.
10. If the Administrator has other lines of business beyond the tax-advantaged accounts they provide under the PEBB or SEBB Program that relate to other benefits offered by the PEB Board or the SEB Board, the resulting Contractor(s) is/are prohibited from using any information obtained as a result of the Contract to solicit PEBB Program or SEBB Program enrollees or Participants to purchase or participate in the Administrator’s other products or services.
11. The Administrator must mail enrollment welcome packets (i) no later than December 20 (pending HCA’s delivery of the eligibility file by December 10) for all enrollments completed during the PEBB annual Open Enrollment; (ii) no later than December 10 (pending HCA’s delivery of the eligibility file by November 30) for all enrollments completed during the SEBB annual Open Enrollment; and (iii) within thirty (30) Business Days of enrolling for Participants who enroll in the Administrator’s tax-advantaged account outside of annual Open Enrollment.

*Appeals and Complaints Requirements*

1. Administrator must provide designated forms or methods for Participant to file appeals and complaints including physical forms, web-based forms and via customer service call lines.
2. Administrator must resolve 95% of Participant appeals and complaints within 30 days of receipt.
3. **Implementation**
4. The initial term of the Contract will commence on the date of last signature and continue through December 31, 2026, unless terminated sooner as provided therein. Implementation will begin immediately following Contract execution. Administrator must complete all necessary steps to ensure successful enrollment of all Participants in appropriate accounts; the creation of necessary systems to ensure successful Claim processing for all accounts; the preparation of all marketing and informational materials and the scheduling of requested reports and analytics. Benefits and other administrative services will not begin until January 1, 2022.
5. If HCA decides to transition from grace period option to rollover option for FSA accounts, then Contractor must partner with HCA on necessary communications and processes to implement this transition.

*Emergency Response Management*

1. Administrator must have an emergency response plan to maintain uninterrupted core business and operations during natural disasters or other system outages.
2. Administrator must have a system of emergency records management and records back-up.